



Memorandum in Support

NYSBA #13

March 28, 2023

S. 4067
A. 3438

By: Senator Mannion
By: M. of A. Zebrowski
Senate Committee: Local Government
Assembly Committee: Local Government
Effective Date: 90 days after signed into law.

AN ACT to amend the general municipal law, in relation to training requirements for members of the board of ethics of a political subdivision or municipality.

LAW AND SECTIONS REFERRED TO: Section 808 of the General Municipal Law.

THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION

Background

New York General Municipal Law Article 18 establishes statewide standards of conduct for the officers and employees of municipalities other than the City of New York. GML Section 808 authorizes municipalities to adopt their own codes of ethics, provided that the local code so adopted may not permit conduct that Article 18 would prohibit. The statute further authorizes municipalities to establish boards of ethics to render advisory opinions to municipal officers and employees with respect to the standards of conduct set forth in GML Art. 18 and in such local code of ethics as may be adopted by the respective municipalities.

The 1987 Ethics in Government Act, among other things, created a Temporary Commission on Local Government Ethics. The Commission sunsetted, leaving no state-level agency charged with studying or reforming statutes aimed at municipal ethics and no state agency specifically tasked with providing education, training or technical assistance on ethics issues for local governments. The New York State Bar Association's Local and State Government Law Section, among other groups, has repeatedly called attention to this gap in ethics oversight.

In the absence of a state agency with regulatory authority over local government ethics, the responsibility devolves upon the board of ethics established by each local municipality.

A well designed and well implemented local government ethics program will have two goals: (1) that of inspiring public confidence in government by ensuring not only the reality, but also the appearance of integrity in government, and (2) that of guiding public officials and assisting them in avoiding unintended ethics violations. The availability of ethics advice from local boards of ethics advances the prophylactic goal of preventing ethics violations before they occur.

Yet, experience indicates that the members of most local boards of ethics themselves have no training in interpreting and applying either the standards of conduct set forth in Article 18 or the common law principles and best practices that have been developed by case law, opinions of the Attorney General and Comptroller, and literature published by bar and municipal associations. As a result, many local boards of ethics rarely meet, if ever, lack independence, and do not adequately understand their mission.

The Comptroller recently concluded a statewide audit of the ethics programs of twenty local municipalities having populations in excess of 50,000 (and, therefore subject to the requirement of annual financial disclosure). Among its key findings, the Comptroller found that 95% of the audited municipalities provided no formal training for the members of their ethics boards.

Existing Training Requirement for Members of Land Use Boards

Recognizing the importance of their functions, the Legislature has required that the members of local planning and zoning boards obtain four hours of annual training. According to information posted on the website of the Department of State Division of Local Government Services,

This amendment to state law, enacted in 2007, is important because members of planning boards and zoning boards of appeals make decisions of major importance in their municipalities.

Town Law Section 267 (Zoning Board of Appeals) was amended to provide, in pertinent part, that:

7-a. Training and attendance requirements.

(a) Each member of the board of appeals shall complete, at a minimum, four hours of training each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet the requirements of this subdivision. Such training shall be approved by the town board and may include, but not be limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to, electronic media, video, distance learning and traditional classroom training.

(b) To be eligible for reappointment to such board, such member shall have completed the training promoted by the town pursuant to this subdivision.

(c) The training required by this subdivision may be waived or modified by resolution of the town board when, in the judgment of the town board, it is in the best interest of the town to do so.

(d) No decision of a zoning board of appeals shall be voided or declared invalid because of a failure to comply with this subdivision.

Town Law Section 271 (Planning Board, creation, appointment), Village Law Section 7-712 (Zoning Board of Appeals), and Village Law Section 7-718 (Planning Board, creation, appointment) were all amended to include identical provisions.

Surely, the decisions made by local boards of ethics are no less important to their municipalities than the decisions made by zoning and planning boards.

GML Article 18 was adopted with the following statement of legislative purpose:

As government becomes increasingly complex, as our democratic processes draw citizens from every walk of life, there is increasing need for known standards of ethical conduct as a guide for public officers. These standards must rest primarily on personal integrity and on community vigilance: law cannot in itself create moral fiber, nor can law quicken the civic conscience. In support of these basic standards, it is the purpose of this chapter to define areas of conflicts of interest in municipal transactions, leaving to each community the expression of its own code of ethics.

The need for the statute does not spring from widespread malfeasance on the part of municipal officers; rather, the Legislature recognizes their integrity as a group, their culpability in only a few instances. But

lest the few brand the many, the discernment of the offending case must be made certain, its elimination sure. Existing law is too complex, too inconsistent, too overgrown with exceptions, for such a clarity of understanding to be possible. Basic concepts must be retained, but something more than recodification is needed.

There is another and equally important objective: a formula of conduct which is not only clear but reasonable, one which will permit governmental employees to share the normal benefits of the democratic society and economy they serve. If government is to attract and hold competent administrators, public service must not require a complete divesting of all proprietary interests. Real conflict must be rooted out, without condemning the inconsequential.

The chapter, then, has a trinity of purposes: to protect the public from municipal contracts influenced by avaricious officers, to protect innocent public officers from unwarranted assaults on their integrity and to encourage each community to adopt an appropriate code of ethics to supplement this chapter. The Legislature declares that each purpose is a matter of State concern and adopts the following chapter accordingly, with the intention that it shall be the generic law in relation to conflicts of interest in municipal transactions, not to be superseded by local law of any municipality subject to its provisions.

The Proposed Amendment to GML Art. 18

The State and Local Government Law Section proposes that GML Section 808 be amended to add a new subdivision (6), requiring that:

6. (a) Each member of the board of ethics of a political subdivision or municipality shall complete, at a minimum, four hours of training each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet the requirements of this subdivision. Such training shall be approved by the governing body and may include, but not be limited to, training provided by a municipality, county, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to, electronic media, video, distance learning and traditional classroom training.

(b) To be eligible for reappointment to such board, such member shall have completed the training promoted by the respective political subdivision or municipality pursuant to this subdivision.

(c) The training required by this subdivision may be waived or modified by resolution of the governing body when, in the judgment of the governing body, it is in the best interest of the respective political subdivision or municipality to do so.

(d) No decision of a board of ethics shall be voided or declared invalid because of a failure to comply with this subdivision.

(e) Notwithstanding any inconsistent provision, this subdivision shall have no application to a city having a population of one million or more or to a county, school district, or other public agency or facility therein.

Like the existing training requirement for land use boards, which this provision tracks, the proposed training requirement for boards of ethics would provide municipalities with the flexibility to select the source, format and content of the training. Further, because a local municipality may waive or modify the training requirement, it would not represent an unfunded mandate. Like GML Article 18 generally, this proposed training requirement would exclude the City of New York.

For the foregoing reasons, the NYSBA's **SUPPORTS** the passage and enactment of this legislation.