

Conflict of Interests and Ethics

GML Article 18, and Decisional Law Relating to Conflicts of Interest and Ethics

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Structure and Scope of Article 18

- Establishes State-wide rules outside of NYC.
 - State-wide rules do **not** address every type of conflict of interest.
 - Focused mainly on business relationships with municipalities.
 - Addresses several other ethical issues.
 - Requires disclosure/prohibits activities in certain instances.



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Application of Article 18

(GML § 800[4], [5])

- Applies to “municipalities” including:
 - counties, cities, towns, villages, school districts, BOCES, public libraries, **district corporations (e.g. fire districts)**, town and county improvement districts, and consolidated health districts, and IDAs.
 - Does **not** apply to NYC or to most local public authorities.
 - Does apply to IDAs



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Application of Article 18 (cont'd)

- Applies to “municipal officers and employees”:
 - Paid or unpaid.
 - Members of administrative boards, commissions or other municipal agencies.
 - In the case of a county, includes any officer or employee paid from county funds.
 - Fire chiefs and assistant fire chiefs.
- Does **not** apply **solely** by reason of status as a volunteer firefighter or civil defense volunteer.

Prohibition on Interests in Contracts

- Unless a **statutory exception** applies, municipal officers and employees are prohibited from having an “**interest**” in a “**contract**” with the municipality for which they serve when they have certain official **powers or duties** in relation to the contract.

Prohibited Interests: How to Determine

- Must examine four issues:
 - “Contract”
 - “Interest”
 - Powers and duties
 - Exceptions

“Contract” (GML § 800[2])

- Contract:
 - “Claim, account or demand” against a municipality.
 - “Agreement” with a municipality.
 - Can be express or implied.
- Contract also includes:
 - Designation of depository of public funds.
 - Designation of newspaper for publication of official notices etc.

Not a “Contract”

- Contract does **not** include:
 - Land use actions (e.g. zoning changes, variances, site plan or subdivision approvals, building permits).
 - Inter-municipal agreements.

“Interest” (GML § 800[3])

- Interest:
 - Direct or indirect pecuniary (monetary) or material benefit as a result of a municipal contract.
- Deemed interests:
 - Contracts of spouse, minor children or dependents, **except** employment contracts.
 - Contracts of firm, partnership or association of which municipal officer or employee is a member or employee.
 - Contracts of a corporation of which municipal officer or employee is an officer, director or employee, or directly or indirectly owns or controls any stock.

Powers and Duties

(GML § 801[1])

- Section 801 powers and duties:
 - Individually **or as a member of a board**:
 - Negotiate, prepare, authorize or approve the contract;
 - Authorize or approve payment under the contract;
 - Audit bills or claims under the contract; or
 - Appoint an officer or employee having any of these functions

Exceptions

(GML §§ 801, 802)

- Statutory exceptions include:
- Lawful compensation and necessary expenses.
 - “Duties and remuneration.”
 - Pre-existing contracts (but not renewals).
 - Stockholdings of less than 5%.
 - Contracts with not-for-profits.
 - Contracts aggregating less than \$750 in a fiscal year.

Exceptions (cont'd)

- Purchases and public work by municipalities in counties with a population ≤ 200,000 under certain circumstances.
- Purchase of real property with court approval.
- Acquisition of real property by condemnation.
- Certain private sales of bonds or notes.
- Designation of a newspaper for publication of official notices etc.
- Designation of bank or trust company as depository, paying agent, registration agent or for the investment of funds exception (not usually applicable to CFOs, treasurers and their staffs).

Not Exceptions

- No exceptions for:
 - Competitive bidding/Request for Proposal;
 - Disclosure;
 - Abstention or recusal; or
 - Emergencies.

Additional Prohibition for CFOs, Treasurers and Their Staff

(GML §§ 801[2], 802)

- Unless a statutory exception applies, CFO, treasurer and their staff are prohibited from having an interest in a bank or trust company designated as depository, paying agent, registration agent or for the investment of funds.
- Statutory exception applies if prohibition would require designation of bank or trust company located **outside** the municipality.

Disclosure of Interests in Contracts

(GML § 803)

- **Written** disclosure of nature and extent of interest generally required when municipal officer or employee (or spouse) has, will have or later acquires an interest in any actual or proposed contract.
- Disclosure must be made as soon as individual has knowledge of an actual or prospective interest.

Disclosure (cont'd)

- Disclosure must be made publicly to:
 - The individual's **immediate supervisor**; and
 - The municipal **governing body**, which must include the disclosure in the official record of its proceedings.
- Disclosure **not** required when exceptions in § 802(2) apply.
 - (e.g. Stockholdings of less than 5%, Contracts aggregating less than \$750 in a fiscal year)
- Disclosure does not cure a prohibited interest.

Violations

(GML §§ 804, 805)

- Contract **willfully** entered into in which there is a prohibited interest is null, void and wholly unenforceable.
- Municipal officer or employee who **willfully** and **knowingly** violates the prior provisions of article 18 is guilty of a misdemeanor.

Additional Prohibitions

(GML § 805-a)

- Municipal officers and employees prohibited from:
 - Soliciting gifts;
 - Accepting or receiving any gift having a value of \$75 or more where it can be reasonably inferred that the gift is intended to influence the performance of official duties or as a reward;
 - Disclosing or using confidential information for private purposes;

Additional Prohibitions (cont'd)

- Rendering compensated services in relation to any matter before the individual's own agency, or any agency over which he or she has jurisdiction or appointment power.
- Rendering compensated services in relation to any matter before any municipal agency when compensation is dependent or contingent upon action by the agency.

Local Codes of Ethics

(GML § 806)

- Mandatory for counties, cities, towns, villages, school districts and **fire districts**.
- Codes adopted under article 18 must contain provisions with respect to:
 - Disclosure of interest in legislation;
 - Holding investments in conflict with official duty;
 - Private employment; and
 - Future employment.

Local Codes of Ethics (cont'd)

- May also contain additional standards relating to conduct of municipal officers and employees, but may not be inconsistent with article 18.
- Chief executive officer required to cause copy of code to be distributed to each municipal officer or employee.

Boards of Ethics

(GML § 808)

- Optional for **counties** and other municipalities; county board may act with respect to municipality which has not established its own board.
- Board renders advisory opinions upon written request of municipal officers or employees with respect to article 18 or a local code of ethics.

Disclosure of Interests in Certain Land Use Matters

(GML § 809)

- Every application, petition, or request for a variance, change of zoning, plat approval etc. pursuant to a municipality's zoning and planning regulations must disclose the name, residence, and nature and extent of any interest in the applicant held by any:
 - State officer;
 - Officer or employee of the municipality; or
 - Officer or employee of a municipality of which such municipality is part.

Disclosure of Interest in Certain Land Use Matters (cont'd)

- Disclosure obligation imposed on person or entity making the application, not on the public officer or employee having the interest.

Posting of Statute

(GML § 807)

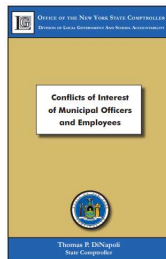
- CEO of a municipality must cause copy of GML §§ 800-809 to be posted in each public building in a place conspicuous to the municipality's officers and employees.

Common Law "Conflicts of interest"

- Situations **not** governed by article 18 or a code of ethics.
- Case-by-case determinations.
- Courts have invalidated board actions based on factors such as self-interest, partiality or economic impropriety.

Resources

- Contact Legal Services
 - (518) 474-5586
- OSC Publications
 - <https://www.osc.state.ny.us/local-government/resources/ethics>
- OSC Advisory Legal Opinions from 1988-present
 - <https://www.osc.state.ny.us/legal-opinions>



Thank You

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