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**ARTICLE 18 OF THE GENERAL MUNICIPAL LAW:  
CONFLICTS OF INTEREST OF MUNICIPAL OFFICERS AND EMPLOYEES**

\*\*\* *This outline has been prepared by Arthur J. Giacalone, Attorney-at-Law, as a supplement to the information found at pp. G-1 to G-8 of the NYSBA's bound material for the CLE program, "The Nuts and Bolts of the Administration and Enforcement of Land Use Laws and Regulations", for presentation on June 3, 2005 in Buffalo, New York.*\*\*\*

**I. A Very Brief History of "Conflict of Interest" Legislation in New York State:**

A. Pre-GML Article 18. Prior to the enactment of GML Art. 18, numerous and oft-times inconsistent conflict-of-interest laws and rules were scattered throughout the State's statutes, city charters, local ordinances, etc.

B. The 1964 enactment of GML Art. 18.<sup>1</sup> Recognizing that "existing law is too complex, too inconsistent, too overgrown with exceptions" to clearly define areas of conflicts of interest in municipal transactions, the State Legislature enacted Article 18 of the General Municipal Law. Although its title, "Conflicts of Interest of Municipal Officers and Employees," appeared to promise a comprehensive set of standards, the 1964 version of *Article 18 only addressed conflicts arising out of an individual's "interest in any contract with the municipality of which he is an officer or employee..."*

As originally enacted, GML Art. 18 was intended as "the generic law" in relation to conflicts of interest in municipal transactions, *not to be superseded* by local law of any municipality subject to its provisions. Its preamble announced "*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."

C. 1969 amendments to GML Art. 18.<sup>2</sup> The State Legislature amended GML Art. 18 in 1969 and, among other things, added Section 809 *requiring the applicant* for a variance, zoning amendment, plat approval, permit, etc., to *disclose the nature and extent of "the interest"* any state officer or officer or employee of that municipality has in the applicant "to the extent known to such applicant."

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<sup>1</sup> L.1964, c. 946 (effective 9/1/1964). See GML § 800 *et seq.*

<sup>2</sup> L.1969, c. 646.

D. 1970 amendments to GML Art. 18.<sup>3</sup> The 1970 amendments to GML Art. 18 made some significant changes. For example:

- It made enactment of a *code of ethics mandatory* for each county, city, town, village and school district.

- It eliminated the pre-emption language found in the original legislation, and gave local municipalities the *authority to adopt standards of ethical conduct not covered in, or more stringent than,* those contained in the GML Art. 18.

- It expressly *prohibited* a local official or employee from soliciting, accepting or receiving any *gift of a value over \$25 [now \$75]* "under circumstances in which it could be reasonably be expected to influence him[/her], in the performance of his[/her] official duties or was intended as a reward for any official action on his part."

- It *prohibited the disclosure of confidential information* or using confidential information to further ones own personal interests.

- It *prohibited* an official or employee from *representing clients before his/her own agency* or before an agency over which he/she has jurisdiction or to which he/she has the power to appoint members, officers or employees.

E. 1987 "Ethics in Government Act" legislation.<sup>4</sup> In an effort to "restore public trust and confidence in government," Governor Mario Cuomo signed the "Ethics in Government Act" in 1987.<sup>5</sup> The legislation established ethical standards governing the conduct of public officials and employees in *all three branches*. The 1987 amendments to the Public Officers Law, Executive Law, Legislative Law and GML Art. 18 address a variety of topics, such as:

- appearance by public officials and employees before State agencies

- dealings with the State after leaving government service

- financial disclosure statements

- establishment of a temporary State commission on local government ethics.

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<sup>3</sup> L.1970, c. 1019.

<sup>4</sup> L.1987, c. 813.

<sup>5</sup> Given this CLE program's focus on land use matters, this outline will not discuss financial disclosure issues and other provisions of the 1987 legislation. Detailed review of the "Ethics in Government Act" can be found in two law review articles: New York's New Ethics Law: Turing the tide on corruption. Robert C. Newman, 16 Hofstra L. Rev. 319 (1988); 1987 Ethics in Government Act: Financial disclosure provisions for municipal officials and proposals for reform. Mark Davies. 11 Pace L. Rev. 243 (1991).

## **II. The Judiciary's Approach to GML Art. 18 and "Conflict of Interest" Issues:**

Resolution of questions of conflict of interest requires a case-by-case examination of the relevant facts and circumstances.

Parker v. Town of Gardiner Planning Board, 184 AD2d 937, 585 NYS2d 571 (AD3 1992)

Byer v. Town of Poestenkill, 232 AD2d 851, 648 NYS2d 768 (AD3 1996)

It is critical that the public be assured that their officials are free to exercise their best judgment without any hint or suggestion of self-interest or partiality, especially if a matter under consideration is particularly controversial. Anything less would undermine the people's confidence in the legitimacy of the proceedings and the integrity of the municipal government.

Zagoreos v. Conklin, 109 AD2d 281, 491 NYS2d 358 (AD2 1985)

Byer v. Town of Poestenkill, 232 AD2d 851, 648 NYS2d 768 (AD3 1996)

The test to be applied is not whether there is a conflict, but whether there might be.

Zagoreos v. Conklin, 109 AD2d 281, 491 NYS2d 358 (AD2 1985)

Tuxedo Conservation and Taxpayers Assoc. v. Town Board of Town of Tuxedo, 69 AD2d 320, 418 NYS2d 638 (AD2 1979)

Violation of a specific section of GML is not critical or necessary to a finding of an improper conflict of interest

Zagoreos v. Conklin, 109 AD2d 281, 491 NYS2d 358 (AD2 1985)

De Paolo v. Town of Ithaca, 258 AD2d 68, 694 NYS2d 235 (AD3 1999)

Tuxedo Conservation and Taxpayers Association v. Town Board of Town of Tuxedo, 69 AD2d 320, 418 NYS2d 638 (AD2 1979)

The conflicts encompassed by article 18 involve pecuniary and material interests rather than expressions of personal opinion.

Webster Associates v. Town of Webster, 59 NY2d 220, 464 NYS2d 431 (NYCA 1983) [public statements before and after election]

Laird v. Town of Montezuma, 191 AD2d 986, 594 NYS2d 939 (4th Dept. 1993)

A statement of personal opinion does not constitute a basis for finding a conflict of interest. Any other conclusion would necessarily have a chilling effect upon a candidate's ability to express an opinion on important issues or to advocate changes in the law once elected.

Segalla v. Planning Board of Town of Amenia, 204 AD2d 332, 611 NYS2d 287 (AD2 1994)

Byer v. Town of Poestenkill, 232 AD2d 851, 648 NYS2d 768 (AD3 1996)

The interest that disqualifies a member of councils to vote is a personal or private one, not such an interest as he or she has in common with all other citizens or owners of property.

Byer v. Town of Poestenkill, 232 AD2d 851, 648 NYS2d 768 (AD3 1996)

Tuxedo Conservation and Taxpayers Association v. Town Board of Town of Tuxedo, 69 AD2d 320, 418 NYS2d 638 (AD2 1979)

Recusal is not necessary where a board member's interest is similar to the vast majority of the municipality's property owners. If the property of nearly every other property owner in the town would be similarly affected, disqualification would make all but a handful of property owners ineligible to sit on the board in such matters.

Segalla v. Planning Board of Town of Amenia, 204 AD2d 332, 611 NYS2d 287 (AD2 1994)

Town of North Hempstead v. Village of North Hills, 38 NY2d 334, 379 NYS2d 792 (NYCA 1975)

In determining whether a disqualifying conflict of interest exists, the extent of the interest at issue must be considered and where a substantial conflict is inevitable, the public official should not act.

Parker v. Town of Gardiner Planning Board, 184 AD2d 937, 585 NYS2d 571 (AD3 1992)

Byer v. Town of Poestenkill, 232 AD2d 851, 648 NYS2d 768 (AD3 1996)

Where the financial interest is "de minimis", the likelihood of the official's interest being influenced and/or the discharge of official duties impaired is "little more than speculative".

Parker v. Town of Gardiner Planning Board, 184 AD2d 937, 585 NYS2d 571 (AD3 1992)

Town of North Hempstead v. Village of North Hills, 38 NY2d 334, 379 NYS2d 792 (NYCA 1975)

Mere fact of employment or similar financial interest does not mandate disqualification of the public official in every instance.

Heutis v. Town of Ticonderoga Planning Board, 11 AD3d 868, 784 NYS2d 187 (AD3 2004)

Parker v. Town of Gardiner Planning Board, 184 AD2d 937, 585 NYS2d 571 (AD3 1992)

Zagoreos v. Conklin, 109 AD2d 281, 491 NYS2d 358 (AD2 1985)

Where no board member had any direct or indirect interest, pecuniary or otherwise, in the subject such that their vote could reasonably be interpreted as benefiting themselves, failure to comply with § 809 disclosure provision is not a defect requiring invalidation of the board's vote.

De Paolo v. Town of Ithaca, 258 AD2d 68, 694 NYS2d 235 (AD3 1999)

Zagoreos v. Conklin, 109 AD2d 281, 491 NYS2d 358 (AD2 1985)

A rational determination by a local board of ethics is entitled to considerable weight by the court.

Parker v. Town of Gardiner Planning Board, 184 AD2d 937, 585 NYS2d 571 (AD3 1992)

**III. Hypothetical "Conflict of Interest" situations: [Note: Any similarity to past or present officials, events or situations is purely coincidental.]**

**A. When Town Officials [or their relatives] Are Offered Contracts for Wind Turbines**

In towns throughout WNY, "wind farm" developers are approaching private landowners, offering them contracts to place 400-foot wind turbines on their property [with substantial monthly rental payments for each tower], and/or requesting easements or right-of-ways for transmission lines, access roads, etc. Not surprisingly, a number of the private landowners who have been offered lucrative contracts are elected or appointed officials (or their relatives). The situations vary, but here are two scenarios:

(1) The Town Supervisor and two board members (on a 5-person town board) have been offered contracts. The town's existing zoning law, adopted at a time when no one envisioned large-scale industrial "wind farms" and 400+-foot towers, allows wind energy facilities in the agricultural-residential district with a special use permit granted by the town planning board, requiring area variances from the ZBA for any structure greater than 50' tall. An initial draft of the town's new comprehensive plan is silent regarding wind farms. A large number of residents urge the town board to enact a moratorium so that: (a) the new comprehensive plan can address whether industrial wind farms should be encouraged or discouraged in the town; and, (b) the existing zoning law can be amended to expressly address industrial wind farms. State law grants wind farms real property tax exemptions *unless* the local taxing authorities (such as the town) votes to opt-out of the exemptions.

(2) A rural town has neither a zoning law or comprehensive plan, as well as a fair amount of wind, so it is an attractive target for wind farms developers. One town board member has been offered a contract by a wind farm developer. The son of another town board member has been offered and signed a contract. A number of town residents demand a moratorium so a zoning law can be enacted restricting or prohibiting wind farms. They also ask that the town board opt-out of the State tax exemption. The town refuses to take any official action on any of the demands, and tells residents that the town will negotiate a payment-in-lieu -of-taxes [PILOT] agreement with wind farm developers to enhance town revenues.

*Questions: Does GML Art. 18 address these situations? Are there improper conflicts of interest, or the appearances of a conflict? Must the town board members officially disclose the fact that they have been approached? Is recusal needed? At what stage? What happens if 3 of the town board's 5 members have a conflict? Can a member of the town board who has not been offered a contract or a resident take any step to compel recusal? Does Art. 18 apply where the town officials have the power to enact zoning laws, or adopt a comprehensive plan, or opt-out of tax exemptions, but merely stand by and take no official action?*

B. When A Mayor Actively Campaigns in Support of a Rezoning Application

While a controversial rezoning application is pending before a Village Board, the Village Mayor takes the following steps:

- Participates in the applicant's "infomercial" (shown endlessly on a TV screen in the applicant's existing store) in which he is identified as the Village Mayor, and where he expressly states that it is important to have the particular business stay in the Village.

- Permits his name to be listed first, along with hundreds of other area residents, in a full-page ad in the Village's official newspaper urging the Village Board "to support" the proposed project.

- Signs the following letter that is mailed to thousands of residents, in and near the Village, the week prior to the public hearing on the rezoning application (at which he will preside):

[MAYOR'S FULL NAME]

Dear Friend and Neighbor,

As you may know, there is a proposal before the Village Board for the ...

This project is right for [the Village]...

Many people have expressed their support for this project... Before anything can happen, the Village Board must hold a public hearing and vote on the proposal.

...

There is a public hearing on [date] at [time and place]. It is very important that you make your voice heard...

Sincerely,

/s/

Mayor's Name

Mayor

Village of \_\_\_\_\_

*Questions: Who can officially question whether such conduct constitutes "the appearance of impropriety?" The Mayor alone? Fellow Board members? The public? Does GML Art. 18 address this situation? Should it? Is there an improper conflict of interest, or the appearance of a conflict? Does it matter if the letter is sent on Village or personal stationery? If the cost of the mailing is borne by the applicant, has the Mayor accepted an improper gift? If GML Art. 18 does not address this situation, does a municipality have authority to prohibit such behavior or mandate recusal?*

#### **IV. GML Article 18 - Selected Statutory Provisions [Emphases added by author]:**

##### **General Municipal Law § 800. Definitions**

When used in this article and unless otherwise expressly stated or unless the context otherwise requires:

...  
2. "*Contract*" means *any claim, account or demand against or agreement with a municipality, express or implied*, and shall include the designation of a depository of public funds and the designation of a newspaper, including but not limited to an official newspaper, for the publication of any notice, resolution, ordinance, or other proceeding where such publication is required or authorized by law.

3. "*Interest*" means *a direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as the result of a contract with the municipality which such officer or employee serves*. For the purposes of this article a municipal officer or employee shall be deemed to have an interest in the contract of (a) his *spouse, minor children and dependents*, except a contract of employment with the municipality which such officer or employee serves, (b) a firm, partnership or association of which such officer or employee is a member or employee, (c) a corporation of which such officer or employee is an officer, director or employee and (d) a corporation any stock of which is owned or controlled directly or indirectly by such officer or employee.

4. "*Municipality*" means a county, city, town, village, school district, consolidated health district, county vocational education and extension board, public library, board of cooperative educational services, urban renewal agency, a joint water works system established pursuant to chapter six hundred fifty-four of the laws of nineteen hundred twenty-seven, or a town or county improvement district, district corporation, or other district or a joint service established for the purpose of carrying on, performing or financing one or more improvements or services intended to benefit the health, welfare, safety or convenience of the inhabitants of such governmental units or to benefit the real property within such units, an industrial development agency but 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.

5. "*Municipal officer or employee*" means *an officer or employee of a municipality, whether paid or unpaid, including members of any administrative board, commission or other agency thereof* and in the case of a county, shall be deemed to also include any officer or employee paid from county funds. No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer fireman or civil defense volunteer, except a fire chief or assistant fire chief.

...  
(Added L.1964, c. 946, § 2; amended L.1965, c. 1043, § 1; L.1971, c. 179, § 1; L.1980, c. 88, § 3.)

**General Municipal Law § 801. Conflicts of interest prohibited**

Except as provided in section eight hundred two of this chapter, (1) *no municipal officer or employee shall have an interest in any contract with the municipality of which he is an officer or employee, when such officer or employee, individually or as a member of a board, has the power or duty to (a) negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder (b) audit bills or claims under the contract, or (c) appoint an officer or employee who has any of the powers or duties set forth above* and (2) no chief fiscal officer, treasurer, or his deputy or employee, shall have an interest in a bank or trust company designated as a depository, paying agent, registration agent or for investment of funds of the municipality of which he is an officer or employee. The provisions of this section shall in no event be construed to preclude the payment of lawful compensation and necessary expenses of any municipal officer or employee in one or more positions of public employment, the holding of which is not prohibited by law.

(Added L.1964, c. 946, § 2; amended L.1965, c. 1043, § 2.)

**General Municipal Law § 802. Exceptions**

The provisions of section eight hundred one of this chapter shall *not* apply to:

1. a. The designation of a bank or trust company as a depository, paying agent, registration agent or for investment of funds of a municipality except when the chief fiscal officer, treasurer, or his deputy or employee, has an interest in such bank or trust company; provided, however, that where designation of a bank or trust company outside the municipality would be required because of the foregoing restriction, a bank or trust company within the municipality may nevertheless be so designated;
- b. A *contract* with a person, firm, corporation or association in which a municipal officer or employee has an interest which is *prohibited solely by reason of employment* as an officer or employee thereof, if the *remuneration of such employment will not be directly affected* as a result of such contract and the *duties of such employment do not directly involve* the procurement, preparation or performance of any part of such contract;
- c. The *designation of a newspaper, including but not limited to an official newspaper*, for the publication of any notice, resolution, ordinance or other proceeding where such publication is required or authorized by law;
- d. The *purchase by a municipality of real property* or an interest therein, provided the purchase and the consideration therefor is *approved by order of the supreme court* upon petition of the governing board;
- e. The acquisition of real property or an interest therein, through condemnation proceedings according to law;

f. A *contract* with a membership corporation or other *voluntary non-profit corporation* or association;

g. The sale of bonds and notes pursuant to section 60.10 of the local finance law;

h. A contract in which a municipal officer or employee has an interest if such *contract was entered into prior to the time he was elected or appointed* as such officer or employee, but this paragraph shall *in no event authorize a renewal* of any such contract;

i. Employment of a duly licensed physician as school physician for a school district upon authorization by a two-thirds vote of the board of education of such school district, notwithstanding the fact that such physician shall have an interest, as defined in section eight hundred one of this chapter, in such employment.

j. *Purchases or public work by a municipality*, other than a county, located wholly or partly within a *county with a population of two hundred thousand or less* pursuant to a contract in which a member of the governing body or board has a prohibited interest, where:

(1) the member of the governing body or board is elected and serves without salary;

(2) the purchases, in *the aggregate*, are *less than five thousand dollars in one fiscal year* and the governing body or board has followed its procurement policies and procedures adopted in accordance with the provisions of section one hundred four-b of this chapter and the procurement process indicates that the contract is with the lowest dollar offer;

(3) the contract for the purchases or public work is approved by resolution of the body or board by *the affirmative vote of each member of the body or board except the interested member who shall abstain*.

2. a. A contract with a corporation in which a municipal officer or employee has an interest by reason of stockholdings when *less than five per centum of the outstanding stock* of the corporation is owned or controlled directly or indirectly by such officer or employee;

b. A contract for the furnishing of public utility services when the rates or charges therefor are fixed or regulated by the public service commission;

c. A contract for the payment of a reasonable rental of a room or rooms owned or leased by an officer or employee when the same are used in the performance of his official duties and are so designated as an office or chamber;

d. A contract for the payment of a portion of the compensation of a private employee of an officer when such employee performs part time service in the official duties of the office;

e. A contract in which a municipal officer or employee has an interest if the total consideration payable thereunder, when added to the *aggregate amount* of all consideration payable under contracts in which such person had an interest during the fiscal year, does not exceed the sum of *seven hundred fifty dollars*.

f. A contract with a member of a private industry council established in accordance with the federal job training partnership act [29 USCA § 1501 et seq.] or any firm, corporation or association in which such member holds an interest, provided the member discloses such interest to the council and the member does not vote on the contract.

(Added L.1964, c. 946, § 2; amended L.1965, c. 1043, § 3; L.1966, c. 135, § 1; L.1968, c. 105, § 1; L.1970, c. 1019, § 1; L.1973, c. 195, § 18; L.1977, c. 28, § 1; L.1983, c. 440, § 1; L.1996, c. 364, §§ 1, 2.)

### **General Municipal Law § 803. Disclosure of interest**

1. *Any municipal officer or employee who has, will have, or later acquires an interest in any actual or proposed contract with the municipality of which he is an officer or employee, shall publicly disclose the nature and extent of such interest in writing to the governing body thereof as soon as he has knowledge of such actual or prospective interest. Such written disclosure shall be made part of and set forth in the official record of the proceedings of such body.* Once disclosure has been made by an officer or employee with respect to an interest in a contract with a particular person, firm, corporation or association, no further disclosures need be made by such officer or employee with respect to additional contracts with the same party during the remainder of the fiscal year.

2. Notwithstanding the provisions of subdivision one of this section, disclosure shall not be required in the case of an interest in a contract described in subdivision two of section eight hundred two hereof.

(Added L.1964, c. 946, § 2; amended L.1965, c. 1043, § 4.)

### **General Municipal Law § 804. Contracts void**

*Any contract willfully entered into by or with a municipality in which there is an interest prohibited by this article shall be null, void and wholly unenforceable.*

(Added L.1964, c. 946, § 2.)

### **General Municipal Law § 804-a. Certain interests prohibited**

[Relates to Nassau County only]

(Added L.1970, c. 720, § 1.)

**General Municipal Law § 805. Violations**

Any municipal officer or employee who *willfully and knowingly* violates the foregoing provisions of this article shall be guilty of a *misdemeanor*.

(Added L.1964, c. 946, § 2.)

**General Municipal Law § 805-a. Certain action prohibited**

1. No municipal officer or employee shall:

a. directly or indirectly, solicit any *gift*, or accept or receive any gift having a *value of seventy-five dollars or more*, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, *under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part*;

b. *disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interests*;

c. receive, or enter into any agreement, express or implied, for *compensation for services to be rendered in relation to any matter before any municipal agency* of which he is an officer, member or employee or of any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee; or

d. receive, or enter into any agreement, express or implied, for *compensation for services to be rendered in relation to any matter before any agency of his municipality*, whereby his compensation is to be *dependent or contingent upon any action by such agency with respect to such matter*, provided that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

2. In addition to any penalty contained in any other provision of law, *any person who shall knowingly and intentionally violate this section may be fined, suspended or removed from office or employment in the manner provided by law*.

(Added L.1970, c. 1019, § 2; amended L.1987, c. 813, § 21.)

### **General Municipal Law § 805-b. Solemnization of marriages**

Notwithstanding any statute, law or rule to the contrary, no public officer listed in section eleven of the domestic relations law shall be prohibited from accepting any *gift or benefit having a value of seventy-five dollars or less*, whether in the form of money, property, services or entertainment, *for the solemnization of a marriage by such public officer at a time and place other than the public officer's normal public place of business, during normal hours of business*. For the purpose of this section, a town or village judge's normal hours of business shall mean those hours only which are officially scheduled by the court for the performing of the judicial function.

(Added L.1983, c. 433, § 1; amended L.1990, c. 238, § 1.)

### **General Municipal Law § 806. Code of ethics**

1. (a) *The governing body of each county, city, town, village and school district shall and the governing body of any other municipality may by local law, ordinance or resolution adopt a code of ethics setting forth for the guidance of its officers and employees the standards of conduct reasonably expected of them. Such code shall provide standards for officers and employees with respect to disclosure of interest in legislation before the local governing body, holding of investments in conflict with official duties, private employment in conflict with official duties, future employment and such other standards relating to the conduct of officers and employees as may be deemed advisable. Such codes may regulate or prescribe conduct which is not expressly prohibited by this article but may not authorize conduct otherwise prohibited. Such codes may provide for the prohibition of conduct or disclosure of information and the classification of employees or officers.*

(b) Effective on and after January first, nineteen hundred ninety-one, *such codes of political subdivisions, as defined in section eight hundred ten of this article, may contain provisions which require the filing of completed annual statements of financial disclosure with the appropriate body, as defined in section eight hundred ten of this article. ... Other than as required by subdivision two of section eight hundred eleven of this article, the governing body of any such political subdivision or other municipality may at any time subsequent to the effective date of this paragraph (b), adopt a local law, ordinance or resolution pursuant to subdivision one of section eight hundred eleven of this article and any such political subdivision or municipality, acting by its governing body, may take such other action as is authorized in such subdivision. Any political subdivision or other municipality to which all of the provisions of section eight hundred twelve of this article apply may elect to remove itself from the ambit of all (but not some) provisions of such section in the manner authorized in subdivision three of such section eight hundred twelve. In such event any such political subdivision or municipality shall be subject to certain conditions and limitations set forth in paragraphs (a), (b) and (c) of such subdivision three which shall include, but not be limited to, the promulgation of a form of*

an annual statement of financial disclosure described in subdivision one of such section eight hundred eleven.

2. *The chief executive officer of a municipality adopting a code of ethics shall cause a copy thereof to be distributed to every officer and employee of his municipality.* Failure to distribute any such copy or failure of any officer or employee to receive such copy shall have no effect on the duty of compliance with such code, nor the enforcement of provisions thereof.

3. ... [T]he clerk of each municipality and of each political subdivision, as defined in section eight hundred ten of this article, ... shall *maintain as a record subject to public inspection:*

(a) *a copy of any code of ethics or any amendments to any code of ethics adopted within thirty days after the adoption of such code or such amendment,*

(b) *a statement that such municipality or political subdivision has established a board of ethics, in accordance with section eight hundred eight and/or pursuant to other law, charter, code, local law, ordinance or resolution, and the composition of such board, within thirty days after the establishment of such board.*

(c) *a copy of the form of annual statement of financial disclosure described in subdivision one of section eight hundred eleven of this article and either a statement of the date such annual statement form was promulgated by local law, ordinance or resolution of the governing body, if adopted pursuant to subparagraph (i) of paragraph (a) of subdivision one of section eight hundred eleven of this article, or a statement that the governing body has, by local law, ordinance or resolution, resolved to continue the use of an authorized form of annual statement of financial disclosure in use on the date such local law, ordinance or resolution is adopted, if adopted pursuant to subparagraph (ii) of paragraph (a) of subdivision one of section eight hundred eleven of this article, and if as of January first, nineteen hundred ninety-one, no such form was promulgated and no such resolve was made to continue using an existing annual statement form, a statement that the provisions of section eight hundred twelve of this article apply or that it is a municipality which is not subject to the provisions of section eight hundred twelve of this article because it is not a political subdivision as defined in section eight hundred ten of this article.*

(d) *on or before the fifteenth day of February in each year, ... the clerk of the municipality or political subdivision ... shall submit to the legislature a report ... stating whether or not the municipality or political subdivision has in effect as of the filing date, a code of ethics.*

...

(Added L.1964, c. 946, § 2; amended L.1969, c. 646, § 2; L.1970, c. 1019, § 3; L.1987, c. 813, §§ 10, 11.)

### **General Municipal Law § 807. Posting of statute**

The chief executive officer of each municipality shall cause a copy of this article to be kept posted in each public building under the jurisdiction of his municipality in a place conspicuous to its officers and employees. Failure to post any such copy shall have no effect on the duty of compliance with this article, nor with the enforcement of the provisions thereof.

(Added L.1964, c. 946, § 2; amended L.1970, c. 1019, § 4.)

### **General Municipal Law § 808. Boards of ethics**

1. *The governing body of any county may establish a county board of ethics and appropriate moneys for maintenance and personal services in connection therewith. The members of such board of ethics shall be appointed by such governing body except in the case of a county operating under an optional or alternative form of county government or county charter, in which case the members shall be appointed by the county executive or county manager, as the case may be, subject to confirmation by such governing body. Such board of ethics shall consist of at least three members, a majority of whom shall not be officers or employees of such county or municipalities wholly or partially located in such county and at least one of whom shall be an elected or appointed officer or employee of the county or a municipality located within such county. The members of such board shall receive no salary or compensation for their services as members of such board and shall serve at the pleasure of the appointing authority.*

2. *The board shall render advisory opinions to officers and employees of municipalities wholly or partly within the county with respect to this article and any code of ethics adopted pursuant hereto. Such advisory opinions shall be rendered pursuant to the written request of any such officer or employee under such rules and regulations as the board may prescribe and shall have the advice of counsel employed by the board, or if none, the county attorney. In addition, it may make recommendations with respect to the drafting and adoption of a code of ethics or amendments thereto upon the request of the governing body of any municipality in the county.*

3. *The governing body of any municipality other than a county may establish a local board of ethics and, where such governing body is so authorized, appropriate moneys for maintenance and personal services in connection therewith. A local board shall have all the powers and duties of and shall be governed by the same conditions as a county board of ethics, except that it shall act only with respect to officers and employees of the municipality that has established such board or of its agencies. The members of a local board shall be appointed by such person or body as may be designated by the governing body of the municipality to serve at the pleasure of the appointing authority and such board shall consist of at least three members, a majority of whom are not otherwise officers or employees of such municipality. Such board shall include at least one member who is an elected or appointed municipal officer or employee.*

4. *The county board of ethics shall not act with respect to the officers and employees of any municipality located within such county or agency thereof, where such municipality has established its own board of ethics, except that the local board may at its option refer matters to the county board.*

...

(Added L.1964, c. 946, § 2; amended L.1965, c. 1043, § 5; L.1970, c. 1019, § 5; L.1987, c. 813, § 12.)

**General Municipal Law § 809. Disclosure in certain applications**

1. *Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit, pursuant to the provisions of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality shall state the name, residence and the nature and extent of the interest of any state officer or any officer or employee of such municipality or of a municipality of which such municipality is a part, in the person, partnership or association making such application, petition or request (hereinafter called the applicant) to the extent known to such applicant.*

2. *For the purpose of this section an officer or employee shall be deemed to have an interest in the applicant when he, his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them*

(a) is the applicant, or

(b) is an officer, director, partner or employee of the applicant, or

(c) legally or beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant, or

(d) is a party to an agreement with such an applicant, express or implied, whereby he may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such application, petition or request.

...

4. *Ownership of less than five per cent of the stock of a corporation whose stock is listed on the New York or American Stock Exchanges shall not constitute an interest for the purposes of this section.*

5. *A person who knowingly and intentionally violates this section shall be guilty of a misdemeanor.*

(Added L.1969, c. 646, § 3; amended L.1970, c. 825, §§ 1, 2.)

**General Municipal Law § 810. Additional definitions**

[The additional definitions are for use in sections 811, 812 (regarding financial disclosure) and 813 (regarding the now-defunct temporary State commission).]

(Added L.1987, c. 813, § 13; amended L.1993, c. 356, § 2.)

**General Municipal Law § 811. Promulgation of form of annual statement of financial disclosure; authority of governing body with respect to persons subject thereto**

(Added L.1987, c. 813, § 14.)

**General Municipal Law § 812. Financial disclosure for local elected officials and certain officers and employees of counties, cities, towns and villages**

(Added L.1987, c. 813, § 15; amended L.2004, c. 85 § 1, eff. May 18, 2004.)

**General Municipal Law § 813. Temporary state commission on local government ethics; functions, powers and duties; review of financial disclosure statements; advisory opinions; investigation and enforcement**

[Section expired Dec. 31, 1992, pursuant to L.1987, c. 813, § 26]

#### **IV. "Legislative History" [Emphases added by author]**

##### **1. Regarding the 1964 enactment of GML Art. 18:**

A. L.1964, c. 946, § 1, 13 and 15 provided:

"§ 1. Declaration of policy and 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 [L.1964, c. 946], 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."

...

"§ 13. Laws superseded. The provisions of article eighteen of the general municipal law, as added by this act [L.1964, c. 946], shall supersede any local law, charter, ordinance, resolution, rule or regulation of any municipality to the extent that such local law, charter, ordinance, resolution, rule or regulation is inconsistent with the provisions thereof. No local law, ordinance, resolution, rule or regulation shall modify or dispense with any provision of article eighteen of the general municipal law, as added by this act; provided,

however, that nothing herein contained shall prohibit a code of ethics adopted pursuant thereto from supplementing the provisions of this act.

"§ 14. Pending actions and proceedings. No action or proceeding pending at the time when this act shall take effect shall be affected by any provision of this act, but the same may be prosecuted, defended or enforced as if this act had not been enacted.

"§ 15. Existing rights and remedies preserved. No existing right or remedy of any character shall be lost, impaired or affected by reason of this act, nor shall the validity of any action taken by any public official under the law in force immediately prior to the time this act shall take effect be affected by the enactment of this act."

B. Governor's Approval Memorandum:

... The bill provides *a clearer standard* to guide local officials against conflicts of interest in their business and professional dealings with their municipalities. It also *requires public disclosure by local officials of direct or indirect interests in contracts with their municipalities*. In addition violations are made a misdemeanor. Lastly, it would provide a procedure for the enactment of local codes of ethics and the creation of local boards of ethics to provide still further guidance for all local officials.

This bill makes an important contribution and is in the public interest. It assures a *uniform conflict of interest standard throughout the State*, outside of the City of New York, and replaces many miscellaneous provisions scattered through the State's statutes.

...

[See NYS Legislative Annual - 1964, p. 526.]

**2. Regarding the 1969 amendments to GML Art. 18:**

Governor's Approval Memorandum:

... The bill requires the *disclosure of interests* of certain public officials and their families *in applications* made to any municipality *for a zoning or planning variance or change*...

The bill also requires each municipality to file with the Comptroller copies of its municipal code of ethics, if any, and information relating to its municipal board of ethics if it has one. These requirements will aid the [Special Committee on Ethical Standards in Public Service] in its continuing study of ethical standards in public service.

...

[See NYS Legislative Annual - 1969, p. 558.]

### **3. Regarding the 1970 amendments to GML Art. 18:**

Governor's Approval Memorandum:

The bill ... will institute *the first comprehensive approach to municipal ethics* in local governments of the State outside of New York City.

The measure *establishes basic standards* for the conduct of municipal officers and employees throughout the State. These rules, together with the provisions of the *codes of ethics that must be adopted by every government* under the bill, will provide municipal officers and employees with both *valuable guides* to their conduct and *protection against unfounded political attack and public criticism*.

...

By requiring every local government to adopt a code of ethics to supplement the statewide standards set forth in this measure, the bill will *fill a gap in present municipal practice, under which few local governments have an established code of ethics*. Moreover, local authority to adopt standards of ethical conduct not covered in the bill or more stringent than those in the bill will assure that *municipal codes can be carefully tailored to varying local needs and concerns* reflecting differences in population, area and other local aspects.

...

[See NYS Legislative Annual - 1970, p. 539.]

### **4. Regarding the 1987 "Ethics in Government Act" legislation:**

A. Memorandum of Senator Warren M. Anderson

Ethics in Government Act

S. 6441 Anderson et al Ch. 813

A. 8528 Miller et al

The "Ethics in Government Act" is *designed to limit opportunities for abuse of official positions and eliminate any appearance of undue influence or illegal profit-taking* by executive officers and employees, legislative officers and employees, elected official, party officers and candidates for office. The Act attacks the problem in three ways: (a) First and foremost, it requires the *filing of comprehensive financial disclosure statements* to reveal income, assets and debts of reporting individuals; (b) Secondly, it *prohibits representation before most State agencies*; and (c) Third, it *establishes Ethics Commissions* to monitor, investigate and impose sanctions for violations of the conflict of interest prohibitions and financial disclosure requirements. By its comprehensive provisions, *the Act reaches almost all government officials, employees and candidates*, thus providing the most sweeping reform in the political area in New York State since 1964.

*Public trust and confidence in elected and appointed public officials are fundamental and necessary conditions for a strong and stable democratic government.*

*Favoritism and the potential for conflicts of interest, as well as the mere appearance of such, serve to weaken and erode the public's trust and confidence in government. To enhance public trust and confidence in our government institutions, this bill contains strengthened, prohibitions against behavior which may permit or appear to permit undue influence or conflicts of interest. It also provides comprehensive financial disclosure requirements to assure that the public is aware of all private and business interests which may influence or appear to influence public officers and employees in their official acts. [Emphasis added.]*

[See NYS Legislative Annual - 1987, p. 277.]

#### B. Governor's Approval Memorandum:

I am signing into law two *sweeping reforms* that constitute the foundation of our efforts to *restore public trust and confidence in government*.

The "Ethics in Government Act" (S.6441) establishes strong ethical standards to govern the conduct of public officers and employees in *all three branches* of government...

The "Accountability, Audit and Internal Control Act of 1987" (S.6442) establishes a comprehensive system of internal controls to ensure integrity of governmental operations in all three branches of government...

These laws establish *a firm foundation for reform*... [I]t constitutes *an important new beginning* in perfecting the laws that protect the integrity of our government. *Constant vigilance and continuing efforts to secure reform are necessary to ensure that we achieve all that remains to be done.*

*These laws can be a turning point for New York State.* They demonstrate our deep commitment to the honesty, integrity and accountability of our government and its officials. They reaffirm our dedication to the rule of law, our ability to achieve fundamental reforms through changes in our laws, and our insistence on laws that will protect the important processes of our government.

[See NYS Legislative Annual - 1987, p. 279.]