Ethical Considerations for Planning and Zoning Boards

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What are “ethics”?

- Dictionary definition:
  - 1. the discipline dealing with what is good and bad and with moral duty and obligation
  - 2a. a set of moral principles: a theory or system of moral values
  - 2b. the principles of conduct governing an individual or a group
  - 2c. a guiding philosophy
  - 2d. a consciousness of moral importance
  - 3. a set of moral issues or aspects (as rightness)
- Conflicts of interest (financial/contractual).
- Conduct of public officials (bad faith).
- Morals and values (community standards).
- Professional standards

What are “ethics”?

- The Relationship Between Ethics and the Law
  - Legal v. Ethical
    - Adherence to the “spirit” of the law, rather than the “letter” of the law.
  - The Importance of Perception
    - Lawful conduct can nonetheless create a perception of unethical activity.

Sources of Law and Guidance

- **Article 18 of the General Municipal Law**
  - Governs the conduct of every municipal officer and employee, paid or unpaid.
  - Conflicts of Interest Law
  - Local Codes of Ethics
  - Local Boards of Ethics
- Other State Statutes
  - Penal Law § 195 – Official misconduct
- Common Law/Case Law
- Opinions of the New York State Attorney General and New York State Comptroller

Ethical Standards

- Article 18 of the General Municipal Law:
  - Regulates “conflicts of interest” on the part of municipal officers and employees.
- What is a conflict of interest?
  - This phrase can apply to a variety of situations in which an individual has divided loyalties, such as when a person has to act on behalf of the public in connection with a matter that affects his/her personal interests.
  - Not all conflicts of interest are prohibited by law.
- Among other things, Article 18 regulates the business dealings of municipal officers with their municipalities.

Ethical Standards

- General Municipal Law - Prohibited Conflicts of Interests:
  - An ***interest*** in a ***contract***
  - Where the employee has the ***power*** to:
    - negotiate, authorize, or make payment under the contract; or
    - audit bills or claims under the contract.
- In order for a municipal officer or employee to have a prohibited interest in a contract:
  - There must be a contract.
  - The individual must have an interest in the contract.
  - The individual, in his or her public capacity, must have power over the contract.
  - The situation must not be covered by an exception.

Identifying Potential Conflicts

- Need to evaluate a situation on a case-by-case basis when identifying potential conflicts of interest.
- Determine whether the agreement/action at issue is a "contract," as defined by the GML.
  - "Contract" – Any claim, account, or demand against or agreement with a municipality, express or implied. (Very broad definition.) Almost any business dealing with a municipality
  - An application for a variance, site plan approval, special use permit? – ???????
- If no "contract" under Article 18, then no prohibited interest exits; however, other provisions may apply to the conduct, such as disclosure.

Are applications for permits/approvals contracts?

- *Friedhaber v. Town Bd. of Town of Sheldon*, 16 Misc. 3d 1140(A), (Sup. Ct. Wyoming Cty. 2007), *aff'd* 59 A.D.3d 1006 (4th Dep't 2009).
  - P commenced Article 78 proceeding seeking to annul the actions of Town Board and ZBA which issued approvals to construct a wind farm.
  - P asserted that certain of the respondent municipal officers possessed interests in the wind farm and, by voting to approve the variances sought by the wind developer, acted in conflict with their responsibilities as municipal officers.
  - P argued that the resolutions adopted by the respondent municipal officers constitute contracts which should be voided under GML § 804 ("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") and that developer failed to comply with GML § 809 and that therefore the votes taken by the respondent municipal officers should be voided under common law principles.

Are applications for permits/approvals contracts?

- *Friedhaber v. Town Bd. of Town of Sheldon*, 16 Misc. 3d 1140(A), (Sup. Ct. Wyoming Cty. 2007), *aff'd* 59 A.D.3d 1006 (4th Dep't 2009).
  - Was there a contract? "The statutory language makes clear that the resolutions adopted by the ZBA and Board are not 'contracts' as referred to in GML § 804 because such resolutions are not within the statutory definition of a 'contract' set forth in GML § 800 (2). This Court disagrees with any analogy petitioners seek to draw to the decision in *People v. Pinto* (88 Misc. 2d 303 [Mount Vernon City Ct 1976]), because this Court concludes that it must follow the statutory definition of a 'contract' and should not expand that definition without legislative guidance. Because the resolutions adopted by the ZBA and Board are not 'contracts' within the meaning of GML § 804, there is no basis on which to grant petitioners any relief voiding these purported contracts."

Are applications for permits/approvals contracts?

- *Friedhaber v. Town Bd. of Town of Sheldon*, 16 Misc. 3d 1140(A), (Sup. Ct. Wyoming Cty. 2007), *aff'd* 59 A.D.3d 1006 (4th Dep't 2009).
  - Was there an interest? "As to the question of whether any of the respondent municipal officers have an 'interest' in the wind farm project, the Court must again defer to the statutory language. GML § 800 (3) defines 'interest' as one involving a 'municipal officer or employee' as well as any matter involving 'his spouse, minor children and dependents . . . .' The 'interests' alleged by petitioners . . . are not an 'interest' within the statutory definition because the interests belong to family members not encompassed within that statutory definition."
- Comptroller Opinions have stated that applications to planning boards and zoning boards are not "contracts" under the GML.

Identifying Potential Conflicts

- Does an “interest” in a contract exist?
  - An “interest” is defined as pecuniary or material benefit, direct or indirect, accruing to an officer or employee of a municipality.
- Beyond Pecuniary “Interest”
  - “Interest” is defined broadly to include any “direct or indirect pecuniary or material benefit.”

Identifying Potential Conflicts

- Municipal officers are deemed to have an interest in the contracts of any firm, partnership or association of which they are members or employees.
- Similarly, municipal officers are deemed to have an interest in the contracts of any corporation of which they are officers, directors, or, in some cases, stockholders.
- With one exception (employment contracts) municipal officers are deemed to have an interest in the contracts of their spouses, minor children, and dependents.

Identifying Potential Conflicts

- What powers and duties can cause an interest in a contract to be prohibited?
  - If the municipal officer has certain powers or duties with respect to the contract (*e.g.*, negotiate, prepare, authorize or approve the contract or authorize payment under the contract; audit bills or claims under the contract; or appoint an officer or employee who has any of these powers or duties).
  - Ordinarily, members of the governing board will have one or more of these powers/duties. The inquiry is whether these powers exist, not whether the officer chooses to exercise them. Merely recusing oneself is not a remedy.

Identifying Potential Conflicts

- *Town of Mamakating v. Village of Bloomingburg*, 174 A.D.3d 1175 (3d Dep't 2019).
  - Village Board makes SEQRA findings for development project.
  - Petitioners challenge on the basis that Trustees had a prohibited conflict of interest because they rented homes from an affiliated entity of the project developer.
  - Conflict?

Scenario 1

- A planner serves on the Town Board of a small community. The Town Board reviews and approves development proposals. A large developer has submitted an application to the planning board for a large project, perhaps the largest in the Town's history. To help the Town, the planner/board member offers to provide his firm's services to the Town at a drastically reduced rate.

Scenario 2

- Building inspector also works for a consulting firm that assists with code compliance.
- A large project comes in for review and the building inspector requires technical assistance.
- Building inspector recommends his consulting firm, but he will not be performing the work.
- Is there a prohibited contract?

Identifying Potential Conflicts

- Exceptions. GML § 802.
  - Payments of salary or other lawful compensation to officers and employees in one or more more positions of public employment.
  - Contracts entered into prior to the time that a municipal officer or employee is elected or appointed, but NOT renewals of such contracts.
  - 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
  - Contracts with voluntary not-for-profit corporations/associations.

Scenario 3

- A town board member is a janitor with Car Dealership X. He is paid an hourly wage with no bonus.
- The Town solicits bids to purchase vehicles for the town.
- Car Dealership X is the responsible low bidder.
- Any problem with this?

GML § 803 - Disclosure

- Any municipal officer or employee (or spouse) who has, will have, or later acquires an interest in an actual *or proposed* contract, shall publicly disclose the nature and extent of such interest in writing to his or her immediate supervisor and to the governing body thereof as soon as he or she 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.

Consequences

- Contracts are null, void, and unenforceable. GML § 804.
- Willful and knowing violation of the law by entering into a contract with a prohibited conflict of interest, or by failing to disclose an interest in a contract, is a misdemeanor.

General Municipal Law Section 805-a

- Certain Action Prohibited
  - Sets forth a specific list of prohibited actions.

- "In addition to any penalty contained in any other provision of law, any person who knowingly and intentionally violate this section may be fined, suspended or removed from office or employment in the manner provided by law." GML § 805-a(2).

General Municipal Law Section 805-a

- Gifts
  - No municipal officer shall: "directly or indirectly, solicit any gift, or accept or receive any gift having a value of [$75] 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."
  - Check your local code of ethics.
  - Those working with municipalities must be mindful of this.

Scenario 4

- City alderman commenced a CPLR Article 78 proceeding against the Mayor, challenging the appointment of a City supervisor to the position of City youth commissioner, arguing that the offices were incompatible.
- The alderman was offered and accepted funds from individuals to pay the legal fees incurred in pursuing that litigation.

General Municipal Law Section 805-a

- Disclosure of Confidential Information
  - No municipal officer shall: "disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interests."
  - Example: Op. St. Comp. 78-744. A real estate attorney serving on the planning board who actively buys and sells property may find it difficult to maintain an impartial and objective posture in matters where his personal interests are involved.

General Municipal Law Section 805-a

- Compensation for Services:
  - No municipal officer shall: "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."
  - No municipal officer shall: 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 the municipality, whereby compensation is to be dependent or contingent on action by your agency with respect to the matter. Exceptions: fixing of fees based on reasonable value of services rendered.
  - Disciplinary action may follow.

Scenario 5

- Town planning board member is an attorney.
- His client asks him to represent him in his application for site plan approval to the planning board.
- The Town planning board members recuses himself from consideration of the client's application.
- May the planning board member represent the client?

Scenario 5

- NO!
- Section 805–a(1)(c) of Article 18 of the General Municipal Law provides that no municipal officer or employee ***may receive or enter into any agreement for compensation for services*** to be rendered in relation to any matter before a municipal agency of which he is an officer, member or employee. Any person who knowingly and intentionally violates this provision may be fined, suspended or removed from office or employment in the manner provided by law (id., § 805–a[2]).
- 1984 N.Y. Op. Att'y Gen. (Inf.) 77 (1984)
- What if the attorney does it for free?

Scenario 6

- Planning Board chairman has a 25% interest in construction Company X.
- Subdivision application is presented to the planning board.
- While the application is pending, the applicant enters into a contract with Company X to perform road and drainage work related to the development at issue.
- Planning Board chairman participates in the deliberation of the subdivision application and votes to approve it.
- Is there a problem?

Scenario 7

- Part-time assistant town attorney's work is limited to matters relating to the town plumber's examining board.
- The plumber's examining board is responsible for licensing of plumbers who work within the Town, and that it meets once a month and interviews applicants, tests them through both written and practical tests, and addresses questions regarding the plumbing code.
- The attorney charges every client he represents in private practice a flat $275 fee.
- May the assistant town attorney represent applicants before the planning board and zoning board of appeals?

Scenario 7

- YES!
- GML 805-a(1)(d) prohibits a municipal officer or employee from receiving or entering into any agreement for compensation for services to be rendered in relation to any matter before ***any*** agency of his/her municipality, where his compensation is dependent or continent upon any action by the agency.
- ***This provision does NOT prohibit the fixing of fees based upon the reasonable value of the services to be rendered.***
- But no contingencies!

Examples – From DOS

- A licensed architect who sits on a ZBA should not represent persons making their initial application before the local building department (NY Op. Attorney General No. 94-51).
- The chair of the planning board, who is employed by a real estate company that would receive business if a subdivision application is approved, should not participate in the consideration of the application (NY Op. Attorney General No. 86-54).
- A town planning board member who is also a geologist in the private sector may not be compensated or enter into an agreement to be compensated for soil borings on a project before the planning board (NY Op. Attorney General No. 95-14).
- Prohibitions under Section 805-a must be evaluated on a case-by-case bases, for example, real estate agents are not always prohibited from voting on a matter before a planning board of which that agent is a member.

Local Standards of Conduct

- GML § 806 requires municipalities adopt a local code of ethics.
- Local codes of ethics set forth standards of conduct for the guidance of a municipality's officers and employees.
- A local code of ethics may regulate or prohibit conduct which is not expressly prohibited by Article 18 of the GML, but it may not authorize conduct that is prohibited by Article 18. Article 18 is a floor, not a ceiling.

Local Standards of Conduct

- GML § 808 authorizes municipalities to create a local board of ethics, which can provide advisory opinions.
  - Renders advisory opinions to officers and employees of the municipality.
  - Receives and investigates complaints filed by citizens.
  - Statute sets forth requirements.
  - Optional board.

GML § 809 – Disclosure in the Planning/Zoning Context

- "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."

GML § 809 – Disclosure in the Planning/Zoning Context

- 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
  - is the applicant, or
  - is an officer, director, partner or employee of the applicant, or
  - legally or beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant, or
  - 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.

GML § 809 – Disclosure in the Planning/Zoning Context

- Violation is a misdemeanor, but generally will not work to invalidate the approval.
- *DePaolo v. Town of Ithaca*, 258 A.D.2d 68, 72 (3d Dep't 1999) (holding that the applicant's acknowledged failure to comply with the disclosure provisions of General Municipal Law § 809 is not a defect requiring invalidation of the municipal board's determination); see 1974 Op. Att. Gen. 106 (March 25, 1974) (stating that the failure to make proper disclosure would not, per se, invalidate an amendment to a zoning ordinance).

The Common Law – Familial Conflicts

- Appearance of impropriety standard may control whether a family member ought to be disqualified from a specific deliberation.
- Public officers have the responsibility to exercise their official duties solely in the public interest, and familial relationships may inhibit that responsibility.
- A board member should recuse himself/herself if a relative appears before the board on an application.

Prejudgment

- Assume a member of a planning board or ZBA expresses outward opposition or support of a project currently before the board.
- Appearance of impropriety?
- At a minimum, it suggests that there is bias (inability to act impartially and keep an open mind) or that an applicant is being singled out and treated differently.
- This is to be distinguished with philosophical approaches or positions on issues of board members generally.

Prejudgment

- *Byer v. Town of Poestenkill*, 232 A.D.2d 851, 853 (3d Dept. 1996).
  - The Third Department recognized the importance of free speech and expression of opinion for a town board member and held that an expression of opinion regarding a project did not disqualify him from voting on an issue. The town board member in that case had publically objected to a law when he was running for election. The court held that this did not disqualify him from voting on the law, stating:
  - "although [the board member] opposed . . . and addressed the issue . . . during his [most recent] campaign, his statement of personal opinion does not constitute a basis for finding a conflict of interest. Indeed, any other conclusion would necessarily have a chilling effect upon a candidate's ability to express an opinion on important issues during an election campaign or to advocate changes in the law once elected. Certainly, the disclosure by candidates for public office of their opinions on controversial topics is to be encouraged."

Prejudgment

- Other courts in New York, including the Court of Appeals, have indicated that statements of personal bias, without any direct financial interest in the project, do not disqualify a board member from voting on a law. *See Webster Associates v. Town of Webster*, 59 N.Y.2d 220 (N.Y. 1983) (Court allowed a new town supervisor to vote on a zoning issue after he had made comments during his campaign expressing his opinion on the matter, because the supervisor had no financial interest at stake.);
- *Matter of Eadie v. Town Bd. of Town of N. Greenbush*, 2008 NY Slip Op 132 (3d Dep't 2008) (Holding: "the fact that both [the defendants] previously expressed favorable views with respect to retail development in the town does not constitute a basis for discounting their votes due to conflicts of interest. Furthermore, in our view, nothing in the record clearly demonstrates that either individual stood to gain any financial or other proprietary benefit from the Planning Board's consideration of the [development] that would mandate annulling their votes");
- *Marion v. Town of Montezuma*, 191 A.D.2d 986 (4th Dept. 1993) (Holding: "because the alleged bias involved only expressions of personal opinion rather than any financial interest in the rezoning, there is no basis for setting aside the action of the town board.").

Prejudgment

- *Pittsford Canalside Properties, LLC v. Village of Pittsford*, 137 A.D.3d 1566 (4th Dep't 2016).
- *But see Titan Concrete, Inc. v. Town of Kent*, 202 A.D.3d 972 (2d Dep't 2022).
- *Schweichler v. Village of Caledonia*, 45 A.D.3d 1281 (4th Dep't 2007).
- *But see Iskalo 5000 Main LLC v. Town of Amherst Indus. Dev. Agency*, 147 A.D.3d 1414 (4th Dep't 2017).

Prejudgment

- *Troy Sand & Gravel Co., Inc. v. Fleming*, 156 A.D.3d 1295 (3d Dep't 2017).
  - Town Supervisor owns property adjoin quarry.
  - Opposed and voice opposition.
  - Believes the quarry will devalue his property.
  - Ran for office opposing the project.
  - Got elected, participated, and voted to deny a special use permit for the quarry.
  - Prohibited conflict?

Ex Parte Communication

- Communication with the reviewing board outside the presence of all sides to a matter.
- Problematic in the sense that it may give the appearance of impropriety, run afoul of the Open Meetings Law, and/or omit important information from the record.
- Board should place the communication on the record as soon as possible and be available to any interested party on the application.

Compatibility of Offices

- Unless otherwise prohibited, one person may hold multiple offices simultaneously, unless they are incompatible.
- What is incompatibility?
  - Statutes and case law guide this analysis.

Compatibility of Offices – Statutory Prohibitions

- Town Law § 271(3) – Town Board member ineligible for membership on town's planning board.
- Town Law §267(3) – Town Board member ineligible for membership on the Town's ZBA.
- Town Law § 20(4) – prohibits holding more than one elective town office.
- But, municipal officials are allowed to serve on the County Planning Board. *See* GML §239-c(2)(c).

Compatibility of Offices – Common Law

- "Incompatibility has been said to exist when there is a built-in right of the holder of one position to interfere with that of the other, as when the one is subordinate to, or subject to audit or review by, the second. Obviously, in such circumstances, were both posts held by the same person, the design that one act as a check on the other would be frustrated." *O'Malley v. Macejka*, 44 N.Y.2d 530, 535 (1978).
- You can't be your own boss.

Scenario 8 – (From OSC)

- A village trustee owns a food service business. Proposed zoning changes will broaden the rights of similar vendors and could negatively affect the business owned by the trustee.

- Does the village trustee have a prohibited interest in a contract? Why or why not? Are there any other issues with which the village should be concerned?

Scenario 8 – (From OSC)

- The Comptroller's Office has concluded that land use actions, such as zoning changes, are not "contracts" within the meaning of Article 18. Because there is no contract, the village trustee does not have a prohibited interest in a contract with the village.

- Other Issues to Consider: The village's code of ethics should be reviewed for any pertinent provisions, such as a provision requiring disclosure, or a provision requiring the trustee to recuse himself or abstain from voting on the zoning change. If the village's code of ethics lacks such provisions, to avoid even an appearance of impropriety, the trustee should publicly disclose the underlying factual circumstances. In addition, if the negative impact of the zoning change on trustee's business is not merely speculative and is not trivial, the trustee should not participate in the discussion and voting on the zoning change.

Scenario 9

- May a member of a town board serve simultaneously as the chairperson of the village zoning board of appeals?

Scenario 9

- Yes. 1996 N.Y. Op. (Inf.) Att'y Gen 16.
- In the absence of a constitutional or statutory provision against dual-officeholding, one person may hold two offices simultaneously unless they are incompatible. *People ex rel. Ryan v. Green*, 58 N.Y. 295 (1874).
  - Incompatible – one is subordinate to the other (you can't be your own boss) or if there is an inherent inconsistency between the two offices.
  - Village has its own zoning; town provisions apply only in the town outside the village.
- BUT, there may be instances where recusal is required where actions taken by the Village ZBA may affect the interests of the Town.

Scenario 10

- May the town attorney represent the town board in a matter before the town zoning board of appeals?

Scenario 10

- Yes. 1997 N.Y. Op. (Inf.) Att'y Gen 41.
- A town board has the right to provide input regarding a matter before the zoning board of appeals and the town attorney providing legal services to the town represents the town board. Representation of the town board is in the public interest and is not violative of GML 805-a.
- Once the town attorney does this, there is a conflict in his/her representation of the zoning board of appeals in the administrative proceeding. ZBA has implied authority to employ independent legal counsel. *Cahn v. Town of Huntington*, 29 N.Y.2d 451 (1972).

Scenario 11

- Town Law 267(11)(a) provides that "[a] town board may, by local law or ordinance, or as a part of the local law or ordinance creating the zoning board of appeals, establish alternate zoning board of appeals member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest."
- May the town board expand the conditions under which alternate members of the ZBA may serve (e.g., vacation, other absence)?

Scenario 11

- Yes. 1999 N.Y. Op. (Inf.) Att'y Gen 1088.
- Towns may enact local laws amending or superseding any provision of the Town Law unless the Legislature expressly prohibits the adoption of such a local law (MHRL).

Scenario 12

- May a senior typist in the city building department serve as a member of the city zoning board of appeals?
- What other facts do you need to know?

Scenario 12

- No. 2002 N.Y. Op. (Inf.) Att'y Gen 7.
- While no express prohibitions, the two positions are incompatible.
- The position of typist is supervised by the building inspector, who serves as zoning administrator. The decisions of the typist's supervisor are reviewed by the zoning board of appeals.
- The typist's duties include reviewing the applications to the ZBA to ensure they are complete and typing information that comes to the ZBA.
- Indirect supervision by the ZBA and appearance of impropriety.

Scenario 13

- May a town planning board member participate in the planning board's review of a major shopping center expansion where, in his private capacity, he is a longstanding and current client of the attorney representing the shopping center developer, but has no other involvement in, or relationship to, the project?

Scenario 13

- No. 1991 N.Y. St. Comp. 1.
- While no Article 18 contract, and no disclosure required under GML 809, the personal nature of a longstanding or ongoing attorney-client relationship between a planning board member and an attorney who also represents an applicant before the board could raise a question of bias and, hence, result in an appearance of impropriety or potential common law conflict of interest.
- The planning board should disclose his or her attorney-client relationship and, depending on the nature of the relationship, consider not participating in the proceedings.

Scenario 14

- May a member of the village zoning board of appeals sell insurance to the village?

Scenario 14

- Yes. 1980 N.Y. St. Comp. 170.
- There is a contract, there is an interest in the contract, BUT, as a member of the ZBA, he does not have the power or duty over the contract.
- Must disclose, however.

Scenario 15

- May an attorney for the planning board represent a client before the planning board, if he recuses himself from his representation of the planning board for this matter, and the planning board waives the conflict?

Scenario 15

- No. 1993 N.Y. Op. (Inf.) Att'y Gen. 36.
- Under section 805-a of the General Municipal Law, no municipal officer or employee may receive or enter into any agreement for compensation for services to be rendered in relation to any matter before a municipal agency of which he is an officer, member or employee. General Municipal Law § 805-a(1)(c).
- Does it matter if they attorney is not the "town attorney," but is hired as outside counsel? No.
- "While section 805-a does not expressly cover an independent contractor, we believe that an independent contractor performing regular services for the planning board would be prohibited from representing a private client for compensation before that board. If not a violation of section 805-a, we believe that such an appearance would constitute a common law conflict of interests."

Questions?

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