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# 1987 Ethics in Government Act: Financial Disclosure Provisions for Municipal Officials and Proposals for Reform

Mark Davies†

## I. Introduction

Floundering in the backwater of municipal ethics law reform, New York State has repeatedly adopted a government-by-crisis approach to ethics regulation, passing ethical standards primarily in response to scandal.<sup>1</sup> The resulting patchwork of laws has generated confusion and dissension among local government officials and the public, depriving officials of the guidance they deserve and citizens of the confidence they demand. Annual financial disclosure for municipal officials in New York State has proven to be a particularly intractable problem. Current state law in that area may charitably be described only as opaque. Worse yet, it proves inadequate in breadth yet overly intrusive in depth. Indeed, the state statutory financial disclosure form is

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1. See 1964 N.Y. Laws, ch. 946; 1970 N.Y. Laws, ch. 1019; 1987 N.Y. Laws, ch. 813, §§ 10-16, 21, 26.

so invasive of the privacy of municipal officials that it may well drive good people from local government.

In short, New York State ethics laws for municipal officers and employees desperately need wholesale reform. This article will, therefore, analyze both the current state of the law and proposals for change. Following a brief summary of the structure of municipal ethics laws in New York State, the requirements for annual financial disclosure by municipal officials will be reviewed. The Governor's program bill to replace current state ethical standards for local government officials will then be examined. Finally, the approach of the Temporary State Commission on Local Government Ethics will be explored.

## II. Municipal Ethics Laws in New York State

The conduct of most municipal officials in New York State is governed by two sets of ethics laws: a state law and a local ethics code. Both of these sets of laws primarily address conflicts of interest. The state laws are found in article 18 (sections 800-813) of the New York State General Municipal Law.<sup>2</sup> The local ethics code is adopted by the individual municipality pursuant to the authority given the municipality by section 806 of the General Municipal Law.<sup>3</sup>

One should note that "municipality" is broadly defined under section 800 of the General Municipal Law to include not only counties, cities, towns, and villages but also, for example, school districts, consolidated health districts, public libraries, urban renewal agencies, and town or county improvement districts.<sup>4</sup> New York City is excluded from that definition.<sup>5</sup>

Consequently, except for New York City, the officers and employees of every municipality in New York State, regardless of size, are subject to certain conflicts of interest restrictions contained in the state's General Municipal Law.<sup>6</sup> Furthermore,

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2. N.Y. GEN. MUN. LAW §§ 800-13 (McKinney 1986 & Supp. 1991).

3. *Id.* § 806.

4. *Id.* § 800(4).

5. *Id.* This section expressly excludes cities having a population of one million or more.

6. *See id.* §§ 800-805-b, 807, 809. *Cf.* N.Y. PUB. OFF. LAW §§ 73-74 (McKinney 1988 & Supp. 1991) (section 73 encompasses business or professional activities by state officers and employees and party officers; section 74 contains a code of ethics for state

since 1970 every county, city, town, village, and school district in New York State, regardless of size, has been required to adopt its own local code of ethics concerning its officers and employees.<sup>7</sup> Other municipalities, of which there are thousands, may, but are not required to, adopt a code of ethics.<sup>8</sup>

All of these codes of ethics, as amended from time to time, are currently on file with the New York State Comptroller's Office. After January 1, 1991, they will be filed with the Temporary State Commission on Local Government Ethics, discussed below.<sup>9</sup>

The 1987 Ethics in Government Act (the Act) imposed certain additional ethics requirements on what it defines as "political subdivisions" — that is, on counties, cities, towns, and villages having a population of 50,000 or more.<sup>10</sup> Those additional requirements are codified in the General Municipal Law and relate almost entirely to annual financial disclosure.<sup>11</sup> The Act also

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employees); *Forti v. New York State Ethics Comm'n*, 75 N.Y.2d 596, 554 N.E.2d 876, 555 N.Y.S.2d 235 (1990) (upholding restrictions in section 73 of the Public Officers Law on former state executive branch employees appearing before their former agencies).

7. N.Y. GEN. MUN. LAW § 806(1) (McKinney 1986 & Supp. 1991). There are 62 counties, 62 cities, 932 towns, 560 villages, and over 700 school districts in New York State.

8. *Id.*

9. See *id.* § 806(3). By April 1, 1991, the Comptroller's Office will transfer to the Commission a copy of all such codes of ethics on file with the Comptroller's Office. *Id.* § 806(3)(e)(ii).

10. See Ethics in Government Act, 1987 N.Y. Laws, ch. 813 (codified as N.Y. GEN. MUN. LAW §§ 806(1)(b), 806(3), 808(5), 810-13 (McKinney 1986 & Supp. 1991)). See generally Newman, *New York's New Ethics Law: Turning the Tide on Corruption*, 16 HOFSTRA L. REV. 319 (1988) (Mr. Newman is the former chairman of New York State Common Cause). The Act includes New York City. N.Y. GEN. MUN. LAW § 810(1) (McKinney 1986 & Supp. 1991). According to the 1980 census and the latest (1988) U.S. Census Bureau estimates, 44 counties (excluding the five counties comprising New York City), 13 cities (including New York City), 21 towns, and no villages have populations of 50,000 or more. A list of these municipalities is set forth in Appendix A to this article.

11. Ethics in Government Act, 1987 N.Y. Laws, ch. 813 (codified as N.Y. GEN. MUN. LAW §§ 806(1)(b), 806(3), 808(5), 810-13 (McKinney 1986 & Supp. 1991)). Cf. N.Y. PUB. OFF. LAW § 73-a (McKinney 1988 & Supp. 1991) (financial disclosure by state employees); *Igneri v. Moore*, 898 F.2d 870 (2d Cir. 1990) (financial disclosure provisions of section 73-a of the Public Officers Law, as applied to political party chairs, do not violate constitutional right to privacy); *Watkins v. New York State Ethics Comm'n*, 147 Misc. 2d 350, 554 N.Y.S.2d 955 (Sup. Ct. 1990) (financial disclosure provisions of section 73-a of the Public Officers Law, including requirements for financial disclosure by spouses, do not violate federal or state constitutional rights to privacy, free speech and free association, fourth amendment protection, equal protection, or the privilege against self-incrimination); *Grygas v. New York State Ethics Comm'n*, 147 Misc. 2d 312, 313, 554 N.Y.S.2d

established the Temporary State Commission on Local Government Ethics to implement those requirements.<sup>12</sup> The members of that commission, which has its offices in the Village of Elmsford, New York, were appointed by the Governor and the legislative leaders on November 27, 1989.

### III. Current New York State Annual Financial Disclosure Requirements for Municipal Officials

The financial disclosure provisions of the 1987 Ethics in Government Act<sup>13</sup> are enormously complex, and difficult even for experienced municipal attorneys to understand. The questions raised by the Act that are of primary concern to citizens and municipalities are:

(1) What municipalities are subject to the annual financial disclosure provisions?

(2) What individuals within the municipality must file annual financial disclosure statements?

(3) What are the minimum requirements for financial disclosure forms?

(4) What information in the annual financial disclosure statements is subject to public inspection?

(5) What exemptions from filing disclosure statements are available?

(6) Who administers the requirements for annual financial disclosure?

(7) What are the penalties for violating those requirements?

Each of these questions is discussed below.

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779, 780 (Sup. Ct. 1990) (rejecting claim that the New York State Legislature, "in violation of the separation of powers provision . . . of the New York State Constitution, delegated to state agencies, and to the New York State Ethics Commission, the authority to determine which state employees are 'policy makers' for the purpose of financial disclosure, without meaningful standards and guidelines . . ."); Board of Educ. of the City School Dist. of the City of New York v. PERB, 75 N.Y.2d 660, 554 N.E.2d 1247, 555 N.Y.S.2d 659 (1990) (restricting school board's unilateral imposition of financial disclosure requirements on school board officers and employees).

12. N.Y. GEN. MUN. LAW § 813(1) (McKinney 1986 & Supp. 1991).

13. *Id.* §§ 810-13.

A. *Municipalities Subject to the Financial Disclosure Provisions*

In determining which municipalities are subject to the financial disclosure requirements of the Act, one must distinguish among three groups of municipalities:

(1) counties, cities, towns, and villages having a population of 50,000 or more (called "political subdivisions" in the Act);<sup>14</sup>

(2) counties, cities, towns, and villages having a population of less than 50,000; and

(3) all other "municipalities," as defined in the General Municipal Law, such as school districts and public libraries.<sup>15</sup>

However, such a body should be regarded as part of a county, city, town, or village and subject to that local government's financial disclosure laws if the body is not a state agency,<sup>16</sup> and in addition, the local government appoints the members of the body's governing board.<sup>17</sup>

1. *Counties, Cities, Towns, and Villages Having a Population of 50,000 or More ("Political Subdivision")*

Every county, city, town, or village having a population of 50,000 or more ("political subdivision") has two options on annual financial disclosure. First, it can do nothing by the end of 1990. In that case, certain public officials in that municipality must file with the Temporary State Commission on Local Government Ethics the state statutory financial disclosure form con-

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14. "The term 'political subdivision' shall mean a county, city, town or village having a population of fifty thousand or more and shall include a city with a population of one million or more." *Id.* § 810(1). There are no villages with populations of 50,000 or more.

15. *Id.* § 800(4).

16. "State agency" is defined as:

any state department, or division, board, commission, or bureau of any state department, any public benefit corporation, public authority or commission at least one of whose members is appointed by the governor, or the state university of New York or the city university of New York, including all their constituent units except community colleges and independent institutions operating statutory or contract colleges on behalf of the state.

*Id.* § 810(4).

17. See, e.g., N.Y. GEN. MUN. LAW § 810(12) (McKinney 1986 & Supp. 1991).

tained in the General Municipal Law;<sup>18</sup> the municipality may also elect to have its officials file that form with the municipality's own ethics board.<sup>19</sup> In any event, the forms must be filed by May 15, 1991, for the 1990 calendar year and by May 15, 1992, for the 1991 calendar year.<sup>20</sup> One may refer to these municipalities as "section 812 municipalities."

Alternatively, it can adopt by the end of 1990, its own form for an annual financial disclosure statement (or elect to continue an existing form that the municipality already uses), which may be the state form.<sup>21</sup> Under this option, the municipality must decide whether to have its officers and employees file their annual disclosure statements with the Commission or with the municipality's own ethics board. If the municipality elects for filing with its own ethics board, the municipality must give that board certain duties and powers.<sup>22</sup> One may refer to these municipalities as "section 811 municipalities."

A section 812 municipality may remove itself from the ambit of section 812 by adopting its own financial disclosure form and thus becoming a section 811 municipality. However, that municipality's officials must still file the state statutory form for the calendar year in which the municipality adopts its own form and for the next calendar year as well.<sup>23</sup> Similarly, a municipality that has elected to file disclosure statements with the Commission may elect to file them with the municipality's local ethics board instead; but, again, that change will not become effective until two calendar years after it is adopted.<sup>24</sup>

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18. *Id.* §§ 811(2), 812(1)(a). The state statutory form is set out in § 812(5). New York is perhaps the only state in the nation to cast the wording of its financial disclosure form in the concrete of statutory law.

19. *Id.* §§ 810(9), 812(1)(c).

20. *Id.* § 812(1)(a); *see also* N.Y. COMP. CODES R. & REGS. tit. 9, pt. 9975 (1991) (Commission regulations governing extensions of time to file a financial disclosure statement with the Commission).

21. N.Y. GEN. MUN. LAW § 811 (McKinney 1986 & Supp. 1991).

22. *Id.* § 811(1)(d).

23. *Id.* § 812(3).

24. *Id.*

2. *Counties, Cities, Towns, and Villages Having a Population Under 50,000*

Every county, city, town, or village having a population under 50,000 has three options regarding annual financial disclosure:

(1) Do nothing, in which case the municipality's officials are *not* subject to any annual financial disclosure requirements under the Act.<sup>25</sup>

(2) Opt to file the state form with the Commission under section 812 and be treated just like a municipality over 50,000 that failed to promulgate its own form.<sup>26</sup>

(3) Adopt (or continue) its own form for annual financial disclosure statements and have those statements filed either with the Commission or with the municipality's own local ethics board, thereby becoming a section 811 municipality.<sup>27</sup>

3. *All Other Municipalities*

All other municipalities, as defined in section 800(4) of the General Municipal Law, such as school districts, public libraries, or urban renewal agencies, have the same options on annual financial disclosure as counties, cities, towns, and villages under 50,000, except they may *not* opt to be treated like an over 50,000 municipality (a section 812 municipality; therefore, they may not elect option (2) immediately above).<sup>28</sup> However, as noted above, a body should be regarded as being a part of a county, city, town, or village and subject to that local government's financial disclosure laws if the local government appoints the members of the governing board of the body and if, in addition, the body is not a state agency.

B. *Minimum Requirements for Financial Disclosure Forms*

The Commission has determined that under section 811 a municipality's annual disclosure form must provide for financial disclosure and must fulfill the purposes of the financial disclo-

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25. *Id.* §§ 810(1), 811(2).

26. N.Y. GEN. MUN. LAW § 812(2) (McKinney 1986 & Supp. 1991).

27. *Id.* § 811(1)(a).

28. *Id.* § 811(1)-(2).

sure law. In that regard, the Commission has reviewed the annual financial disclosure form recently adopted by the County of Chautauqua and has concluded that the form would meet the *minimum* requirements of section 811 if the form were amended in certain respects. Attached to this article as Appendix B is a copy of the Chautauqua form,<sup>29</sup> as amended by the Commission to include the following changes:

(1) Categories of amount must be added to each of the relevant paragraphs (paras. 3(b), 3(d)-(g), 4-6). The form need not require disclosure of specific dollar amounts but must require disclosure of categories of amounts. The categories included in the state form as well as those proposed by the New York State Association of Counties (NYSAC) are both acceptable.<sup>30</sup> The categories of amounts on an official's disclosure statement may not be revealed to the public or to any other official, except the members and staff of the municipality's ethics board (and then only if the statement is filed with the board) and the Temporary State Commission on Local Government Ethics.

(2) The loans provision of the Chautauqua form (para. 6) must be brought into line with the liabilities provision of the state form (para. 19) and must, therefore, require disclosure not just of loans payable on demand but of all debts over \$5,000, including loans from federally insured institutions and whether payable on demand or not.

(3) The interests in contracts provision of the Chautauqua form (para. 7) must also require disclosure of contracts with any municipality within the filer's municipality. For example, if a county official's private business has a contract to supply snow removal services to a village within the county, the official must disclose that contract.

If, in the opinion of the Commission, a municipality's form does not comply with the above minimum requirements, then that municipality will be regarded as having failed to promul-

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29. See *infra* Appendix B.

30. The state form sets forth the following categories: A (under \$5,000); B (\$5,000 to under \$20,000); C (\$20,000 to under \$60,000); D (\$60,000 to under \$100,000); E (\$100,000 to under \$250,000); and F (\$250,000 and over). N.Y. GEN. MUN. LAW § 812(5). NYSAC has proposed the following categories: A (\$0-\$5,000); B (\$5,001-\$10,000); C (\$10,001-\$25,000); D (\$25,001-\$50,000); E (\$50,001-\$100,000); and F (\$100,001 and over).

gate a proper form and its covered officers and employees will be required to file the state statutory form with the Commission.<sup>31</sup>

### C. *Individuals Who Must File*

In determining which officers and employees of a particular municipality must file an annual financial disclosure statement, one must distinguish between those municipalities subject to section 812 and those subject to section 811.<sup>32</sup>

#### 1. *Section 812 Municipalities*

As detailed above, these municipalities include those counties, cities, towns, and villages having a population of 50,000 or more that do not adopt by the end of this year their own form for an annual financial disclosure statement, and those counties, cities, towns, and villages having populations under 50,000 that elect to be treated like those over 50,000 municipalities.

Four groups of officials in section 812 municipalities must file annual financial disclosure statements:

- (1) Local elected officials;<sup>33</sup>
- (2) Local officers and employees (department heads, their deputies and assistants, and policy makers);<sup>34</sup>
- (3) Local political party officials (the chairs of the political parties in that municipality, but only if they receive at least \$30,000 in compensation or expenses from party funds);<sup>35</sup> and
- (4) Candidates for local elected office.<sup>36</sup>

The Commission has adopted guidelines for determining which officials in a municipality hold policy-making positions. Those guidelines are set out as Appendix C at the end of this article.

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31. See N.Y. GEN. MUN. LAW §§ 811(1)(a), 811(2) (McKinney 1986 & Supp. 1991).

32. See *supra* notes 20-23 and accompanying text.

33. N.Y. GEN. MUN. LAW § 812(1)(a)(i) (McKinney 1986 & Supp. 1991). The term "local elected officials" excludes judges and justices of the unified court system. *Id.* § 810(2).

34. *Id.* §§ 810(3), 812(1)(a)(i).

35. *Id.* §§ 810(6), 812(1)(a)(ii), 812(1)(e).

36. *Id.* §§ 812(1)(a)-(b), 812(1)(d), 812(1)(h)-(i).

## 2. Section 811 Municipalities

As detailed above, these municipalities include every municipality that has promulgated its own form for an annual statement of financial disclosure.<sup>37</sup> In every municipality subject to section 811, "municipal officers and employees" are required to file annual financial disclosure statements.<sup>38</sup> Section 800 defines "municipal officer or employee" to include *all* officers and employees in the municipality, whether paid or unpaid.<sup>39</sup>

The Commission has concluded that it will deem as insufficient any financial disclosure policy that fails to require annual financial disclosure by the following officials:

- (1) Local elected officials;<sup>40</sup>
- (2) Local officers and employees (department heads, their deputies and assistants, and policy makers);<sup>41</sup> and
- (3) Those officers and employees whose duties involve the negotiation, authorization, or approval of any of the matters listed in the exemptions provision of General Municipal Law section 813(9).<sup>42</sup>

As noted above, the Commission has adopted guidelines for determining which officials in a municipality hold policy-making positions.<sup>43</sup>

In addition, every county, city, town, and village, regardless of size, that is subject to section 811 may, but need not, require local political party officials to file annual disclosure statements.<sup>44</sup> The Act does not specifically address the authority of

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37. See *supra* note 21 and accompanying text. The term "municipality" is broadly defined to include not only counties, cities, towns, and villages, but also, for example, school districts, public libraries, urban renewal agencies, and town or county improvement districts. N.Y. GEN. MUN. LAW § 800(4) (McKinney 1986 & Supp. 1991).

38. *Id.* § 811(1)(a).

39. *Id.* § 800(5). Civil defense volunteers and volunteer firemen, except fire chiefs and assistant fire chiefs, are excluded from the definition. *Id.*

40. *Id.* §§ 810(2), 811(1)(a). The requirement that local elected officials file disclosure statements does not apply to those municipalities that are not counties, cities, towns, or villages. *Id.*

41. N.Y. GEN. MUN. LAW § 810(3) (McKinney 1986 & Supp. 1991).

42. *Id.* § 813(9)(k) (for example, negotiation of contracts).

43. See *infra* Appendix C.

44. N.Y. GEN. MUN. LAW § 811(1)(b) (McKinney 1986 & Supp. 1991). Again, "local political party officials" are defined as the chairs of the political parties in the municipality, but only if they receive at least \$30,000 in compensation or expenses from party

section 811 municipalities to require candidates for local elected office to file.

### 3. *Advisory Boards*

Municipalities occasionally set up ad hoc advisory bodies that have no statutory or regulatory function. Sections 811 and 812 do not require the members of such a body to file financial disclosure statements if the body is in fact purely advisory, for example, a group of citizens who have been asked by a village mayor to advise him or her on citizens' views about a proposed zoning law. However, a body will *not* be regarded as purely advisory if: it has been created by law or executive order; it has the authority to implement its recommendations or to restrict the authority of the municipality to act; it requires a quorum to conduct business; it has any members who serve for a fixed term; or, in general, it performs any governmental function.<sup>45</sup>

### 4. *Former Officials*

Article 18 does not require annual financial disclosure by former officials. The Commission has therefore concluded that an official need not file an annual disclosure statement if he or she completes service or employment with the municipality before the filing date for that statement.

## D. *Information Subject to Public Inspection*

Disclosure statements filed with the Commission will be available for public inspection, "except the categories of value or amount which shall remain confidential . . ."<sup>46</sup> In addition, any individual filing a disclosure statement with the Commission

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funds. *Id.* § 810(6).

45. See *Poughkeepsie Newspaper Div. of Gannett Satellite Information Network v. Mayor's Intergovernmental Task Force on New York City Water Supply Needs*, 145 A.D.2d 65, 537 N.Y.S.2d 582 (1989) (Mayor's Intergovernmental Task Force and its subcommittees are not subject to the Open Meetings Law; the Task Force is merely an advisory body which does not perform a governmental function); *Goodson Todman Enters., Ltd. v. Town Bd. of Milan*, 151 A.D.2d 642, 542 N.Y.S.2d 373, *appeal denied*, 74 N.Y.2d 614, 547 N.Y.S.2d 848 (1989) (an advisory board that meets the foregoing conditions is not a "public body" for purposes of the New York State Open Meetings Law, N.Y. PUB. OFF. LAW §§ 100-111 (McKinney 1988 & Supp. 1991)).

46. N.Y. GEN. MUN. LAW § 813(18)(a)(1) (McKinney 1986 & Supp. 1991).

may apply to the Commission for the deletion of one or more items of information from the copy made available for public inspection.<sup>47</sup> One might also note that, with limited exceptions, the Commission is specifically exempt from the Freedom of Information Law and the Open Meetings Law.<sup>48</sup> The Commission has recently adopted emergency regulations governing public inspection of annual statements filed with the Commission.<sup>49</sup>

The Act does not specifically address the public availability of annual financial disclosure statements filed with a municipality's own local ethics board.<sup>50</sup> However, the Act does authorize a section 811 municipality to promulgate rules and regulations, which "may provide for the public availability of items of information to be contained on such form of statement of financial disclosure . . . ."<sup>51</sup> A municipal ethics board's rules and regulations must be "of the same import as those which the [Commission] enjoys . . . ."<sup>52</sup> Thus, the board *must* allow public inspection of the information contained in disclosure statements filed with the board, with two exceptions, the categories of amount, and any information properly deleted from the copy of the statement available for public inspection. Those items *must* remain confidential.<sup>53</sup>

### E. *Exemptions from Filing Annual Disclosure Statements*

Under certain circumstances, individuals may also apply for exemptions from filing certain information or from filing a disclosure statement at all.<sup>54</sup> Specifically, any person required to

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47. *Id.* §§ 813(9)(h), 813(17)(h)(1), 813(17)(i). *See also id.* §§ 813(9)(n), 813(17)(j)-(k); N.Y. COMP. CODES R. & REGS. tit. 9, § 9977.19 (1991) (Commission regulations governing appeals from Public Advisory Council decisions).

48. N.Y. GEN. MUN. LAW § 813(18).

49. N.Y. COMP. CODES R. & REGS. tit. 9, pt. 9978 (1991).

50. *See* N.Y. GEN. MUN. LAW § 811(1)(c)-(d).

51. *Id.* § 811(1)(c).

52. *Id.* § 811(1)(d).

53. The Freedom of Information Law and recent court decisions upholding financial disclosure requirements for state employees would dictate the same result. *See* N.Y. PUB. OFF. LAW § 87(2)(a) (McKinney 1988 & Supp. 1991); *Igneri v. Moore*, 898 F.2d 870 (2d Cir. 1990); *Watkins v. New York State Ethics Comm'n*, 147 Misc. 2d 350, 554 N.Y.S.2d 955 (Sup. Ct. 1990); *Grygas v. New York State Ethics Comm'n*, 147 Misc. 2d 312, 554 N.Y.S.2d 779 (Sup. Ct. 1990).

54. N.Y. GEN. MUN. LAW §§ 813(9)(i), 813(9)(k), 813(17)(h)(2), 813(17)(i); *see also* §§ 813(9)(n), 813(17)(j)-(k).

file a statement may request an exemption from any requirement to report one or more items of information pertaining to that person's spouse or unemancipated child when the spouse or child objects to providing the information and the items have no material bearing on the discharge of the reporting person's official duties.<sup>55</sup>

Furthermore, any person who is not a policy maker but who is otherwise required to file a financial disclosure statement may request an exemption from filing if the person's duties do not involve certain specified activities, such as negotiating contracts or leases.<sup>56</sup> Indeed, the Commission may grant such exemptions for an entire job title or employment classification.<sup>57</sup>

The Act does not specifically address the authority of a local ethics board to grant exemptions. However, one should note that, if a section 811 municipality elects to have its officials file with its own local ethics board, then the municipality must confer upon that board "the authority to promulgate rules and regulations of the same import as those which the [Commission] enjoys . . . ."<sup>58</sup>

#### F. *Administration of Annual Financial Disclosure Requirements*

As discussed above, every section 812 municipality, as well as every section 811 municipality, may elect to have its officers and employees file annual disclosure statements either with the Commission or with the municipality's local ethics board.<sup>59</sup> Again, if the municipality elects to have its disclosure statements filed with its own ethics board, then the municipality must confer upon that ethics board "appropriate authority to enforce such filing requirement, including the authority to pro-

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55. *Id.* §§ 813(9)(i), 813(17)(h)(2); *see also* N.Y. COMP. CODES R. & REGS. tit. 9, § 9977.19 (1991) (Commission regulation governing appeals from Public Advisory Council decisions).

56. N.Y. GEN. MUN. LAW § 813(9)(k); *see also* N.Y. COMP. CODES R. & REGS. tit. 9, pt. 9976 (1991) (Commission regulations governing requests for exemptions from filing disclosure statements).

57. N.Y. GEN. MUN. LAW § 813(9)(k); *see also* §§ 813(9)(n), 813(17)(k); N.Y. COMP. CODES R. & REGS. tit. 9, pt. 9976 (1991).

58. *Id.* § 811(1)(d).

59. *Id.* §§ 810(9), 811(1)(d), 812(1)(c); *see supra* notes 18-22 and accompanying text.

mulgate rules and regulations of the same import as those which the [Commission] enjoys . . . ."<sup>60</sup>

The Commission has broad powers and may, for example, perform the following: grant deletions and exemptions from financial disclosure; render advisory opinions; review, maintain, and inspect financial disclosure statements; review complaints alleging a violation of financial disclosure requirements or of any other provision of a duly adopted ethics code; investigate, either upon complaint or on its own initiative, any such violation; administer oaths; subpoena books, records, and witnesses; conduct adjudicatory proceedings and appeals; and assess penalties.<sup>61</sup> This authority of the Commission and ethics boards stands in marked contrast to the previous power of ethics boards, which was essentially limited to rendering advisory opinions and making recommendations with respect to the drafting and adoption of local ethics codes.<sup>62</sup>

In addition to implementing the financial disclosure provisions of the Act, the Commission must also recommend changes in the law governing the conduct of municipal officers and employees, and must "[a]dvise and assist any local agency in establishing rules and regulations relating to possible conflicts between private interests and official duties of present or former" municipal officers and employees.<sup>63</sup> In that regard, the Commission has recently proposed a Code of Ethics for Municipal Officials in New York State and a list of provisions for inclusion in a new article 18 of the General Municipal Law.<sup>64</sup>

Two advisory bodies have been created to assist the Commission in its duties. The first, a public advisory council consisting of five members,<sup>65</sup> passes upon certain requests for deletions and exemptions.<sup>66</sup> The Commission possesses jurisdiction over

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60. N.Y. GEN. MUN. LAW § 811(1)(d); *see also* §§ 810(9), 812(6).

61. *See also* N.Y. GEN. MUN. LAW §§ 813(9)(f)-(i), 813(9)(k), 813(9)(m)-(n), 813(10)-(16); N.Y. COMP. CODES R. & REGS. tit. 9, pt. 9977 (1991) (Commission regulations governing adjudicatory proceedings before the Commission).

62. N.Y. GEN. MUN. LAW § 808(2)-(3).

63. *Id.* § 813(9)(j), 813(9)(l).

64. *See* Temporary State Comm'n on Local Gov't Ethics, ANN. REP. 4-7 & Appendix A-B (1990). A copy of the Annual Report is available from the Commission upon request.

65. N.Y. GEN. MUN. LAW § 813(17)(a).

66. *Id.* § 813(17)(h)-(k).

appeals from the Council's determinations.<sup>67</sup> The second, a local government advisory board consisting of twelve members appointed by the governor upon nomination of the New York State Conference of Mayors, the New York State Association of Counties, and the New York State Association of Towns, "inform[s] the commission of policies and concerns of local governments with respect to the administration of the provisions of [article 18] and disseminate[s] information to local governments with respect to the operations of the commission."<sup>68</sup>

### G. Penalties

The Act establishes maximum penalties that the Commission may assess for violations of reporting requirements;<sup>69</sup> those same limitations apply to section 812 municipalities that opt to have their municipal officers and employees file with the municipality's own ethics board.<sup>70</sup> Section 811 municipalities may prescribe their own penalties.<sup>71</sup>

Penalties include a civil penalty, not to exceed \$10,000, for knowingly and willfully failing to file a financial disclosure statement or for knowingly and willfully making a false statement with intent to deceive.<sup>72</sup> In lieu of a civil penalty, the ethics board or the Commission, as the case may be, may refer a violation to the appropriate prosecutor; upon conviction after such referral, the violation is punishable as a class A misdemeanor.<sup>73</sup> In any event, the municipality may impose disciplinary action as otherwise provided by law.<sup>74</sup> Civil penalties are assessed in accord with rules providing for procedural due process mechanisms that are substantially similar to those set forth in article 3 of the New York State Administrative Procedure Act.<sup>75</sup>

67. *Id.* §§ 813(9)(h)-(i), 813(9)(n), 813(17)(h)-(i), 813(17)(k).

68. *Id.* § 813(19).

69. *Id.* §§ 813(13), 812(6); *see also* § 810(9) (definition of "appropriate body").

70. N.Y. GEN. MUN. LAW §§ 810(9), 812(6) (McKinney 1986 & Supp. 1991) (definition of "appropriate body").

71. *See id.* § 811(1)(c).

72. *Id.* §§ 812(6), 813(13).

73. *Id.*

74. *Id.* § 812(6).

75. *Id.* §§ 812(6), 813(13); *see also* N.Y. A.P.A. §§ 301-307 (McKinney 1984 & Supp. 1991); N.Y. COMP. CODES R. & REGS. tit. 9, pt. 9977 (1991) (Commission regulations governing adjudicatory proceedings before the Commission).

#### IV. The Governor's Program Bill

In May 1988 the New York State Commission on Government Integrity ("COGI"), chaired by Dean John D. Feerick of Fordham Law School, sent to every county, city, town, village, and school district in New York State a copy of a draft Municipal Ethics Act prepared by COGI staff. That draft Act was intended to replace the current patchwork of state and local ethics laws, in particular article 18 and local ethics regulations.

Based on comments received on the draft, on investigations by COGI of ethical violations in communities throughout the state, and on public hearings held by COGI after the author of this article left that Commission, COGI revised the draft Act and submitted it, together with a report, to the Governor. With certain relatively minor changes, the Governor adopted the draft Act as a program Bill, which was introduced in the state legislature in April 1989.<sup>76</sup> The Bill died in Committee but may be introduced again in 1991.

If enacted, the Bill would replace article 18 of the General Municipal Law and would set out minimum ethics standards for every county, city, town, village, and school district in the state (except New York City) and every agency thereof, including, for example, zoning boards, consolidated health districts, and public libraries. Every municipality would have the option of adopting a local ethics code and creating a local ethics board. A state commission would then review the local code to ensure that it is at least as stringent as the state act. Once a local code passed that review, it would supersede the state act. Municipal officials in that community would then be governed by one and only one ethics code — their own.

The following is a brief description of some of the major substantive provisions of the Bill. One must emphasize that the Temporary State Commission on Local Government Ethics has taken no position on this proposed legislation.

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76. N.Y.A. 7953, 212th Sess. (1989).

### A. Prohibitions

*Conflicts of interest.* Unlike current law,<sup>77</sup> the Bill would allow municipal officials to receive compensation from a contract with the municipality but *prohibit* them from taking an action (for example, voting to award a municipal contract), or from not taking an action (for example, failing to cite a zoning violation), in order to obtain a financial benefit for themselves, their families, their businesses, any corporation of which they own more than five percent of the stock, or anyone from whom they or their spouses received more than \$2,000 during any one of the past two years.<sup>78</sup>

*Appearances.* The Bill would:

(1) prohibit municipal officers and employees from representing any person in connection with the person's business dealings with the municipality;<sup>79</sup>

(2) prohibit municipal officers and employees, and their companies or firms, from appearing before the officer's or employee's own municipal agency, except on their own or the municipality's behalf;<sup>80</sup>

(3) prohibit *elected or paid* municipal officers and employees, and their companies or firms, from appearing before *any* agency of the municipality, except on their own or the municipality's behalf;<sup>81</sup> and

(4) prohibit municipal officers or employees from appearing as counsel against the interests of the municipality in any proceeding in which the municipality is a party or complainant.<sup>82</sup>

As indicated, an officer or employee could always appear on his or her own behalf, even before his or her own agency. For example, a zoning board member could seek a zoning variance for his or her own property.

*Gifts.* The Bill would prohibit officers and employees from receiving gifts from individuals who do business with the munic-

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77. N.Y. GEN. MUN. LAW § 801 (McKinney 1986 & Supp. 1991).

78. Proposed § 801(1)(c).

79. Proposed § 801(1)(a).

80. Proposed §§ 801(1)(d), 801(2).

81. Proposed §§ 801(1)(e), 801(3).

82. Proposed § 801(1)(f).

ipality. There are various exceptions, including campaign contributions and certain holiday gifts under seventy-five dollars per year.<sup>83</sup> Current law prohibits accepting gifts having a value of seventy-five dollars or more under circumstances in which it could be inferred that the gift is meant to influence the officer or employee.<sup>84</sup>

*Political solicitations.* The Bill would prohibit municipal officers and employees from asking non-elected officers or employees to participate in an election campaign (elected officials could solicit their exempt or unclassified subordinates).<sup>85</sup> The Bill would also prohibit municipal officers or employees, either directly or through a campaign organization, from soliciting non-elected officers or employees for campaign contributions unless the solicitation is part of a general solicitation, for example, of all registrants of that political party in the community.<sup>86</sup> The Bill sets out a similar prohibition with respect to solicitation of contributions from persons doing business with the municipality, again unless the solicitation is part of a general solicitation.<sup>87</sup>

*Revolving door.* The Bill would prohibit a former municipal officer or employee from working on any "particular matter" (taking any "discretionary act") while employed with the municipality.<sup>88</sup>

## B. Disclosure

*Transactional disclosure.* The Bill would require that municipal officers and employees disqualify themselves and publicly disclose their interest whenever they are "requested or required to take any action on a matter before the municipality and, to [their] knowledge, either the performance or nonperformance of that action would provide a pecuniary or material benefit" to themselves or a "related person." "Related person" is defined as a member of the officer's or employee's immediate family; corpo-

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83. Proposed § 801(1)(b).

84. N.Y. GEN. MUN. LAW § 805-a(1)(a) (McKinney 1986 & Supp. 1991).

85. Proposed § 801(1)(g); see *Golden v. Clark*, 76 N.Y.2d 618, 564 N.E.2d 611, 563 N.Y.S.2d 1 (1990) (upholding New York City Charter prohibition against certain City officers holding certain political party offices).

86. Proposed § 801(1)(h).

87. Proposed § 801(1)(i).

88. Proposed § 801(1)(k); see also proposed § 801(1)(l).

rations of which the officer or employee owns more than five percent of the stock; persons with whom the officer or employee, or a member of his or her immediate family, has an employment, professional, business, or financial relationship; and persons from whom the officer or employee, or his or her spouse, has received, during a twelve-month period in the last two years, a pecuniary or material benefit worth more than \$2,000.<sup>89</sup> Disclosure and disqualification would *not* be required in connection with the performance of ministerial acts.<sup>90</sup>

*Annual disclosure.* The Bill would require that each year municipal officers and employees file a statement disclosing: (a) the address of their real property in the municipality and immediately surrounding area; (b) the name of their employer or business and their position (job title); (c) the names of corporations of which they are officers, directors, or employees, or of which they own more than five percent of the shares, and their position (job title); (d) any self-employment (if it provided more than \$2,000 in gross income in the previous calendar year); and (e) in the case of lawyers, real estate brokers or agents, and individuals licensed by the Department of Education, the nature of their practice and of their clients' businesses (*not* the names of customers, patients, or clients).<sup>91</sup> With respect to items (a) through (d), the officer or employee would also have to provide the information as to his or her spouse. With respect to item (a), the officer or employee would also have to provide the information as to the members of his or her immediate family, unless, after a reasonable effort by the officer or employee, the spouse or other family member refused to disclose the information.<sup>92</sup>

The Bill would *not* require disclosure of any financial information.<sup>93</sup> Furthermore, annual disclosure would *not* be required of unpaid officials, unless they are elected to office.<sup>94</sup> Thus, for example, members of most zoning boards, planning boards, and advisory boards would *not* be required to file an annual disclosure statement.

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89. Proposed § 803(2); *see also* proposed § 800(5).

90. Proposed § 803(4); *see also* proposed § 800(7).

91. Proposed § 804.

92. Proposed § 804(2)-(3).

93. *See* proposed § 804(2).

94. *See* proposed § 804(1).

*Applicant disclosure.* The Bill would require that persons who have business dealings with the municipality disclose in their applications, bids, or proposals, the name of any officer or employee of that municipality who, to the applicant's knowledge, has an interest in the submission if that officer or employee is required to take discretionary action on the submission.<sup>95</sup> That disclosure would include campaign contributions in certain instances.<sup>96</sup>

#### V. The Temporary State Commission's Proposals for Reform<sup>97</sup>

The 1987 Ethics in Government Act mandates that the Temporary Commission on Local Government Ethics recommend "changes in the laws governing the conduct of local elected officials, local political party officials and local officers and employees [in New York State]."<sup>98</sup> The Commission views that obligation as one of its greatest opportunities to improve the ethical climate in local government.

##### A. *Deficiencies in Current State Ethics Laws for Municipal Officials*

As one member of the Commission's Advisory Board recently stated:

Many important ethical matters are wholly untouched by the current state law — leaving all regulation on those matters to localities — resulting in what the Feerick Commission called "a confusing and contradictory patchwork of unenforced and unenforceable ethics codes." Even in those areas that are covered, the state law is often inadequate, offering many loopholes and exceptions.<sup>99</sup>

As a result, New York State ethics laws neither guide the up-right public servant nor reassure an all too cynical public.

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95. Proposed § 806.

96. See proposed § 806(2).

97. This section is based on the Commission's 1990 Annual Report. N.Y. TEMP. STATE COMM'N ON LOCAL GOV'T ETHICS ANN. REP. (1990).

98. N.Y. GEN. MUN. LAW § 813(9)(1) (McKinney 1986 & Supp. 1991).

99. Hon. David N. Dinkins, Remarks to the Temporary State Commission on Local Government Ethics (Oct. 25, 1990).

The deficiencies in article 18 of the General Municipal Law (the state law governing municipal ethics) are legion. Above all, no uniform, statewide Code of Ethics exists to guide municipal officials in their conduct. Bereft of a comprehensive, comprehensible Code and even an agency to authoritatively interpret the hodgepodge of current ethics laws, local government officials faced with ethical dilemmas search in vain for counsel.

Furthermore, no permanent statewide agency exists to enforce state ethics laws governing municipal officials; to guide municipalities in drafting local ethics codes; to provide education, training, and technical assistance to ethics boards and municipalities in interpreting and complying with ethics regulations; or to oversee local ethics boards. Those local boards themselves have little power to enforce local ethics codes, except in the area of financial disclosure and then only if the municipality has opted to have its officials file annual financial disclosure statements with the board.

The scheme for annual financial disclosure in the current law is extraordinarily complicated and remains optional in ninety-five percent of the counties, cities, towns, and villages in the state.<sup>100</sup> The financial disclosure form set out in the statute<sup>101</sup> is in many instances virtually unintelligible and is far too invasive of the rights of officials in most municipalities. In some municipalities that form may indeed chill the willingness of good people to serve in local government. Moreover, officials in all municipalities, not just in counties, cities, towns, and villages with populations over 50,000, should be subject to some appropriate form of annual disclosure.

Requiring only limited disclosure of particular transactions in which a municipal official has a conflict of interest,<sup>102</sup> the law currently employs lengthy annual financial disclosure in the place of transactional disclosure and disqualification. Yet transactional disclosure and disqualification should be the rule, not the exception. Annual disclosure should serve as a check on

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100. Of the 1616 counties, cities, towns, and villages in New York State, only 83 (including the five counties comprising New York City) have populations of 50,000 or more and are thus subject to mandatory annual financial disclosure. See N.Y. GEN. MUN. LAW §§ 810(1), 811(1)(a), 811(2) (McKinney 1986 & Supp. 1991); see also *supra* note 10.

101. *Id.* § 812(5).

102. *Id.* § 803.

transactional disclosure, not as a substitute for it. Annual disclosure simply provides a means of indicating to officials, the public, and the press where potential conflicts may arise before they actually occur. Similarly, the law now rarely requires applicants or bidders to disclose the names of municipal officials having an interest in the applicant, application, bidder, or bid.<sup>103</sup>

Current state law also provides no restrictions on the matters a municipal official may undertake after leaving municipal service. A town planning board member, for example, may today vote to approve a major development and tomorrow go to work for the developer on that very same project.

State law now provides few restrictions on municipal officials and their private firms appearing before the municipality on behalf of private customers or clients. For example, state statutory law would permit a mayor's law firm to appear on behalf of a private client before the city council, so long as the mayor receives no compensation from that representation.<sup>104</sup> Likewise, under current state statutory law, the town attorney could represent a private client before the town's planning board.<sup>105</sup>

The current prohibition against acceptance of gifts by municipal officials<sup>106</sup> is vague and difficult to enforce. A simple, straightforward gifts regulation is needed.

Penalties for violations of ethics laws are now either too narrow or non-existent. Current state law either classifies an ethics violation as a misdemeanor or permits only disciplinary action.<sup>107</sup> Civil fines are permissible only for violations of the financial disclosure provisions.<sup>108</sup> Penalties such as civil forfeiture, censure, or damages, that might be tailored to a particular ethical lapse are wholly absent from the current statutory scheme.

Some of the provisions of current state ethics laws produce draconian results. For example, a municipal contract willfully entered into in violation of the state ethics laws is not merely voidable by the municipality but "null, void and wholly unen-

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103. *Id.* § 809.

104. *Id.* § 802(1)(b).

105. *See* N.Y. GEN. MUN. LAW § 805-a(1)(c)-(d) (McKinney 1986 & Supp. 1991).

106. *Id.* § 805-a(1)(a).

107. *Id.* §§ 805, 805-a(2), 809(5).

108. *Id.* §§ 812(6), 813(13).

forceable,"<sup>109</sup> sometimes to the substantial detriment of the citizens of the community. Similarly, the lack of any provisions for waivers in the current law may impose a significant hardship in smaller, rural communities having limited sources of goods and services. For example, a village, prohibited from contracting for snow removal with the mayor's firm or from buying materials from a trustee's hardware store, may be forced to pay a substantially higher price for those same goods and services from businesses thirty miles down the road.

Finally, current state ethics laws regulate the conduct only of municipal officials. Private individuals and companies are given virtually free reign, short of outright bribery, to pressure officials into taking unethical actions. If, for example, a village treasurer accepts a loan from a bank at a below-market rate and then selects that bank as the depository of village funds, the official will probably lose his or her job. Absent outright bribery, the bank risks nothing. Granting the private sector virtual impunity thus to pressure municipal officials gives it little stake in the enforcement of ethics laws.

#### B. *The Commission's Recommendations for Changes in the Law*

A substantial portion of the Commission's deliberations during this past year has been devoted to the development of a new article 18 for the General Municipal Law. As a first step toward that goal, the Commission has drafted a proposed Code of Ethics for Municipal Officials in New York State and has compiled a list of provisions that the Commission recommends be included in a new article 18.

If enacted, the proposed Code of Ethics would provide comprehensive, minimum ethical standards that would apply uniformly to every municipal official in the state. Individual municipalities could then adopt a local Code of Ethics that is more stringent, but not less stringent, than that statewide Code. A copy of the Commission's proposed Code of Ethics is set out in Appendix D to this article.

The list of provisions for a new article 18 sets forth the

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109. *Id.* § 804.

Commission's recommendations for the administration and enforcement portions of a new state ethics law that would accompany the Code of Ethics. That list is contained in Appendix E to this article.

The Commission's proposals reflect not only the work of the Commission but also substantial input from the Commission's local government advisory board. Ever mindful of the chilling effect that overly stringent ethics regulations may have on officials' willingness to serve, the Commission has worked closely with its advisory board to ensure that the Commission's recommendations, if enacted, will not only promote integrity in local government but also increase citizen participation in that government.

To that end, the Commission and its advisory board have, with two exceptions, reached a consensus on the proposed Code of Ethics and on the list of proposals for a new article 18.<sup>110</sup> While that consensus restricts neither the Commission nor its advisory board in proposing other alternatives, it does serve as a basis for reform.

Indeed, based upon the Commission's proposed Code of Ethics and list of provisions for a new article 18, the Commission and its advisory board are now working together to craft a common sense, straightforward ethics law for municipal officials in New York State, a law that will replace the confusing and inadequate patchwork of current legislation. The Commission will present that draft bill to the Governor and the Legislature in February 1991.

## VI. Conclusion<sup>111</sup>

If, as Dr. King once said, true peace is not merely the absence of war but the presence of justice, so too, ethics in govern-

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110. Those two exceptions are: (1) the prohibitions against a municipal official appearing before a political subdivision located within the official's municipality (Code ¶ 4) and against their representing someone in a matter before such a political subdivision (Code ¶ 5) (for example, a county legislator appearing before a town zoning board of appeals within that county); and (2) the prohibition against municipal officials soliciting vendors to participate in an election campaign or contribute to a political committee (Code ¶ 7). See *infra* Appendix D.

111. This section is based on the Commission's 1990 Annual Report. N.Y. TEMP. STATE COMM'N ON LOCAL GOV'T ETHICS ANN. REP. (1990).

ment is not merely the absence of corruption but the presence of trust — mutual trust between public officials and those whom they serve. Yet trust cannot be mandated. It must be nurtured.

Ethics laws and enforcement efforts aimed solely at deterring corruption fail to apprehend that simple truth.<sup>112</sup> Indeed, they foster the notion, unjustified in fact, that public officials are inherently dishonest. Such a policy not only fails to achieve its narrow goal of combatting corruption but also destroys trust in municipal officials and thus ultimately undermines both the perception and reality of integrity in government.

The purpose of ethics laws lies not in the promulgation of rules nor in the amassing of information nor even in the punishment of wrongdoers, but rather in the creation of a more ethical government, in perception and in fact. Proceeding from that premise, the Temporary State Commission on Local Government Ethics shall in the coming year press vigorously for a new state ethics law regulating municipal officials, a common sense law that will give guidance to officials and confidence to citizens.

It is said that, while morality cannot be legislated, actions can be regulated. In proposing legislative reform, in advising municipalities, citizens, and officials, and in enforcing the current patchwork law, the Commission will seek to be guided by that distinction.

In the end, the touchstone of integrity in government, and the ultimate test of the Commission's success, reside in the willingness of good citizens to serve in local government. Laws and agencies that chill that willingness to serve do far more harm than good. When, however, good citizens clamor to join the ranks of municipal officials, the ethical health of the community runs strong. In fulfilling its statutory mandate, the Commission will strive to encourage that participation.

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112. See generally Davies, *The Public Administrative Law Context of Ethics Requirements for West German and American Public Officials: A Comparative Analysis*, 18 GA. J. INT'L & COMP. L. 319 (1989).

## APPENDIX A

MUNICIPALITIES SUBJECT TO MANDATORY  
ANNUAL FINANCIAL DISCLOSURE

The following counties, cities, and towns have populations of 50,000 or more and are thus subject to mandatory annual financial disclosure:

<i>Counties</i>	<i>Cities</i>	<i>Towns</i>
Albany	Albany	Amherst
Allegany	Binghamton	Babylon
Broome	Buffalo	Brookhaven
Cattaraugus	Mount Vernon	Cheektowaga
Cayuga	New Rochelle	Clarkstown
Chautauqua	New York City	Clay
Chemung	Niagara Falls	Colonie
Chenango	Rochester	Greece
Clinton	Schenectady	Greenburgh
Columbia	Syracuse	Hamburg
Dutchess	Troy	Hempstead
Erie	Utica	Huntington
Fulton	Yonkers	Irondequoit
Genesee		Islip
Herkimer		North Hempstead
Jefferson		Oyster Bay
Livingston		Ramapo
Madison		Smithtown
Monroe		Tonawanda
Montgomery		Union
Nassau		West Seneca
Niagara		
Oneida		
Onondaga		
Ontario		
Orange		
Oswego		
Otsego		
Putnam		
Rensselaer		
Rockland		
St. Lawrence		
Saratoga		
Schenectady		
Steuben		
Suffolk		
Sullivan		
Tioga		
Tompkins		
Ulster		
Warren		
Washington		
Wayne		
Westchester		

APPENDIX B  
ANNUAL STATEMENT OF FINANCIAL DISCLOSURE FOR  
[COUNTY, CITY, TOWN, VILLAGE] OF \_\_\_\_\_  
FOR 199\_\_

## 1. NAME AND ADDRESS.

Last Name	Middle Initial	First Name
Title		
Department or Agency		
Department or Agency Address		Telephone No.
Residence Address		Telephone No.

## 2. SPOUSE AND CHILDREN.

Provide the name of your spouse (if married) and the names of any dependent children:

Spouse	Child/Age
Child/Age	Child/Age

NOTE: FOR QUESTIONS 3 TO 6, DO NOT REPORT EXACT DOLLAR AMOUNTS. INSTEAD, REPORT CATEGORIES OF AMOUNTS, USING THE FOLLOWING:

CATEGORY A: UNDER \$5,000	CATEGORY D: \$25,001 TO \$50,000
CATEGORY B: \$5,001 TO \$10,000	CATEGORY E: \$50,001 TO \$100,000
CATEGORY C: \$10,001 TO \$25,000	CATEGORY F: OVER \$100,000.

## 3. FINANCIAL INTERESTS.

- a. *Business Positions.* List any office, trusteeship, directorship, partnership, or other position in any business, association, proprietary, or not-for-profit organization held by you and your spouse and dependent children, if any, and indicate whether these businesses are involved with the [County, City, Town, Village] of \_\_\_\_\_ in any manner.

Name of Family Member	Position	Organization	County Department or Agency and Nature of Involvement

- b. *Outside Employment.* Describe any outside occupation, employment, trade, business, or profession providing more than \$1,000 per year for you and your spouse and dependent children, if any, and indicate whether such activities are regulated by any state or local agency.

Name of Family Member	Position	Name, Address, and Description of Organization	State or Local Agency	Category of Amount
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

- c. *Future Employment.* Describe any contract, promise, or other agreement between you and anyone else with respect to your employment after leaving your [County, City, Town, Village] office or position.

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- d. *Past Employment.* Identify the source and nature of any income in excess of \$1,000 per year from any prior employer, including deferred income, contributions to a pension or retirement fund, profit sharing plan, severance pay, or payments under a buy-out agreement.

Name and Address of Income Source	Description of Income (i.e., pension, deferred, etc.)	Category of Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- e. *Investments.* Itemize and describe all investments in excess of \$5,000 or five percent of the value in any business, corporation, partnership, or other assets, including stocks, bonds, loans, pledged collateral, and other investments, for you and your spouse and dependent children, if any. List the location of all real estate within the [County, City, Town, Village] or within five miles thereof, in which you, your spouse, or dependent children, if any, have an interest, regardless of its value.

Name of Family Member	Name and Address of Business or Real Estate	Description of Investment	Category of Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

- f. *Trusts.* Identify each interest in a trust or estate or similar beneficial interest in any assets in excess of \$2,000, except for IRS eligible retirement plans or interests in an estate or trust of a relative, for you and your spouse and dependent children.

Name of Family Member	Trustee/Executor	Description of Trust/Estate	Category of Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

- g. *Other Income.* Identify the source and nature of any other income in excess of \$1,000 per year from any source not described above, including teaching income, lecture fees, consultant fees, contractual income, or other income of any nature, for you and your spouse and your dependent children, if any.

Name of Family Member	Name and Address of Income Source	Nature of Income	Category of Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

#### 4. GIFTS AND HONORARIUMS.

List the source of all gifts aggregating in excess of \$250 received during the last year by you, your spouse or dependent child, excluding gifts from a relative. The term "gifts" includes gifts of cash, property, personal items, payments to third parties on your behalf, forgiveness of debt, honorariums, and any other payments that are not reportable as income.

Name of Family Member	Name and Address of Donor	Category of Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

#### 5. THIRD-PARTY REIMBURSEMENTS.

Identify and describe the source of any third-party reimbursement for travel-related expenditures in excess of \$250 for any matter that relates to your official duties. The term "reimbursement" includes any travel-related expenses provided by anyone other than the [County, City, Town, Village] for speaking engagements, conferences, or fact-finding events that relate to your official duties.

Source	Description	Category of Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**6. DEBTS.**

Describe all debts of you, your spouse, and dependent children in excess of \$5,000.

Name of Family Member	Name and Address of Creditor	Category of Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**7. INTEREST IN CONTRACTS.**

Describe any interest of you, your spouse, or your dependent children in any contract involving the [County, City, Town, Village] or any municipality located within the [County, City, Town, Village].

Name of Family Member	Contract Description
_____	_____
_____	_____
_____	_____
_____	_____

**8. POLITICAL PARTIES.**

List any position you held within the last five years as an officer of any political party, political committee, or political organization. The term "political organization" includes any independent body or any organization that is affiliated with or a subsidiary of a political party.

_____
_____
_____
_____

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

APPENDIX C  
GUIDELINES FOR DETERMINATION OF  
PERSONS IN POLICYMAKING POSITIONS

Pursuant to General Municipal Law § 813(9)(d), the Temporary State Commission on Local Government Ethics hereby issues the following guidelines:

**A. DEFINITIONS**

1. "Appointing authority" shall mean that individual or body which has the authority by law, rule, or regulation to appoint a person to a policymaking position or that individual or body to whom such authority may be properly delegated by law, rule, or regulation.

2. "Appropriate body" shall have the same meaning as ascribed to that term by General Municipal Law § 810(9).

3. "Commission" shall mean the Temporary State Commission on Local Government Ethics, established pursuant to General Municipal Law § 813.

4. "Local agency" shall have the same meaning as ascribed to that term by General Municipal Law § 810(12).

5. "Municipality," as used in these guidelines, shall mean all municipalities, as defined in General Municipal Law § 800(4), that have adopted a form for annual statements of financial disclosure.

**B. GUIDELINES**

1. These guidelines, which are advisory in nature, are intended to assist appointing authorities in determining which persons hold policymaking positions for purposes of General Municipal Law § 811 and § 812. These guidelines apply to all municipalities regardless of whether the municipalities use the Commission or their own board of ethics as the appropriate body for filing annual financial disclosure statements.

2. For purposes of General Municipal Law § 811 and § 812, a person should be considered to hold a policymaking position if he or she:

(a) has been determined to be managerial pursuant to Civil Service Law § 201(7) because he or she formulates policy; or

(b) is in the non-competitive class under § 2.2 of the rules and regulations of the Department of Civil Service, provided that the person holds a position that either (i) is designated in Appendix 2 of those rules and regulations by the Greek letter "Φ" on the basis that the position requires the performance of functions influencing policy or (ii) is similarly designated in any applicable local rules and regulations promulgated by a

municipal civil service commission pursuant to Civil Service Law § 20; or

(c) exercises responsibilities of a broad scope in the formulation of plans for the implementation of goals or policy for a local agency or acts as an advisor to an individual in such a position. In determining whether a person holds a policymaking position under this subdivision (c), the appointing authority should consider the following factors:

(i) whether the position permits meaningful input into the governmental decision-making process on issues where there is room for principled disagreement on goals or their implementation;

(ii) whether the powers and duties of the position are broadly defined and require more than the exercise of simple ministerial competence;

(iii) whether the position permits the person to exercise control over other officers or employees;

(iv) whether the position involves the establishment of priorities or the development of programs;

(v) whether the position requires or authorizes the conducting of studies or entails a significant degree of involvement in the preparation of budgets or budget requests for a local agency or municipality;

(vi) whether the position authorizes the person to speak on behalf of local elected officials or other policymakers;

(vii) whether the position entails frequent contact with local elected officials or their principal deputies.

3. The appointing authority should use both an objective and a subjective test in applying the guidelines set forth in paragraph (2)(c) above. Therefore, the appointing authority should apply these guidelines to the powers and duties of the position as set forth in the job description or any applicable law or regulation as well as the actual duties performed by the person. For example, if a person in actual fact only performs some of the duties contained in his job description, the policymaking determination should nevertheless be made by applying the aforementioned guidelines to all of the duties contained in the job description, as well as the duties actually performed.

### C. PROCEDURES

1. Each municipality for which the Commission acts as the appropriate body shall file a written statement with the Commission by the last day of February of each year containing the name, title, office address, and social security number of each person who holds a policymaking position in that municipality as determined by the appointing authorities for that municipality.

2. The municipality shall file an amended written statement with the Commission within thirty (30) days after the undertaking of policymaking responsibilities by a new employee or by any other employee whose name did not appear on the most recent written submission. The amended statement shall contain the name, title, office address, and social security number of each such employee.

3. Each municipality shall notify in writing each employee designated as policymaking by the municipality in accordance with these guidelines.

## APPENDIX D

PROPOSED CODE OF ETHICS  
FOR MUNICIPAL OFFICIALS IN NEW YORK STATE

NOTE: Following is the *actual text* of a proposed Code of Ethics for municipal officials. The provisions should be read together with the proposed *exclusions* from the Code, listed in paragraph 2 of Appendix E.

§ 800. Code of Ethics for Municipal Officers and Employees.

1. *General prohibition.* A municipal officer or employee shall not use his or her official position or office, or take or fail to take any action, in a manner which may result in a personal financial benefit for any of the following persons: (a) the municipal officer or employee; (b) his or her outside employer or business; (c) a member of his or her household; (d) a customer or client; (e) a relative; or (f) a person from whom the officer or employee has received election campaign contributions of more than \$1000 in the aggregate during the past twelve months.

2. *Recusal.* A municipal officer or employee shall promptly recuse himself or herself from acting on a matter before the municipality when acting on the matter, or failing to act on the matter, may financially benefit any of the persons listed in paragraph 1 above.

3. *Gifts.* A municipal officer or employee shall not solicit anything of value from any person who has received or sought a financial benefit from the municipality nor accept anything of value from any person who has received or sought a financial benefit from the municipality within the previous twenty-four months.

4. *Representation.* A municipal officer or employee shall not represent any other person in any matter the person has before the municipality, or before any political subdivision located within the municipality, nor represent any other person in any matter in which the municipality has an adverse interest.

5. *Appearances.* A municipal officer or employee shall not appear before any agency of the municipality, or before any political subdivision located within the municipality, except on his or her own behalf or on behalf of the municipality.

6. *Confidential information.* Municipal officers and employees and former municipal officers and employees shall not disclose any confidential information or use it to

further anyone's personal interests.

7. *Political solicitation.* A municipal officer or employee shall not knowingly request or knowingly authorize anyone else to request any subordinate of the officer or employee, or any person who has sought or received a financial benefit from the municipality within the previous twenty-four months, to participate in an election campaign or contribute to a political committee.

8. *Revolving door.* A municipal officer or employee shall not appear or practice before the municipality, except on his or her own behalf, or receive compensation for working on any matter before the municipality, for a period of one year after the termination of his or her municipal service or employment; however, the bar shall be permanent as to matters on which the municipal officer or employee personally worked while in municipal service.

9. *Avoidance of conflicts.* Municipal officers and employees shall not knowingly acquire, solicit, negotiate for, or accept any interest, employment, or other thing of value which would put them in violation of this Code of Ethics.

10. *Inducement of others.* A municipal officer or employee shall not induce or aid another officer or employee of the municipality to violate any of the provisions of this Code of Ethics.

11. *Transactional disclosure.* Whenever a municipal officer or employee is required to recuse himself or herself under this Code of Ethics, he or she (i) shall promptly inform his or her superior, if any, (ii) shall promptly file with the municipal clerk a signed statement disclosing the nature and extent of the prohibited action, and (iii) shall immediately refrain from participating further in the matter.

## APPENDIX E

PROPOSED PROVISIONS FOR INCLUSION IN A  
NEW ARTICLE 18 OF THE GENERAL MUNICIPAL LAW

**NOTE:** Following is a *list* of provisions to be included in a revision of article 18 (the ethics article) of the General Municipal Law. This list does *not* include the actual text of a new article 18 and leaves many details to be determined later. This list also does not include the proposed Code of Ethics, which is set out in Appendix D.

1. *Annual disclosure.* Some form of annual disclosure should be required. The current State statutory form in General Municipal Law section 812(5) is far too invasive and should be amended.

2. *Exclusions from the Code of Ethics.* Certain actions should expressly be permitted despite the prohibitions of the Code of Ethics, including:

a. Actions specifically authorized by statute, rule, or regulation of the State or federal government;

b. Gifts from parents, spouses, and children; gifts having a value less than a specified amount; attendance at social functions having a value less than a specified amount; gifts to the municipality itself; payment for performing marriage ceremonies; awards from charitable organizations;

c. Ministerial acts;

d. Revolving door activities by a former municipal official who performed only ministerial acts while a municipal official;

e. Municipal services or benefits, or use of municipal facilities, generally available to residents of the municipality; and

f. Representation of constituents by elected officials without compensation in public advocacy matters.

3. *Penalties.* Civil penalties should include disciplinary action, civil fines up to a specified maximum, and payment of damages to the municipality. Under specified circumstances, a municipal resident should be able to sue for an injunction prohibiting an official of that municipality from violating the Code of Ethics. Criminal penalties, which should only be available for an action that the official knew violated the Code, should include classification of the violation as a misdemeanor. A knowing violation of the Code should also be punishable by a civil forfeiture to the municipality. The intentional commission of an act that the official knows to violate the Code and that the official commits in order to obtain a financial benefit in excess of a specified amount should be a felony.

4. *Definitions.* Definitions should be kept to a minimum and should

not impose any additional obligations, or create any additional exemptions, beyond those contained in the clear language of the Code and the exemptions section.

5. *Restrictions on persons other than municipal officials.* Appearances before the municipality by an official's outside firm should be restricted to a specified extent.

6. *Voiding of contracts.* Municipal contracts entered into in violation of the Code of Ethics should be voidable.

7. *Applicant disclosure.* To the extent they know, persons making an application or submitting a bid to the municipality should be required to disclose the names of municipal officials who have an interest above a specified amount in the application or bid or in the applicant.

8. *Inducement of violations.* Any person, including a private citizen or company, who intentionally induces or attempts to induce a municipal official to violate the Code of Ethics should be subject to a penalty.

9. *Debarment.* Persons who do business with the municipality, including municipal officials who engage in self-dealing, and who violate article 18 should be subject to debarment — that is, preclusion from doing business with New York State and local governmental entities for a specified maximum period.

10. *Waivers.* In view of the limited number of suppliers of goods and services in some smaller towns and villages, municipalities should be able to obtain a waiver of some of the provisions of article 18.

11. *Local codes of ethics.* Municipalities should have the authority to enact their own local codes of ethics, which must be at least as stringent as article 18.

12. *Administration and enforcement.* Article 18 should be administered by the individual municipality's own ethics board, which should have certain specified powers and duties. Municipalities should be able to form joint ethics boards. If a municipality does not have its own ethics board, article 18 should be administered as to that municipality by an independent State agency. In those municipalities that do have a local ethics board, that State agency should ensure that the local board is properly carrying out its mandate under article 18.

The State agency should also provide education, training, and technical assistance to all ethics boards and municipalities in the State. The agency would thus help local officials and their municipalities to interpret and comply with ethics regulations. Finally, the agency should periodically review ethics laws to determine whether they are fulfilling their goal of increasing integrity, public confidence, and citizen participation in local government by setting forth clear and enforceable, common sense standards of conduct for municipal officials.