

# Village of Copenhagen

## Ethics Policy

### **Purpose:**

Pursuant to the provisions of Section 806 of the General Municipal Law, The Board of Trustees of the Village of Copenhagen recognizes that there are rules of ethical conduct for public officers and employees which must be observed if a high degree of moral conduct is to be obtained and public confidence is to be maintained in our unit of local government. It is the purpose of this policy to promulgate these rules of ethical conduct for the Officers and employees of the Village of Copenhagen. These rules shall serve as a guide for official conduct of the officers and employees of the Village of Copenhagen. The rules of ethical conduct of this policy, as adopted, shall not conflict with but shall be in addition to any prohibition in Article 18 of the General Municipal Law or any other general or special law relating to ethical conduct and interest in contracts of municipal officers and employees.

# Acknowledgement and Certification:

The Mayor of the Village of Copenhagen shall require a copy of this Ethics Policy to be distributed to every Village Trustee, Officer, Employee, or any other Village agency member. In addition, a copy of the policy will be posted at the Village Office.

Every Trustee (including the Mayor), Officer, Employee, or any other Village of Copenhagen Agency, whether paid or unpaid, shall certify in writing that they have read and understand this Ethics Policy.

## Village of Copenhagen Annual Acknowledgement Certification

### Acknowledgement:

I hereby acknowledge that I have read and understand all of my obligations, duties, and responsibilities under each principle and provision of The Village of Copenhagen's Ethics Policy

I certify by my signature below that this is a true and correct statement,

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Printed Name

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Signature

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Date

- Ethics refers to Principles that define behavior as right and proper

- Ethics Laws are both a sword and a shield designed “to protect the public from municipal contracts influenced by avaricious offenders, and to protect innocent public officers from unwarranted assaults on their integrity.

## Conflict of Interest – Contracts

### Questions to Ask

1. Is there a contract with the Village of Copenhagen?
  - Contract Means: Claim, Account, Demand, Agreement
  - Written or Oral, Express or Implied
2. If so, does the Village Employee or Village Official have an “interest” in the contract?
  - Direct or Indirect Financial or Material Benefit
  - An Employee or board member is deemed to have an interest in the contracts of their spouse, minor children and dependents
  - A Village Employee or Village Official has an interest in contracts with the following:
    - A Firm, partnership or associations whether they are a member or employee
    - A company of which they are an officer, director, employee or stockholder
3. If so, does the Village Employee or Village Official have “control” over the contract?
  - General Municipal Law § 801
    - Individually or as a board member
    - Negotiate, draft, authorize or approve the contract
    - Authorize payment under a contract
    - Audit bills or claims under the contract
    - Appoint someone with any of these powers or duties
4. Does a Statutory Exception apply?
  - General Municipal Law § 802 contains a list of exceptions
    - The Village Employee or Village Official is employed by a company that does not:
      - Receive any payment from the contract
      - Does not have any part in:
        - ✓ Procuring
        - ✓ Preparing
        - ✓ Performing
    - Pre-existing Contracts – But no renewals
    - Public Utility Services when rates or charges are fixed or regulated by the public service commission
    - The Village Employee or Village Board Member is a Stockholder under 5%

- Contract is less than \$750.00
- If there is conflict of interest under General Municipal Law § 802:
  - ✓ Disclose The Conflict of Interest
    - In Public
    - In Writing
    - Include it in Meeting Minutes (GML § 803)
    - Recommended even if statutory exceptions apply
- CONTRACT IS PROHIBITED!
- Effect of Violations:
  - Willful Violation
    - ✓ Contract will become Null & Void
    - ✓ Payments are Prohibited
  - Willful & Knowing Violation
    - ✓ Misdemeanor Charges
- Competitive Bidding and Emergencies do not cure or excuse a conflict of interest!

## 5. Is there an “appearance of impropriety?”

### Tuxedo Doctrine – The Appearance of Impropriety

- An appearance of impropriety results when an Official's personal situation may affect the public's perception of his/her ability to act impartially and in the best interests of the taxpayers as a whole
  - “Government Officials must maintain public confidence in the integrity of Government. They must avoid even the appearance of impropriety.”
  - “The “TEST” to be applied is not whether there is a conflict, but whether there might be. It is the policy of law to keep the Official so far from temptation as to ensure his/her unselfish devotion to the public interest.”
- Does the Official have a substantial personal interest in the matter pending before the Ethics Board?
  - A Personal Interest is not an interest that you share in common with others.
  - A Personal Interest must be substantial and not de minimis

## Conflict of Interest Recusal's

- The Attorney General advises Official's to “Recuse” themselves where an appearance of impropriety arises
- Recusal will be in Public and on the Record.
- Recusal Prohibits you from discussions and voting on the matter, it is recommended that the individual remove themselves from the room for the duration of the discussion/vote, then return after the conclusion of the discussion/vote. This prevents any verbal/non-verbal influence of the discussion/vote and avoiding the appearance of any impropriety.
- Consequences of acting despite appearance of impropriety.
  - Litigation

- Action will be voided

## Recusal vs. Abstention

- Recusal is more than abstaining
- Recusal is disengaging from the entire process
- Disclose the conflict

## Conflict of Interest – Family

- Family
  - No Prohibition against members of the same family working for municipality
  - General Rule
    - Official should not participate in decisions concerning salary, term, conditions of employment for other family members also employed by the Village of Copenhagen
    - If conflict is so pervasive that the Official cannot carry out their duties of office, recusal is insufficient

## Dual Office Holding

- No General Prohibition against holding two offices
- Conflict exists when:
  - Subordinate Position
  - Conflict of Duties
  - Otherwise Prohibited by Law
    - There are conflicts regarding Volunteer Fire Department Members and Holding Office as a Village Trustee. Please see the Opinions in the Law and Agency Opinions section of this document below.
- The Village may overcome a conflict by passing a local law
  - This is a limited exception intended for smaller Municipalities

## General Municipal Law Article 18 – Misc. Provision

- General Municipal Law § 805-a: An Employee or Official May NOT:
  - Solicit gifts or accept gifts over \$75.00 which could reasonably be inferred to influence performing official duties
  - Disclose confidential information obtained through position or using that information for personal gain
  - Compensation for matters before the Village of Copenhagen
- Penalty – Sanctions Possible:
  - Fines

- Suspension
- Removal from office

## Land Use Application

- Applicants in land use matters must list
  - Name of Official or Employee with interest
  - Nature and extent of interest
- Official or Employee has an interest when he/she OR spouse, child, siblings, parents, etc., is
  - Applicant
  - Officer, director, employee of applicant
  - Owns stock or is a member of corporate applicant
  - Party to an agreement with the applicant where there is a benefit contingent on outcome of the application

If there are questions call NYCOM

New York Conference of Mayors  
 119 Washington Avenue  
 Albany, New York 12210  
 518-463-1185

## Laws and Agency Opinions:

Judd Grey, Esq., 1991 N.Y. Op. Atty. Gen. (Inf.) 1042 (1991)

1991 N.Y. Op. Atty. Gen. (Inf.) 1042 (N.Y.A.G.), 1991 WL 537214

Office of the Attorney General

State of New York Informal Opinion No. 91-21 April 3, 1991

GENERAL MUNICIPAL LAW, ART 11-A, §§ 216(2), 217, 806(1)

\*1  
 Trustees of a village who are also volunteer firefighters must recuse themselves from acting with respect to the establishment of a service award program for volunteer firefighters and with respect to the funding of the fire department.

Judd Grey, Esq.

Village Attorney  
Village of Corinth  
260 Main Street  
Corinth, New York 12822

Dear Mr. Grey:

You have asked whether under specified circumstances two village trustees who are also active members of the volunteer fire department have conflicts of interests which require that they recuse themselves from deliberations and voting.

You have explained that the village board consists of four trustees and the mayor. The village owns a firehouse and firefighting equipment which is utilized by the volunteer fire company. You further explained that the village, as part of its annual budget, provides substantial sums of money for firefighting equipment. Also, at the general election in March of 1990, the voters of the village rejected a proposition to establish a service award program for volunteer firefighters.

Your question is whether the two trustees who are active members of the volunteer fire department may vote on a proposal to submit to the voters the question whether a service award program should be established for volunteer firefighters of the volunteer fire department. Also, you ask whether these two trustees may deliberate and vote on that portion of the budget which deals with funding of the fire department.

The development of ethics standards to define when private employment and activities are in conflict with the official duties of a local government officer or employee has been left to the governing body of the municipality. General Municipal Law, § 806(1). Governing bodies of a county, city, town, village and school district are required to adopt codes of ethics, which must include these and other standards. *Ibid.* A code of ethics may provide for the prohibition of conduct in violation of ethics standards. *Ibid.* Local governments are authorized to establish boards of ethics, which may render advisory opinions to local officers and employees concerning compliance with standards established by a code of ethics. *Id.*, § 808. Thus, we suggest that you review your local code of ethics to determine if any of its provisions apply to the facts at hand.

It is not necessary, however, that a specific provision of the General Municipal Law or local law be violated to find a conflict of interests. *Mtr. of Zagoreos v Conklin*, 109 AD2d 281, 287 (2d Dept 1985); *Mtr. of Conrad v Hinman*, 122 Misc 2d 531, 534 (Sup Ct Onondaga Co 1984). The decisions of local boards have been set aside based upon judicial findings of conflicts of interests of board members participating in the decisions. *Ibid.*; *Taxpayers' Association v Town Board*, 69 AD2d 320 (2d Dept 1979). In opinions of the Attorney General, we have emphasized that public officials should avoid circumstances which compromise their ability to make impartial judgments solely in the public interest. 1984 Op Atty Gen (Inf) 86, 160. Even the appearance of impropriety should be avoided in order to maintain public confidence in government. *Ibid.*

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Judd Grey, Esq., 1991 N.Y. Op. Atty. Gen. (Inf.) 1042 (1991)

\*2 Article 11-A of the General Municipal Law is the enabling legislation for the establishment of service award programs for volunteer firefighters. Upon the affirmative vote of at least sixty percent of the governing board of the political

subdivision, a mandatory referendum of eligible voters is held to determine whether the governing board will establish a service award program for the volunteer firefighters of the volunteer fire department or fire companies. General Municipal Law § 216(2). A service award program provides for the payment of monetary benefits to eligible volunteer firefighters based on years of firefighting service as determined under the provisions of State law. *Id.*, §§ 217, et seq.

In our view, the two trustees may not participate in deliberations and voting as to whether to submit the proposition to the voters for the establishment of a service award program. Since this program would provide monetary benefits to them as volunteer firefighters, they have a direct personal financial interest in such action. In our view, this interest compromises their ability to make impartial judgments solely in the public interest.

The question whether the two trustees may participate in deliberations on that portion of the budget funding the fire department is less clear cut. The two trustees are not officers of the volunteer fire department, a policy-making status which would give them a greater interest in the funding of the department. Further, both the trustees and volunteer firefighters have an interest in supporting the fire department, which protects the health and welfare of village residents. The trustees, however, must determine the extent of support, taking into consideration limited resources. On balance, we believe that the two trustees should recuse themselves from participating in deliberations on the portion of the budget funding the fire department. In our view, participation in these matters would at least create an appearance of impropriety.

We conclude that trustees of a village who are also volunteer firefighters must recuse themselves from acting with respect to the establishment of a service award program for volunteer firefighters and with respect to the funding of the fire department.

The Attorney General renders formal opinions only to officers and departments of the State government. This perforce is an informal and unofficial expression of the views of this office.

Very truly yours,

James D. Cole

Assistant Attorney General in Charge of Opinions

1991 N.Y. Op. Atty. Gen. (Inf.) 1042 (N.Y.A.G.), 1991 WL 537214

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Robert J. Allan, Esq., 1994 N.Y. Op. Atty. Gen. (Inf.) 1055 (1994)

1994 N.Y. Op. Atty. Gen. (Inf.) 1055 (N.Y.A.G.), 1994 WL 496433

Office of the Attorney General

State of New York Informal Opinion No.

94

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31

August 16, 1994

Members of the village board of trustees who also are affiliated with the volunteer fire department should recuse themselves from voting on those portions of the budget that effect the fire department. The board of trustees may, however, establish exceptions to this rule if the public interest would be served.

\*1 Robert J. Allan, Esq. Village Attorney

Village of Camillus

43 Main Street

Camillus, NY 13031

Dear Mr. Allan:

You have asked whether two members of the board of trustees may participate in matters relating to the financing of the fire department and purchases for the fire department.

You have informed us that the Village of Camillus is served by the Camillus Volunteer Fire Department, Inc. which is a fire company incorporated under the Not-For-Profit Corporation Law. The village mayor and board of trustees oversee the operations and expenditures of the fire department. Fire department expenses for items such as vehicles, insurance, fuel, equipment, etc. are paid out of general village funds after appropriation by the board of trustees. All firefighting equipment is owned by the village and purchased by the village.

You state that two members of the current board of trustees are associated with the fire department. The mayor has the status of lifetime member of the fire department, effectively retired from active service. Under the fire department bylaws any person in good standing with 20 years of active service becomes a lifetime member. Lifetime members may choose to participate in 12 drills a year, thus maintaining active service, and have the option to respond to emergency calls. A trustee is currently an active fireman who has been voluntarily placed on inactive status. You have indicated that he is also past president of the Firefighters Association of the State of New York.

Inactive members, including the mayor and trustee, have all the privileges of a regular member except they are excused from all fire, rescue and ambulance calls and practices. Inactive members may not hold any line office.

In a prior opinion of this office, we noted that

“The development of ethics standards to define when private employment and activities are in conflict with the official duties of a local government officer or employee has been left to the governing body of the municipality. General Municipal Law, § 806(1). Governing bodies of a county, city, town, village and school district are required to adopt codes of ethics, which must include these and other standards. Ibid. A code of ethics may provide for the prohibition of conduct in violation of ethics standards. Ibid. Local governments are authorized to establish boards of ethics, which may render advisory opinions to local officers and employees concerning compliance with standards established by a code of ethics. Id., § 808.”

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Robert J. Allan, Esq., 1994 N.Y. Op. Atty. Gen. (Inf.) 1055 (1994)

Informal Opinion No. 9121.

We suggest that you review your local code of ethics to determine if any of its provisions apply to the facts at hand. We also noted in that opinion that a body of common law has developed setting aside the decisions of boards and officers acting with substantial conflicts of interests.

\*2 Members of the board of trustees (which includes the mayor) must determine the extent of support for various village functions, taking into consideration limited resources. We have found that two trustees who served as active members of the village volunteer fire department should recuse themselves from participating in deliberations on the portion of the village budget funding the fire department. Informal Opinion No. 9121. We stated that participation in these matters would at least create an appearance of impropriety.

The mayor and trustee, although in inactive status in the village fire department, continue to have the opportunity to participate in department social functions and undoubtedly have close relationships with the volunteer firefighters. In our view, this relationship necessitates that they recuse themselves from acting on village fire department matters.

We recognize, however, that in a small village it may be necessary or desirable that members of the board of trustees serve as volunteer firefighters. If that is the case, the village should either amend its code of ethics or enact a local law providing that members of the board of trustees may act with respect to the fire department. To justify that action, the board of trustees must balance the expected conflict of interests against the public interest to be served by having sufficient members on the volunteer fire department.

We conclude that members of the village board of trustees who also are affiliated with the volunteer fire department should recuse themselves from voting on those portions of the budget that affect the fire department. The board of trustees may, however, establish exceptions to this rule if the public interest would be served.

The Attorney General renders formal opinions only to officers and departments of State government. This perforce is an informal and unofficial expression of the views of this office.

Very truly yours,

James D. Cole

Assistant Attorney General in Charge of Opinions

1994 N.Y. Op. Atty. Gen. (Inf.) 1055 (N.Y.A.G.), 1994 WL 496433

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## **Sec. 801**

### **Conflicts of Interest Prohibited**

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

## **Sec. 802**

### **Exceptions**

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

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

The purchase by a municipality of real property or an interest therein, provided the purchase and the consideration therefore is approved by order of the supreme court upon petition of the governing board;

**e.**

The acquisition of real property or an interest therein, through condemnation proceedings according to law;

**f.**

A contract with a membership corporation or other voluntary non-profit corporation or association including, but not limited to, rural electric cooperatives. For purposes of this paragraph, the term "rural electric cooperative" shall have the same meaning as the term "cooperative" as defined in subdivision (a) of section two of the rural electric cooperative law;

**g.**

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

**h.**

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

**i.**

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

**j.**

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

**(1)**

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

**(2)**

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

**(3)**

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

**2.**

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

**b.**

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

**c.**

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

**d.**

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

**e.**

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

**f.**

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

## **Sec. 805-A**

### **Certain Action Prohibited**

**1.**

No municipal officer or employee shall:

- a.** directly or indirectly, solicit any gift, or accept or receive any gift having a value of seventy-five dollars or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part;
  - b.** disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interests.
  - c.** receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or of any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee; or
  - d.** receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of his municipality, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.
- 2.** In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate this section may be fined, suspended or removed from office or employment in the manner provided by law.