

WARREN COUNTY MUNICIPAL CENTER

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LAW DEPARTMENT

DATE: August 8, 2016
TO: Warren County Board of Ethics
FROM: Brian S. Reichenbach *BSR*
RE: The Warren County Board of Ethics/Complaints

The Warren County Board of Supervisors, by enactment of Local Law No. 6 of 2014 (“Warren County Ethics and Disclosure Law”) created a Code of Ethics and a Board of Ethics and provided guidance regarding the board’s procedures and authority. The Local Law authorizes the Board of Ethics to issue advisory opinions to the officers and employees of Warren County, with respect to Article 18 of the General Municipal Law and the Ethics Code. The Local Law authorizes such opinions to be rendered pursuant to a written request of an officer or employee of the County. The question has arisen of whether the Board of Ethics is empowered to adjudicate allegations or complaints of violations of the local ethics law made by private individuals.

The Ethics Law does not contemplate or authorize adjudication of a complaint that an officer or employee of the County has violated its terms by the Board of Ethics.

In the first instance, the clear language of the law provides authority to the Board of Ethics to “render advisory opinions to the officers and employees of Warren County with respect to N.Y. Gen. Mun. Law Article 18 and this code”, § III.054 (C). Insofar as the Board of Ethics exists only pursuant to the terms of the Local Law, the board has only that authority granted to it by the enabling statute, and no additional powers are conferred beyond those specified or required to discharge its statutory duties.

The Office of the State Comptroller has rendered opinions on the reach of a local board of ethics’ authority under a local ethics code. In considering the same language included in the Warren County Code of Ethics, the NYS Comptroller, in State Comptroller’s Opinion 68-114, 24 Op.StateCompt. 125, (1968), opined that a town ethics board lacked authority to render opinions to anyone other than municipal officers or employees of that governmental unit. Indeed, the Comptroller held that the rendering of such opinions to private citizens would not be a proper municipal purpose. See also, State Comptroller’s Opinion 68-208, 24 Op.State Compt. 223, (1968), addressing county and town local ethics laws and boards.

The Office of State Comptroller further advised on the issue in State Comptroller's Opinion 74-583. This opinion discussed another governmental unit, a village, yet the logic employed applies equally to a county government. The opinion, in interpreting General Municipal Law § 806 and § 808, in reference to a local board of ethics, noted that a village board of ethics had no authority to render opinions to anyone other than municipal officers and employees within the village and that rendering of such opinions to private citizens would not be a proper village purpose.

The Attorney General has opined that a local government may enact an ethics law that specifically provides for investigation and adjudication of alleged violations of such law by a local ethics board, but that opinion is not analyzed in detail here because our local law does not include such authorization. See, 1991 N.Y. Op. Atty. Gen. (Inf.) 1135.

My professional legal opinion is that without further directives within either the local law establishing the Board of Ethics (Local Law No. 6 of 2014) or the enabling state statute (General Municipal Law, Article 18), the authority of the Board of Ethics is limited to rendering advisory opinions to officials and employees of the County at their request, and the board does not have the authority to entertain or adjudicate complaints alleging violations of the Code of Ethics from private individuals.



STATE OF NEW YORK
DEPARTMENT OF AUDIT AND CONTROL
ALBANY

ARTHUR LEVITT
STATE COMPTROLLER

IN REPLYING REFER TO

68-114

GENERAL MUNICIPAL LAW, §808: A town board of ethics may not render advisory opinions in response to inquiries from residents of the town. The town board has no authority to delegate its subpoena powers to the board of ethics.

Inquiries

(1) May a town board of ethics render advisory opinions in response to inquiries from any resident of the town?

(2) May the town board delegate its subpoena powers to the board of ethics?

Statement of Law

(1) General Municipal Law, §808, authorizes a town to establish a board of ethics. Such a board would have the power to render advisory opinions to municipal officers and employees within the town with respect to Article 18 of the General Municipal Law and any code of ethics adopted pursuant thereto. Such advisory opinions would be rendered in response to the written request of any such officer or employee pursuant to such rules and regulations as the board may deem advisable and must have the approval of counsel employed by the board or, if none, the town attorney.

There is no authority for the board to render opinions to anyone other than municipal officers and employees within the town. The rendering of such opinions to private citizens, then, would not be a proper town purpose.

(2) In regard to investigatory powers, the Attorney General has rendered an opinion stating that Article 18 makes no specific grant of subpoena power to a local board of ethics, and that such board is not within the purview of court decisions holding that a legislative body has power to investigate by subpoena. He, therefore, concluded that such a board did not have the power to subpoena witnesses (1964 Att. Gen. (inf.) 141; see also Op. State Compt. No. 68-208, as yet unreported).

A town board, which has subpoena powers necessary to the exercise of its own powers and duties, has no authority to delegate such subpoena powers.

Conclusions

- (1) A town board of ethics may not render advisory opinions in response to inquiries from any resident of the town.
- (2) The town board has no authority to delegate its subpoena powers to the board of ethics.

April 5, 1968

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

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STATE OF NEW YORK
DEPARTMENT OF AUDIT AND CONTROL
ALBANY

ARTHUR LEVITT
STATE COMPTROLLER

IN REPLYING REFER TO

Opinion No. 74-583

GENERAL MUNICIPAL LAW, §§806(1), 808(2): (1) A village board of ethics may not be authorized by local legislation to render opinions at the request of the general public. (2) A village code of ethics may include a provision barring any village officer or employee from appearing before a board or commission on behalf of a client if such former officer or employee was instrumental in the appointment of a member of the board or commission, although the enforceability of such a provision is open to question.

Inquiries

(1) May a village board of ethics be authorized by local legislation to render opinions requested by the general public relating to ethical conduct of its officers and employees?

(2) May a village code of ethics be amended to bar any former village officer or employee from appearing before a board or commission on behalf of a client if such former officer or employee was instrumental in the appointment of a member of the board or commission?

Statement of Law

(1) General Municipal Law, §808(2) clearly provides that "the board shall render advisory opinions to officers and employees of municipalities * * * with respect to this article and any code of ethics adopted pursuant hereto. Such advisory opinions shall be rendered pursuant to the written request of any officer or employee under such rules and regulations as the board may prescribe * * *". There is no authority for the board of ethics to render opinions to anyone other than municipal officers and employees within the village (24 Op. State Compt. 223, 1968). The rendering of such opinions to private citizens would not be a proper village purpose (24 Op. State Compt. 125, 1968), and thus could not be authorized by action of the board of trustees.

(2) General Municipal Law, §806(1) prescribes, generally, the standards of conduct which must be included in a local code of ethics; The said section also provides: "Such codes may regulate or prescribe conduct which is not expressly prohibited by this article but may not authorize conduct otherwise prohibited. Thus, a municipality has considerable latitude in legislating in the area

of ethics with respect to its officers and employees, all the time subject to the caveat that such legislation cannot be inconsistent with any provision of Article 18, or, of course, any other general statute or the State or Federal Constitution (Op. State Compt. No. 71-417, 1971, unreported).

The village code of ethics provides, in Paragraph (3)(c):

"Representation before one's agency. He shall not 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."

The said provision does not have application to former municipal officers or employees. It would be within the discretion of the board of trustees to amend the code to preclude former officers and employees, retired or otherwise, from appearing before a board on behalf of a client where such officer or employee was instrumental in appointing a member of the board during his service with the village (see General Municipal Law, §806(1), dealing with standards governing "future employment"). We suggest that it should be made clear in the amendment under what circumstances an officer or employee would be considered to be "instrumental" in the appointment of the board member.

Perhaps we should add here that section 806 and related sections are silent as to penalties or enforcement methods available when code of ethics provisions are violated. The only penal clause applicable to the situation before us is section 6 of the code of ethics adopted by this village which provides that a violator may be "fined, suspended or removed from office". That is all well and good for an individual still on the village payroll, but how such provision may be invoked against a former officer or employee is open to question. This should probably be considered when the incorporation of the provision in question is being considered.

Conclusions

(1): A village board of ethics may not be authorized by local legislation to render opinions at the request of the general public.

(2): A village code of ethics may include a provision barring any former village officer or employee from appearing before a board or commission on behalf of a client if such former officer or employee was instrumental in the appointment of a member of the board of commission, although the enforceability of such a provision is open to question.

July 3, 1974