



*New York State Assembly, Sheldon Silver, Speaker
Legislative Commission on State-Local Relations
Assemblymember Tim Gordon, Chair*

Parks and Recreation

Statutory Authority

See generally, Statute of Local Governments, § 10(3); Municipal Home Rule Law, § 10(1)(ii)(a)(14)

Counties, Cities, Towns and Villages – Municipalities, except cities of the first class and any county inside the city of New York, may [General Municipal Law article 13]:

- designate, acquire and lease lands for playgrounds or neighborhood recreation centers [General Municipal Law § 241];
- jointly acquire property for and operate and maintain playgrounds or neighborhood recreation centers [General Municipal Law § 244-b];
- establish a park board to establish and maintain playgrounds and neighborhood recreation centers. May provide public baths and swimming pools [General Municipal Law § 242];
- establish a recreation commission to equip, operate and maintain recreation centers. [General Municipal Law § 243] Municipalities which have established a recreation commission may join for purpose of establishing a joint recreation commission. [General Municipal Law § 244-d];
- may, and upon petition by qualified electors, shall submit to the electors a proposition to establish and/or maintain a recreation system and specify the minimum amount to be levied for the system [General Municipal Law §244-c];
- acquire land within the municipality for open space [General Municipal Law § 247].

Authorized to furnish recreational programs for the elderly. [General Municipal Law article 13-D, § 95-a]

May acquire docks, piers and wharves. [General Municipal Law article 14-C, §§ 401(a), 403]

Authorized to establish, maintain, and operate agencies and programs for youth. [Executive Law § 422(1); General Municipal Law § 95]

May designate any public highway under its jurisdiction as open for travel by ATVs when it is otherwise impossible for ATVs to gain access to areas adjacent to the highway. May, by ordinance or local law, designate any appropriate public property, other than highways, under its jurisdiction as a place open for travel by ATVs upon written request by any person, and may impose restrictions and conditions for the regulation and safe operation of ATVs on the property. [Vehicle and Traffic Law § 2405]

May, by ordinance or local law, permit the operation of snowmobiles on lands, waters and property other than highways owned by the municipality. [Parks, Recreation and Historic Preservation Law § 25.07]

Parkland Alienation

Parkland can not be sold, leased, exchanged or used for non-park purposes without authorization from the New York State Legislature. For further information on parkland alienation, see the *Handbook on the Alienation and Conversion of Municipal Parkland* available in print or electronic form from the New York State Office of Parks, Recreation and Historic Preservation:

http://nysparks.state.ny.us/news/public/archive/2005_AlienationHandbook.pdf

When a municipality accepts State funding for the acquisition or improvement of parkland or recreational facilities, certain restrictions on parkland alienation are created as follows:

- Park and Recreation Land Acquisition Bond Acts of 1960 and 1965: Provides for a restriction on alienation. [Parks, Recreation and Historic Preservation Law § 15.09]
- Outdoor Recreation Development Bond Act of 1965: Provides for a restriction on alienation. [Parks, Recreation and Historic Preservation Law § 17.09]
- Environmental Quality Bond Act of 1986: Provides for a restriction on Alienation and a requirement to provide substitute lands. [Environmental Conservation Law § 52-0901(4)]
- Environmental Protection Act of 1993: Provides for a restriction on alienation and a requirement to provide substitute lands. [Environmental Conservation Law §§ 52-0903(4)(a), 54-0909(1)]
- Clean Water/Clean Air Bond Act of 1996: Provides for a restriction on alienation and a requirement to provide substitute lands. [Environmental Conservation Law § 56-0309(12)]

Property acquired or developed with assistance from the federal Land and Water Conservation Fund program or the Urban Park and Recreation Recovery Program may not be converted to other than public outdoor recreation uses without the approval of the Secretary of the Interior. [16 U.S.C. § 4601-8(f)(3) and 16 U.S.C. § 2509]

Cities, Towns and Villages – May require, under certain circumstances, for the reservation of parks for playground or other recreational purposes on site plans containing residential units and on subdivision plats containing residential units. If suitable parkland cannot be properly located, may require a sum of money in lieu of parkland which must be deposited into a trust fund to be used exclusively for park, playground or other recreational purposes. [General City Law §§ 27-a, 33; Town Law §§ 274-a, 277; Village Law §§ 7-725-a, 7-730]

Counties – May create a county park commission. [County Law § 221]

Authorized to establish a county zoo or to fund an existing zoo in the county owned by a municipal corporation. [County Law § 225(1)(j)]

Cities – Authorized to acquire real and personal property for any public or municipal purpose, but the rights of a city to its waterfront, land under water, wharves, docks, parks and all other public places are inalienable. [General City Law § 20(2)]

Authorized to establish parks and playgrounds. [General City Law § 20(7)]

May control and administer for any business, commercial, maritime or public purpose the waterfront and waterways of the city and provide docks, piers, and wharves. [General City Law § 20(8)]

Authorized to establish and maintain institutions and instrumentalities for the recreation of its inhabitants. [General City Law § 20(16)]

Towns and Villages – Authorized to enter into an agreement for the joint acquisition, construction and operation of a public dock. [General Municipal Law § 120-x]

Towns – A town board may upon its own motion or shall upon a petition, establish public parks or playgrounds. [Town Law § 81(1)(c)]

May, upon adoption of a resolution subject to permissive referendum, establish public parks or playgrounds, acquire necessary lands therefor and equip with buildings, structures and apparatus. [Town Law § 220(3)]

Villages - The board of trustees may acquire land for public park, square, athletic field or playground purposes by gift, purchase or condemnation under certain circumstances. [Village Law § 6-624]

May acquire or improve public docks. [Village Law § 4-412(3)(8)]

Special Districts

Towns – Authorized to establish park districts. [Town Law Article 12, § 198(4) and Article 12-A]

Towns with navigable waters – Authorized to establish public dock districts. [Town Law Article 12 § 198(10) and Article 12-A]

School Districts – May join with municipalities in equipping, operating and maintaining playgrounds and neighborhood recreation centers. [General Municipal Law § 244-b]

May furnish programs devoted to the welfare of the aging. [General Municipal Law § 95-a]

A municipality and the board of education, board of trustees or the trustee of a school district may make and perform agreements providing for the operation by a school district of a youth service, recreation or other project of the municipality. [Executive Law § 422(6)]

Selected Court Cases

State v. Town of Horicon (3rd Dept. 2007) 46 A.D.3d 1287, 848 N.Y.S.2d 770. Local law attempting to open eight routes over state forest lands for all terrain vehicles void when town failed to comply with State Environmental Quality Review Act (SEQRA). Adoption of local law was “action” within meaning of SEQRA and State Department of Environmental Conservation, as land manager for affected state forest land, qualified as “involved agency” whose comments should have been solicited. Record shows town performed only “perfunctory” review of possible environmental impacts and could not support ultimate negative declaration. Town similar failed to support determination under Vehicle and Traffic Law §2405.

Gowanus Indus. Park, Inc. v. City of New York (1st Dept. 2005) 15 A.D.3d 311, 790 N.Y.S.2d 442, leave to appeal denied N.Y.3d 708, 803 N.Y.S.2d 28 (2005). Absent express legislative approval, city did not have authority to remove portion of tract from adjoining park, and any action purporting to do so was without legal effect.

Friends of Van Cortlandt Park v. City of New York (2001) 95 N.Y.2d 623, 750 N.E.2d 1050. Parkland is impressed with a public trust, requiring legislative approval before it can be alienated or used for an extended period for non-park purposes, even by leasehold.

Huntington Yacht Club v. Incorporated Village of Huntington Bay (2d Dept. 2000), 272 A.D.2d 327, 708 N.Y.S.2d 120. Village and its zoning board of appeals lacked jurisdiction over the applicants proposed dock expansion involving tidewaters and underwater lands since the project was located in the town outside the village, and thus, the positive declaration of environmental significance issued by the board was null and void.

Sierra Club v. Board of Education of City of Buffalo (4th Dept. 1987) 127 A.D.2d 1007, 512 N.Y.S.2d 954, appeal denied 70 N.Y.S.2d 612, 523 N.Y.S.2d 496, 518 N.E.2d 7 (1987). In selecting and approving park as site for school, city, previously empowered by state legislature to discontinue park land, fully complied with mandates of Park, Recreation and Historic Preservation Law, where all feasible and prudent alternatives were explored, and proposals for avoiding or mitigating adverse impacts upon historic site were considered.

Ackerman v. Steisel (2d Dept. 1984) 104 A.D.2d 940, 480 N.Y.S.2d 556, affirmed 66 N.Y.S.2d 833, 498 N.Y.S.2d 364, 489 N.E.2d 251 (1985). Dedicated park areas in New York are impressed with public trust, and their uses for other than park purposes, either for a period of years or permanently, requires the State Legislature's plainly conferred, direct and specific approval.

Aldrich v. City of New York, 208 Misc 930 (NY Sup Ct Queens County 1955), affirmed. 2 AD2d 760 (2d Dept. 1956). Title taken for public use as park and entire tract held in trust for that special purpose; city could not dispose of property without specific sanction of Legislature.

Matter of Central Parkway 140 Misc 727 (Sup Ct Schenectady Co 1931). City holds land acquired and held strictly for park property in trust for use of public and in absence of legislative authority it may not appropriate any part thereof to laying out streets.

Van Dyke v. City of Utica (4th Dept. 1922) 203 A.D.26, 196 N.Y.S. 277. In an action brought against the city of Utica to recover damages for the death of a child resulting from injuries received owing to the defective condition of a "slide" on a playground maintained by the city by virtue of this article [GML art. 13], it was error to dismiss the complaint upon the theory that the city in maintaining the playground was acting in a governmental capacity, since the city having voluntarily undertaken the enterprise of furnishing playgrounds, it was its duty to protect the children using them, at least from its own negligence.

Brooklyn Park Commissioners v. Armstrong (1871) 45 N.Y. 234. The City of Brooklyn may not sell parkland without first obtaining Legislative approval.

Opinions of the Comptroller and Attorney General

Attorney General Opinion [2009-1](#), Town Law §§ 81, 81(1)(b), 81(1)(c), 220, 220(2), 220(3); *Local Finance Law* §§ 35.00(b), 35.00(c). In light of unsettled case law, a municipality should seek legislative approval before constructing a library in parkland. The municipality may hold a permissive referendum on the issuance of bonds to finance the construction of the library if the bonds have a maturity of more than five years.

Comptroller Opinion [2008-4](#), Municipal Home Rule Law § 10(1)(ii)(d)(3); Town Law §§ 198(4), 202(3), 202-b. The costs of construction of additional facilities or reconstruction or replacement of obsolete, inadequate, damaged, destroyed or worn out facilities, undertaken in an existing town park district pursuant to the authority in Town Law § 202-b, are charged against the properties within the park district on an ad valorem basis, and are not general town expenses payable out of the town's general fund.

Attorney General Opinion [2008 - 11](#), *General City Law* § 20(2); *General Municipal Law* §§ 72-h, 72-h(2). Alienation legislation should be sought before parkland is transferred from a county to a town.

Attorney General Opinion [2005 - 11](#). Where the Town of Huntington owns underwater lands based upon colonial patents, it may require its consent to the use of these underwater lands for dock construction and the anchoring and mooring of vessels, even where such activities are subject to a village's regulatory control.

Attorney General Opinion [2005 - 21](#), *Environmental Conservation Law*, Art. 8; *State Finance Law* § 92-o; *Vehicle and Traffic Law*, Art. 48-C, §§ 2280, 2281, 2282, 2291, 2400, 2402, 2403, 2405; 6 N.Y.C.R.R. 617; 15 N.Y.C.R.R. 103.7; L. 2005, Ch. 59, Part D; L. 1990, Ch. 190, §§ 323, 324; L. 1988, Ch. 61; L. 1986, Ch. 402; L. 1985, Ch. 671. Municipal highways may be designated for use by ATVs only when necessary to provide access to adjacent trails. Highways previously designated for use by ATVs do not qualify as "adjacent trails" for this purpose. Trails on private land that are open to the public for recreational ATV use may qualify as "adjacent trails."

Attorney General Opinion [2004-5](#), *Municipal Home Rule Law* §§ 10(1)(ii)(a)(12)(a), 11(3); *Navigation Law* §§ 2(4), 30, 45-b, 46-a(1); Town Law §§ 17(1)(a), 130, 132; *Village Law* § 89; L. 1989, Ch. 508; L. 1960, Ch. 796; L. 1957, Ch. 158; L. 1935, Ch. 346. A town may regulate the water activities enumerated in the Town Law and Navigation Law in waters within an incorporated village but more than 1500 feet from a village's shore. A village may consent to the town regulation of these activities in waters closer than 1500. Regulation of other water activities by a town in Suffolk County pursuant to its general police powers is not effective in waters within the geographic boundaries of a village.

Comptroller Opinion [2003-7](#). Moneys, in lieu of land for park, playground and other recreational purposes, may be expended to pay reasonable and necessary preliminary costs, such as engineering and legal expenses, directly related to, and necessary to proceed with, an improvement to parkland. Such moneys may also be expended to undertake a study of the feasibility of particular capital improvements to park land.

Comptroller Opinion [2002-3](#), Town Law §198(10); *Municipal Home Rule Law* § 10(1)(i), (ii)(d)(3). A town board may not expand the activities of a public dock district to include maintenance and operation of recreational facilities such as a playground and swimming pool.

Comptroller Opinion [2000-2](#), *General Municipal Law*, §§ 95, 95-a, 99-i, 240 et seq.; *Municipal Home Rule Law*, §10(1)(i). A village, by resolution, may provide for bands, movies and similar events as part of its recreation, senior citizens and youth programs. It also may enter into agreements with not-for-profit agencies accepting federal funds pursuant to the National Foundation on the Arts and Humanities Act of 1965 to provide funds, services and facilities to promote progress and scholarship in the humanities and the arts within the village. In addition, it may, by local law, further provide for the promotion of literary, graphic, dramatic and performing arts by way of demonstrations, performances and exhibits of art and art forms.

Attorney General Opinion [2000-3](#), Parks, Recreation and Historic Preservation Law §§ 1501, 1509. A municipality may engage in limited and selected cutting of timber on park land to preserve the land and to enhance its use by the public. Proceeds of the harvesting of timber should be used for park improvement purposes.

Attorney General Opinion [2000-16](#), Parks, Recreation and Historic Preservation Law Art. 21, 25, §§ 25.05, 25.09, 27.17(1); Vehicle & Traffic Law Art. 47 § 2226; 9 N.Y.C.R.R. Parts 453-460. A county may not implement a snowmobile permit system which involves charging fees for the use of snowmobiles on public highways and lands.

Attorney General Opinion [97-10](#). Land acquired for park purposes and improved and utilized for park purposes, is impressed with a public trust and may not be used for other than park purposes without the express approval of the State Legislature.

Attorney General Opinion [97-29](#), NY Const., Art. IX, § 2(b)(10); Municipal Home Rule Law, § 10(1)(ii)(d)(3); Navigation Law, §§ 46, 46-a; Town Law, § 130; L 1938 Ch. 309; L 1935 Ch. 346. The town may not enact a local law superseding Town Law § 130(17)(1)(a) to regulate the size and horsepower of motor boats permitted upon Chenango Lake. It may regulate the speed of vessels and regulate and restrict the operation of vessels upon any waters within or bounding the town.

Comptroller Opinion [96-21](#), Town Law §§198(10-a), 202-b(2). A town board, pursuant to Town Law §202-a, may authorize the replenishment of sand and the installation of a sand-filled geotube at a town-owned beach in a town beach erosion control district which was damaged by coastal storms.

Comptroller Opinion [93-24](#), Town Law, §176(14). A fire district may not improve vacant land owned by the district with permanent outdoor competitive sports facilities such as softball fields and tennis courts.

Comptroller Opinion [92-49](#), Town Law, §§ 881, 220. A proposed lease of real property for use as a town recreational trail is subject to permissive referendum, or the town board, upon its own motion, may submit a proposition therefore to referendum at a special or biennial town election, if the lease payments are to be paid from moneys appropriated from taxes levied for the current fiscal year.

Comptroller Opinion [91-10](#), Laws of 1924, Chapter 574 (McKinney's Unconsolidated Laws, §§ 1471-1493). A park district established pursuant to the provisions of chapter 574 of the Laws of 1924 is an administrative unit of the town rather than an independent corporate entity. The board of park commissioners of such a district may hold real property in its own name. The board, however, is not subject to the provisions of Article 13 of the Town Law. Judgments against the board of commissioners would be properly assessed and levied on the properties within the district. Properties within the district are assessed on an ad valorem basis.

Comptroller Opinion [91-36](#), General Municipal Law, §§ 119-o, 244-b; Town Law, §277(1); Village Law, §7-730(1). A newly incorporated village which has no parks of its own may enter into a cooperation agreement with the town in which it is located, whereby the village would use park trust fund moneys to pay for additional recreational facilities in an existing town park located in the neighborhood of or readily accessible to the subdivisions from which the park land fees were received. The agreement must include safeguards to protect the village's investment for the useful life of the improvements, and to ensure compliance with Village Law, §7-730(1). Prior opinions, including Opn Nos. 81-275, 79-240 and 76-345, are superseded to the extent they are inconsistent therewith.

Comptroller Opinion [90-64](#), Town Law, §202-b; Local Finance Law, §35.00. The determination to increase or improve facilities of a town park district is not subject to referendum. A bond resolution authorizing the issuance of bonds to finance an improvement to a town park district is not subject to referendum.

Attorney General Opinion 84-15. Land dedicated for park or recreational purposes may not be sold or diverted to other uses without authorization by the State Legislature. Use of land as a golf course constitutes a recreational use. The acts of a village in purchasing land for park purposes and expending village funds for the improvement of such land utilized as a public golf course, together with continued public use of such land as a golf course for a lengthy period, is sufficient to constitute the dedication of such land as a park or recreational use.

Comptroller Opinion 88-25, Town Law, §198(4); State Constitution, Art. I, §11. Subject to equal protection guarantees, a town board may exclude nonresidents of a park district from the facilities of the district. However, the town board may also permit nonresidents to use park district facilities, with or without a fee. If the town board permits use of park district facilities by nonresidents, it may impose reasonable regulations on that use, subject to constitutional equal protection guarantees.

Comptroller Opinion 88-40, General Municipal Law §119-o(2)(a), (c),(h). Delegation of immediate control and supervision of joint youth program. (1) The respective governing boards of municipalities engaged in a joint service need not be directly responsible for the immediate control and supervision of a joint service, but rather, the municipal cooperation agreement may provide for delegation of that responsibility to other officers. (2) If a municipal cooperation agreement provides that moneys available for a joint service are held in the custody of the fiscal officer of one of the participants, the agreement may also provide that claims for the expenses of a joint service will be audited by the auditing body of the municipal corporation whose fiscal officer is to have custody of the moneys of the joint service. (3) A municipal cooperation agreement may provide how to allocate moneys remaining at the conclusion of each year which are to be returned to each municipality.

Attorney General Opinion 84-51, Town Law, § 81. A town board has discretion to submit a proposition to purchase land for public parks or playgrounds to the electors at either a special or biennial town election.

Attorney General Opinion 84-53, Navigation Law, §§ 15-0503, 30, 45-b; L. 1983, Chapter 442, § 1. There is no authority for village regulation of the construction of piers and docks in navigable waters bounding the village.

Attorney General Opinion 83-56, Environmental Conservation Law, Article 11; Municipal Home Rule Law, § 10(1)(ii)(a)(12); Navigation Law, §§ 1, 2(4), 30, 45-b, 46-a; Town Law, §§ 130(17) and (18); Village Law, § 4-412(8); L. 1972, Chapter 888. A village may regulate swimming and, where not inconsistent with applicable Federal or State law, the operation, anchoring and mooring of vessels in navigable waters bounding the village to a distance of fifteen hundred feet from the shore. There is no authority for village regulation of fishing, shellfishing or the construction of piers and docks in such area.

Comptroller Opinion 83-207, General Municipal Law, § 244-b. Where a town and village agree to operate and maintain a playground or recreation center, it is not necessary that the property involved be jointly owned by both municipalities, and the municipalities are not required to share the costs of operating, equipping and maintaining the facilities equally.

Comptroller Opinion 81-279, General Municipal Law, §§ 119-o, 244-b, c, d. Where a village has entered into an agreement with a town to operate a recreation program with facilities located in the portion of the town outside the village, the village may, as part of such agreement, expend funds for the maintenance and operation of those facilities.

Comptroller Opinion 80-777, General Municipal Law, §§ 95, 99-h, 119-o; Executive Law, § 422. School districts may, individually or jointly with other municipal corporations, contract with certain private organizations for services in connection with youth programs.

1979 Atty Gen [Inf Ops] 184. The State retains complete authority over the city as to the alienation of park lands. Park land held by a city is impressed with a public trust and may not be sold without authorization by the State Legislature.

1978 Ops Atty Gen 302. (1) The Town of Stony Point may properly spend general revenues for the construction of a baseball field; (2) use of a baseball field in a town park may not be restricted exclusively to a privately run Little League; (3) the town may permit a Little League to operate a concession stand on town property; and (4) it would be improper for the town to lease land in a town park to a privately run Little League and allow it to operate independently thereon.

Comptroller Opinion 77-429, General Municipal Law §§ 244-b, 119-o, 92-a; Executive Law § 422(5). The parties to a joint recreation agreement may purchase liability insurance to cover their potential liability arising from such joint program. Where a village is a party to such agreement, the cost of such insurance should be shared proportionately by the village and the other participating municipalities and a single policy may be purchased as part of the joint program. However, the village may not purchase medical insurance to cover participants in the recreation program.

23 Op St Comp at 381 (1967). The functions and powers to maintain parks and park facilities, and to establish, maintain and operate recreational facilities and projects can be consolidated or merged in one separate municipal body or commission.

19 Op St Comp at 377 (1963). Donations to a village recreation commission are to be considered as village revenue and should be paid out for recreation purposes in the same manner as other village expenditures.