



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

Water Supply

Constitutional & Statutory Authority

See generally, Municipal Home Rule Law, § 10(1)(ii)(a)(12)

Counties, Cities, Towns and Villages - No local government shall be prohibited by the legislature (1) from making a fair return on the value of the property used and useful in its operation of a water public utility service, over and above costs of operation and maintenance and necessary and proper reserves, in addition to an amount equivalent to taxes which such service, if privately owned, would pay to such local government, or (2) from using such profits for payment of refunds to consumers or for any other lawful purpose. [Constitution article IX, § 1(f)]

State Legislature may authorize any county, city, town or village or any county or town on behalf of an improvement district to contract indebtedness to provide a supply of water, in excess of its own needs, for sale to any other public corporation or improvement district; may authorize two or more public corporations and improvement districts to provide for a common supply of water and may authorize the corporation or any county or town on behalf of an improvement district, to contract joint indebtedness for a supply of water. [Constitution article 8, § 2-a]

Any county (on behalf of a county water district), city, town (on behalf of a town water district), or village may provide for the development of a supply of water in excess of its needs for sale to a public corporation or improvement district and may contract indebtedness for such purpose. [General Municipal Law article 5-C; County Law § 253-a]

Two or more municipalities may enter into a contract with each other and with a public authority with reciprocal powers to provide for a common water supply, including joint acquisition, construction, operation and maintenance. [General Municipal Law article 5-B; see also General City Law § 20(7-a)]

Counties, cities, towns and villages may contract for the purification of water and sewage. [General Municipal Law § 120]

City, Village, School District, Fire District, Public Benefit Corporation which owns and operates a water system, a Suburban Town operating a water system, a Town water district and a County water district - May establish a mutual aid plan for water service in the event of a possible emergency. Any above municipalities is authorized, in case of emergency, to construct interconnections between its water system and other water systems to provide water service. [General Municipal Law § 120-u] The State Commissioner of Health may facilitate the interchange of water works among municipalities in event of emergencies. [General Municipal Law § 120-u(12)]

Owners or operators of a community water system that supplies drinking water to more than 3,300 people must submit a water supply emergency plan to the commissioner of the State Department of Health, who must approve the plan. [Public Health Law § 1125]

Towns, Villages and Water Districts – May jointly acquire, construct, maintain, and operate a water works system governed by an appointed board of trustees. [Unconsolidated Laws, Title 16, Chapter 19]

City, Town and Village – May jointly consent to the formation of a Water-Works Corporation to supply water by mains or pipes. [Transportation Corporations Law article 4]

Cities – Authorized to construct and operate water supply systems. [General City Law §§ 20(2) and (7)]

Authorized to construct and maintain public improvements, including local improvements. [General City Law § 20(11)]

Towns – Authorized to provide water improvements. [Town Law article 12-C]

Suburban Towns - Authorized to provide water supply, water quality treatment and water storage and distribution improvements. [Town Law article 3-A]

Villages – Authorized to establish or acquire existing water supply system. [Village Law article 11]

Board of Water Commissioners may:

- sell to a corporation, individual or water district outside the village the right to connect to village water mains. May contract with the State to furnish water to state institutions. [Village Law § 11-1120]

- contract for up to 40 years with an individual or corporation for supplying water to the village for extinguishing fires or other public purposes. [Village Law 11-1100]

- contract for up to 10 years with a town, village, or fire district to furnish water for fire protection, sanitary or other public purposes. May contract for up to 40 years with any public corporation or improvement district with the power to sell a supply of water in order to purchase all or a portion of the water supply of the village from the public corporation or improvement district. [Village Law § 11-24]

A proposition may be submitted at a village election to authorize a village to contract with the City of New York for a supply of water for village purposes. [Village Law § 11-1126]

Authorized to make local improvements. [Village Law article 22]

Special Districts

Counties – Authorized to establish water and water quality treatment districts. [County Law article 5-A]

Towns and Villages – May establish a joint water district. [General Municipal Law § 120-t]

Towns - Authorized to establish water and water supply districts. [Town Law article 12 and article 12-A]

Authorized to establish water quality treatment and water storage and distribution districts. [Town Law article 12]

Certain town water districts are governed by the town board as well as an elected board of commissioners. (Town Law article 13)

Public Authorities

A number of water and sewer public authorities have been established by State legislation. See generally, Public Authorities Law article 5, Titles 2-A through 10-D.

Selected Court Cases

Niagara Mohawk Power Corp. v. Town of Watertown (2005) 6 NY3d 744. Respondent Town appropriately imposed a special ad valorem levy on petitioner power corporation's transmission and distribution facilities to fund a water district. Special ad valorem levies are limited to benefited properties. Real property is benefited if it is capable of receiving the municipal service at issue, based on innate features and legally permissible uses. Special ad valorem levies are unauthorized where the inherent characteristics of the subject properties preclude them from receiving the particular municipal services at issue. Petitioner's transmission and distribution facilities benefited from the Town's water district, which maintained a system of mains, pipes and hydrants available for firefighting purposes. In the past, the Town had responded to calls at petitioner's facilities caused by downed wires or arcing related to power surges in inclement weather.

Village of Webster v. Town of Webster, 1999, 183 Misc.2d 956, 707 N.Y.S.2d 747, affirmed as modified 270 A.D.2d 910, 705 N.Y.S.2d 774, appeal and reargument denied 710 N.Y.S.2d 238, leave to appeal dismissed in part, denied in part 95 N.Y.S.2d 901, 716 N.Y.S.2d 639, 739 N.E.2d 1143. Authorization under Municipal Home Rule Law, allowing villages to enact local laws which amend or supersede Village Law provisions governing water supplies, would not include the capacity to create a special water district outside of village boundaries. Village water district cannot continue to serve the area outside of the village once the contract lapses, unless given that ability under a new contract freely negotiated by the parties. The village does not own the supply and connection pipes located outside of the village used to provide water to residences, business and other private owners. However, it can and must repair and maintain the water main and distribution pipes that bring water to the village from its source.

Waterbury v. City of Oswego (4th Dept. 1998) 251 A.D.2d 1060, 674 N.Y.S.2d 530. Public Service Law provisions governing water service charges do not apply to municipality as operator of water system, and thus, Public Service Commission has no jurisdiction over review and determination of rates, penalties, and late fees charged by municipality that owns and operates its own water supply system.

In the Matter of John Esler et al. v. Carl J. Walters, as Supervisor of the Town of Guilderland, et al., Respondents, 56 N.Y.2d 306; 437 N.E.2d 1090; 452 N.Y.S.2d 333 (1982). A state statute restricting voters in a referendum regarding the consolidation of special districts to only those persons who are electors of the town and who own taxable real property situated within one of the affected districts does not violate the equal protection clauses of the federal or state constitutions where the districts serve a limited purpose and there is a disproportionate effect of the districts' activities on one segment of the population because only real property owners are subject to assessments and charges for the benefits conferred by the district and are subject to liens for delinquencies.

Barnathan v. Kramer, 44 Misc. 2d 203; 253 N.Y.S.2d 144 (1964). A park water district, in erecting a new water tower of larger capacity to take the place of one already in existence and the purpose of which is to supply water for inhabitants for domestic and commercial uses and fire protection, is exercising a governmental function and exempt from compliance with zoning ordinances.

Opinions of the Comptroller and Attorney General

Comptroller Opinion [2009-2](#): Town Law § 209-q (13) (a). When a town proposes or is required to issue indebtedness to finance a water improvement, the town must obtain the State Comptroller's permission for the improvement if the total estimated cost of the improvement, including amounts to be financed both by the issuance of obligations and from other sources, exceeds one-tenth of one percent of the full valuation of taxable real property in the area of the town outside of any villages.

Attorney General Opinion [2007-6](#): Elmira City Charter §§ 166-a, 166-d, 166-f(a), 166-f(b), 166-f(h), 166-g, 166-i, 166-n, 166-n(aa), 166-n(d), 166-n(e), 166-n(f), 166-n(h), 166-n(j), 166-o, 166-r, 166-s, 166-t, 166-u; Municipal Home Rule Law §§ 10(1)(I), 10(1)(ii)(a)(1), 10(1)(ii)(c)(1), 23(2)(e); New York State Constitution Art. IX, § 2(c), Art. IX, § 2(c)(1), Art. X, § 5; General City Law §§ 20(2), 20(7), 20(7-a); Second Class City Law §§ 94, 95; Session Laws 1913 Chapter 660, 1913 Chapter 660, § 7, 1950 Chapter 535. The city cannot abolish the state-created Elmira Water Board or provide that the Water Board commissioners be appointed by city officials. Under the provisions of the City Charter, the City Chamberlain does not have authority to determine the amount of Water Board surplus funds, and the City lacks authority to amend the Charter to give the City Chamberlain such power.

Comptroller Opinion [2006-2](#): Town Law §§202-d, 209-h. A town must follow the procedures set forth in Town Law §§202-d or 209-h in order to increase the maximum amount to be expended for establishment of a water district, even though the increased amount will be funded by a private contribution to the town.

Comptroller Opinion [2006-9](#): Town Law §198(12). The transfer of property and facilities of a town sewer district to a county on behalf of a county district pursuant to an agreement under which the county will assume the payment of debt service on obligations issued to finance the cost of the town district property and facilities, is subject to referendum.

Comptroller Opinion [2005-7](#): General Municipal Law § 99-t; Town Law § 198(3)(b); Environmental Conservation Law § 15-1501. A town may enter into an agreement with a bank or trust company, in accordance with the provisions of section 99-t of the General Municipal Law, for the collection, either by payment in person or payment by electronic funds transfer, of water rents imposed on behalf of a town water district. A town water district may provide service to users located outside the district pursuant to Town Law §198(3)(b), so long as the use will not reduce the water supply so that it will be insufficient for the district or its inhabitants and all required approvals and permits are obtained. The town should contact the Department of Environmental Conservation to obtain information about any required permits and approvals.

Comptroller Opinion [2003-1](#): Town Law § 202(5). The cost of an extension to a town water district is charged against only properties within the extension. The extension may also be charged a proportion of the costs of certain items of the original district, as may be determined by the town board.

Attorney General Opinion [2003-5](#): County Law § 2(b), 150, 203, 250, 261, 265, 266, 268, 411, Article 5, Article 5-A; General City Law § 20(3); General Municipal Law § 77-c, 800(3), 801, 804; Municipal Home Rule Law § 2(5), 10 (1)(i), 10(1)(ii)(a)(1),33(2); State Constitution VIII, 1, IX, 2(c)(i), IX, 2(c)(ii)(1), IX, 3(d)(1); Town Law § 20(4), 27, 116(1), 198; Village Law § 5-524(7). Members of county water and sewer district boards may not be paid a flat meeting fee of \$50 in lieu of reimbursement for expenses actually and necessarily incurred. The positions of town supervisor and county improvement district administrator are compatible; the town supervisor cannot be paid for serving as county improvement district administrator. Employees of the town improvement districts may serve in the same ministerial capacity for the county improvement districts. The county board of supervisors retains significant control over improvement districts after their formation.

Comptroller Opinion [2002-8](#): Town Law §§195, 202-c. When a water district was established more than three years ago, no improvement has been constructed for the district or services provided by the district and no indebtedness is outstanding to accomplish the purposes of the district, the district may be dissolved, subject to public hearing requirements, if the town board determines it to be in the public interest.

Comptroller Opinion [2002-12](#): General Municipal Law §119-o. Pursuant to a municipal cooperation agreement, two villages may combine their water, sewer and street departments under the supervision of a single superintendent of public works, and all officers and employees performing services for the combined department, including the superintendent, may be designated as officers and employees of the villages.

Comptroller Opinion [2000-17](#): Town Law §§197, 197-a. If a town, on behalf of a water district, contracts with a water authority for the construction of a water system by a contractor engaged by the authority, the authority must solicit bids in accordance with Town Law §197 for the construction of the town's particular water system as a discrete project. The authority may not solicit bids for individual categories of estimated construction work to be performed in the aggregate for districts in several towns.

Comptroller Opinion [99-15](#): Village Law, §§ 11-1108, 11-1118, 14-1406, 14-1410; State Constitution, Article XVI, § 1; Real Property Tax Law, § 300. A village may not provide a partial real property tax exemption or reduction to village residents solely because those residents are not served by the village water or sewer systems.

Attorney General Opinion [99-31](#): Village Law, § 11-1120. Under the facts presented, a village may terminate supplying water to outside residents upon reasonable notice.

Comptroller Opinion [96-16](#): Town Law, §198(12); Municipal Home Rule Law §10. A town may not, pursuant to either Town Law, §198 or a local law, use the proceeds from the sale to the county of all the property and facilities of a town water district for the construction of a new town hall.

Comptroller Opinion 95-29: Town Law, §§ 198(12), 202-c. The governing board of a town water district may, subject to a mandatory referendum, sell all the property and facilities of the water district to a public authority and dissolve the district. Moneys received from the sale of the property and facilities of the water district must be placed in a reserve fund for the purpose of retiring the outstanding debt on behalf of the district. Excess funds are to be credited to reduce town and county taxes for each parcel in an equitable manner.

Comptroller Opinion 92-23: Town Law, §§198(12)(a), 215(8). A separate board of commissioners which governs a town water district pursuant to article 13 of the Town Law, with the approval of the town board and after complying with public hearing requirements, may enter into a lease to permit a mobile communications company to use a portion of real property of the district which is not needed for district purposes, although the remainder of such property may be so needed. The lease should contain a provision reserving the district's right to cancel if the leased portion of the property is needed for district purposes at a future date, and such other provisions as the district deems necessary to ensure that the remainder of the property may be properly used for district purposes. The lease should be for a reasonable term which may bind successor governing boards, and for the best price obtainable or the most beneficial terms and conditions in the public interest.

Comptroller Opinion 92-39: Town Law, §209-e. Persons who do not own taxable real property situate in a proposed water or sewer district are not entitled to vote in a special district election on a proposition to establish the water or sewer district. At such election each tenant by the entirety, tenant in common and joint tenant owning taxable real property within the proposed district is entitled to vote. However, partnerships and corporations owning such property are only entitled to a single vote. Any such person or entity owning more than one parcel within the proposed district is entitled only to a single vote.

Comptroller Opinion 91-28: General Municipal Law, § 94. A village may use profits resulting from operation of a water utility for general village purposes.

Comptroller Opinion 90-61: Town Law, §§202(3), 202-a(1). A town may assess the costs of establishing and maintaining a water supply district only on an ad valorem basis, and not on a benefit basis. Also, a town may not establish a system of user fees to finance the costs of a water supply district.

Comptroller Opinion 89-59: Town Law, §§198(3)(d), 202, 202-a. A town board may raise all the operation and maintenance and capital expenses of a water district established pursuant to Article 12 or Article 12-A of the Town Law by the imposition of water rates upon the users of the water district.

Comptroller Opinion 88-9: Town Law, §§202-b, 215[5], 216. A town board may delegate to a separate board of commissioners of a water district governed by article 13 of the Town Law the authority to purchase real property in connection with an increase or improvement of facilities. Prior to such delegation, the town board must call and conduct a public hearing on the increase or improvement of facilities after the written approval of the separate board of commissioners.

Comptroller Opinion 88-30: Town Law, §§130(15), 194(1)(b), 198, 201, 202, 202-a, 209-e(1)(b). (1) A town, by ordinance, may require district property owners to connect to a district water system in the proper exercise of its police powers. (2) The costs of establishing and operating and maintaining a district are, to the extent not raised by user charges, a charge upon all the properties in the district.

Comptroller Opinion 85-24: Village Law, §§ 11-1100, 22-2200; Municipal Home Rule Law, § 10(l)(ii)(e)(2). A village may establish a special district for the purpose of supplying water to the properties therein and assess the cost of the service against benefited properties utilizing a benefit formula.

Comptroller Opinion 85-35: Part-town funds may be used for water improvements if the town dissolves water districts and provides water service to the area of the districts as a town function.

Comptroller Opinion 82-6: *Town Law, § 190; Constitution, Article VIII, § 2.* Water supply and distribution is not a town function and a town may not issue obligations to finance the construction of public water mains in an area of the town that is not included within the boundaries of a water district, water supply district or water improvement area; however, in unusual circumstances, such as a public emergency, town obligations could be issued to finance certain improvements.

Comptroller Opinion 82-47: *Town Law, § 199.* When a town board wishes to extend water mains within an existing water district, it may proceed on its own motion or pursuant to petition under Town Law, § 199. The cost of the improvement must be assessed by the town board in proportion to the benefit received.

Comptroller Opinion 80-486: *Town Law, § 198(3)(a).* The expense of relocating water district water pipes and fire hydrants following reconstruction of a town highway by the town highway department is chargeable to the water district and not the highway department.

Comptroller Opinion 79-770 (1980). A village cannot “compel the formation of a water district.”

Comptroller Opinion 77-376: *General Municipal Law § 119-o.* A village and town may enter into an agreement pursuant to which the town will assist the village in the repair and improvement of the village water system, provided the town is reimbursed for its expenses.