

EDUCATION LAW § 2103(3); GENERAL MUNICIPAL LAW § 806; MUNICIPAL HOME RULE LAW § 10(1)(i) and (ii)(a)(1).

Assuming appropriate legislative findings have been made establishing a legitimate governmental interest, a proposed amendment to the Niagara County Code of Ethics, which would prohibit any person appointed to a county office by the Legislature and/or the chairman of the Legislature from holding an executive office in a political party organization, is authorized and lawful.

November 5, 1997

Glenn S. Hackett, Esq.  
County Attorney  
County of Niagara  
Niagara County Courthouse  
Lockport, NY 14094-2740

Informal Opinion  
No. 97-50

Dear Mr. Hackett:

You have asked whether a proposed local law amending the Niagara County Code of Ethics, which would prohibit any person appointed to a county office by the county legislature and/or the chairman of the legislature from holding an executive office in a political party organization, is lawful. Under the proposal, "executive office" is defined as the chairman, vice-chairman, treasurer or secretary of the party.

There is ample authority for the enactment of the proposed local law amending the Code of Ethics. Under section 806 of the General Municipal Law, each municipality, including a county, is required to adopt a code of ethics setting forth the standards of conduct reasonably expected of its officers and employees. By its terms, section 806 authorizes the ethics provision proposed by the county. Additionally, the proposal may be authorized under the grant of home rule authority in section 10 of the Municipal Home Rule Law, permitting local governments to enact local laws, consistent with the Constitution and general State laws, relating to their property, affairs or government; the powers, duties, qualifications, and other terms and conditions of employment of their officers and employees; and the protection, order, government, conduct, safety, health and well-being of persons or property therein. Municipal Home Rule Law § 10(1)(i) and (ii)(a)(1), (12).

The Court of Appeals has upheld a similar provision. A proposed amendment to the New York City Charter requiring certain high City officers to forego specific political party offices as a qualification for holding public office was before the Court in Golden v Clark, 76 NY2d 618 (1990). The proposal was attacked on several grounds under the State Constitution including denial of equal protection of the law. Golden v Clark, 76 NY2d at 624.

The Court discussed its prior decision in Matter of Rosenstack v Scaringe, 40 NY2d 563 (1973), in which the plaintiff challenged section 2103(3) of the Education Law, which prohibits more than one member of a family from being a member of the same board of education in any school district. In Rosenstack, the Court of Appeals held, citing, Bullock v Carter, 405 US 134, 142-144 (1972), that the direct impact of the law was on the right to hold office which did not warrant strict scrutiny of the statute in determining an equal protection challenge. Golden v Clark, 76 NY2d at 624. The Court of Appeals in Rosenstack reasoned that the statute had only an incidental effect and did not disenfranchise any identifiable class of the electorate. Golden v Clark, 76 NY2d at 624. Rejecting the equal protection challenge, the Court applied a rational basis test and found the law to be rationally related to the legitimate State interest of ensuring that a board of education represents a wide cross section of the community. Golden v Clark, 76 NY2d at 624. The Court in Golden found no basis for distinguishing the position of school board member, reviewed in Rosenstack, from offices of other municipal corporations. Golden v Clark, 76 NY2d at 624.

In that the State Constitution's Equal Protection guarantee is as broad as coverage under the Fourteenth Amendment, the Court in Golden also considered two types of ballot access cases identified by the United States Supreme Court to involve fundamental rights and, therefore, requiring heightened scrutiny. Golden v Clark, 76 NY2d at 624. These cases involved restrictions based on wealth, which unfairly burden political opportunity, and restrictions arising from classifications imposing burdens on new or small political parties or independent candidates. Golden v Clark, 76 NY2d at 624. The Court of Appeals found that the proposed amendment to the City Charter was neutral in its application and did not create a barrier based on wealth, political affiliation or political viewpoint. Golden v Clark, 76 NY2d at 626.

The Court reasoned that the proposed amendment to the New York City Charter could be sustained against an equal protection challenge if it was shown to be rationally related to a legitimate State interest. Golden v Clark, 76 NY2d at 626. The

purpose of the proposed amendment of the New York City Charter was described and found by the Court of Appeals to promote a legitimate governmental interest:

Section 2604(b)(15) is intended to eliminate conflicts of interest that arise when high public officials are simultaneously subject to the demands of both their constituencies and their political parties, to broaden opportunities for political and public participation, to reduce the opportunities for corruption inherent in dual officeholding, and, through all of these methods, to increase citizens' confidence in the integrity and effectiveness of their government. These are legitimate governmental purposes and have been identified as such both judicially and legislatively. Golden v Clark, 76 NY2d at 626.

The Court of Appeals also found that the proposed charter provision did not prohibit City officials from engaging in a broad range of personal or financial activity in support of a candidate or cause. Golden v Clark, 76 NY2d at 630. "Any de minimis burden the Charter provision imposes on individual rights of expression or association is justified by the important governmental interests underlying it." Golden v Clark, 76 NY2d at 630.

In our view, assuming appropriate legislative findings have been made by the Niagara County legislature establishing a legitimate governmental interest, the proposed amendment to the Niagara County Code of Ethics is authorized and lawful.

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