



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

## **Contracting for Public Services by Local Governments**

### **Statutory Authority**

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*See generally, Municipal Home Rule Law, § 10(1)(ii)(a)(3); General Municipal Law, Article 5-A*

**Counties, Cities and Towns** – Two or more assessing units (counties, cities and towns having authority to assess real property) may establish a coordinated assessment program. [Real Property Tax Law § 579]

**Cities, Towns and Villages** – Authorized to have cooperative assessment agreements. [Real Property Tax Law § 576]

**Counties** – May contract with nonprofit organizations and other corporations, associations, and agencies for certain objects and purposes. [County Law § 224]

Counties may not enter into a contract unless an amount has been appropriated and is available or has been authorized to be borrowed pursuant to the Local Finance Law. [County Law §362(3)]

Counties are authorized to contract with cities and towns to furnish them with appraisal, exemption and assessing services as a joint service. [Real Property Tax Law § 1537]

**Cities** – Every city may contract and be contracted with, and institute, maintain and defend any action or proceeding in any court. [General City Law § 20(1)]

Every city is granted power to manage and control its property over local affairs, and is granted all the rights, privileges and jurisdiction necessary and proper for carrying such power into execution. [General City Law § 19]

**Towns** – Town boards may award contracts for any of the purposes authorized by law; contracts shall be executed by supervisor with approval of town board. [Town Law § 64(6)]

Towns may only enter into a contract if provision has been made for the amount in the annual budget or a supplemental appropriation has been made; except contracts for a term exceeding one year. [Town Law §§ 112, 117]

**Villages** – Generally, the village may take all measures and do all acts, by local law, not inconsistent with the Constitution, which shall be deemed expedient or desirable for the good government of the village. [Village Law § 4-412(1)]

## **Special Districts**

**School Districts** – Boards of Education authorized to contract for various goods and services. [Education Law §§ 1604, 1709, 2503 and article 9]

**Boards of Cooperative Educational Services (BOCES)** – May contract with the federal government, state government, any school district, community college, public institution of higher education, independent institution of higher education or public agency for cooperative educational services. [Education Law § 1950 h. (2)]

**Charter Schools** – May contract with school districts for transportation of children in district jurisdiction. May contract with school districts and public colleges and universities for use of buildings and grounds. [Education Law § 2853.4 (b) (c)]

**Fire, Fire Alarm and Fire Protection Districts** – The board of fire commissioners has general authority to contract for fire district purposes [§ 176, Town Law] The town board may contract for a fire alarm system and must contract for fire protection in a fire alarm district. [Town Law § 183] The town board may contract with a city, village, fire district or incorporated fire company for fire protection in a fire protection district. [Town Law § 184]

**County Districts** – The administrative head or body may contract for certain purposes related to a particular kind of district. [County Law §§ 263, 265, 273, 279-b, 279-c, 299-p]

**Town Improvement Districts** – A town board may contract for certain purposes related to a particular kind of district. [Town Law § 198]

**Business Improvement Districts** – The local legislative body has authority to provide for the construction, operation and maintenance of district improvements. [General Municipal Law § 980-c]

**Special District Public Libraries** – Any body authorized to levy and collect taxes may contract with the trustees of a public library to furnish library services. [Education Law § 256]

## **Selected Court Cases**

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*Madison-Oneida-Herkimer Consortium v. North American Administrators, Inc., 2003, 196 Misc.2d 365, 765 N.Y.S.2d 184, 181 Ed. Law Rep. 746.* Consortium of school districts which pooled their resources to provide self-funded health benefits to employees initiated action against health insurance plan administrator for breach of contract, fraud, and unjust enrichment arising out of administrator's payment of fees from consortium's account for managed care services provided by affiliated company. Administrator moved for summary judgment. Consortium moved for partial summary judgment. The Supreme Court, County of Madison, William F. O'Brien III, J., held that: (1) there was no evidence that administrator knowingly submitted false invoices in attempt to conceal fees, as was required to support consortium's claim for constructive fraud, but (2) genuine issues of material fact precluded summary judgment on breach of contract and unjust enrichment claims. Ordered accordingly.

*Brittain v. Village of Liverpool, 1997, 172 Misc.2d 201, 657 N.Y.S.2d 298, appeal dismissed 248 A.D.2d 1031, 679 N.Y.S.2d 784.* Municipal Home Rule Law requiring that local law be subject to mandatory referendums if it abolishes, transfers or curtails power of elected officer was not applicable where village police force was subsumed into neighboring city's police force through contractual merger as only specific action taken by village board was to pass a motion authorizing mayor to enter into contract with neighboring city for police services and did not constitute a "local law."

*South Orangetown Kitchen Workers Association v. South Orangetown Central School District, 1979, 422 N.Y.S.2d 597.* Municipal subdivisions of State are free to contract in good faith with private parties for provision of services which might otherwise be performed by public employees and public employer may not surrender those powers in collective bargaining agreement, unless they constitute terms and conditions of employment.

*Westchester Co. CSEA v. Cimino, 1977, 58 A.D.2d 869 affirmed 44 N.Y.S.2d 985.* Municipal subdivisions are free to contract with private industry for rendition of work and services; Constitution and Civil Service Law do not bar an attempt to have municipal services provided by an independent contractor in a more cost-efficient manner than is possible by the governmental unit hiring the workers.

## **Opinions of the Comptroller and Attorney General**

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*Comptroller Opinion No. [2005-3](#): Education Law §§ 402, 1709(11); General Municipal Law §§72-j, 109-b.* A union free school district is not authorized to construct, or enter into a lease for the construction of, a parking garage to be used primarily for commercial purposes. In addition, a union free school district may not sell a building currently in use for school district purposes, to be reacquired by lease-purchase agreement.

*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 [99-5](#): Education Law, §§ 255, 256, 259.* A school district may enter into a contract pursuant to section 256(1) of the Education Law with a cooperative library system under which library services will be provided to residents of the school district by the member libraries of the cooperative library system. The amount stated in the contract and approved as an appropriation for library purposes by the voters of the school district must be paid to the treasurer of the cooperative library system. 24 Opns St Comp, 1968, p 914; 23 Opns St Comp, 1967, p 731; and 23 Opns St Comp, 1967, p 387, superseded to the extent inconsistent.

*Comptroller Opinion [98-1](#): General Municipal Law, §§ 99-r, 103; Social Services Law, § 365-a.* Pursuant to General Municipal Law, § 99-r, a county, by direct negotiation and without competitive bidding, may contract with a public authority for transportation services, which the county provides pursuant to the Social Services Law and regulations, for Medicaid clients.

*Comptroller Opinion 83-205.* Village may contract with an outside security force to provide a "patrol service" and may establish a benefit assessment area to cover the cost.

*Comptroller Opinion 82-73.* Town may not sell its gasoline to private volunteer ambulance corps, but may provide gasoline at cost in context of the contract for ambulance service.

*Comptroller Opinion 82-123.* Snow removal services may be contractually provided by village to volunteer ambulance corps as part consideration for the ambulance services.

*Comptroller Opinion 82-182.* A city may not enter into a multi-year contract for ambulance services when such contract will bind future boards.

*Comptroller Opinion 82-290.* Contract with private corporation to operate public sewer system, without competitive bidding, may be made under the provisions governing professional services contracts.

*Attorney General Opinion 81-8.* A town may enter into a contract with a private developer to build a sewer line which will allow the town and the developer to hook up to an existing sewer system as long as contract is supported by fair and adequate consideration. Since sewer line is also for public purpose, it avoids the constitutional prohibition of town aiding a private undertaking.

*Comptroller Opinion 81-215.* General Municipal Law, § 119-o; Municipal Home Rule Law, § 10(1)(i); State Constitution, Article VIII, § 1, Article IX, § 1(c). There is no statutory authority for a village and a private firm to jointly contract with a third party for waste removal. A village may not enact a local law authorizing such a joint contract.

*Comptroller Opinion 80-210.* County-owned hospital may enter into contract with a private management firm.

*Comptroller Opinion 80-672.* A municipality may contract with a private corporation for operation and maintenance of a municipal wastewater treatment plant.