



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

## **Sewerage and Drainage**

### **Constitutional & Statutory Authority**

---

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

**Counties, Cities, Towns and Villages** - Protection and promotion of health of inhabitants of State are to be provided by State and its subdivisions. [Constitution, Article 17, § 3]

State Legislature may authorize, by general or special law, any locality or district to contract indebtedness to provide facilities, in excess of its own needs, for conveyance, treatment and disposal of sewage from any other public corporation or improvement district. [Constitution, Article 8, § 2-a]

Use of property for drainage of swamp or agricultural lands is a public use, and State may pass general laws permitting owners or occupants of such lands to construct and maintain necessary drains, ditches, and dikes on the lands of others. [Constitution, Article 1, § 7-(d)]

Any county (on behalf of a county sewer district), city, town (on behalf of a town sewer district or sewage disposal district), or village may provide for the construction and development of excess sewage disposal capacity for the purpose of conveying, treating and disposing of sewage of another public corporation. [General Municipal Law, Article 5-D, County Law, § 253-a]

May provide for the construction and development of capacity of drainage facilities in excess of its own needs for the purpose of conveying and disposing storm waters and other surface or sub-surface waters collected by another public corporation or improvement district. [General Municipal Law, Article 5-E]

Two or more municipalities may contract to provide for common drainage facilities. [General Municipal Law, Article 5-F]

May establish and impose sewer rents where authorized by law. [General Municipal Law, Article 14-F; General City Law, § 20(26)]

May apply for and expend State aid for comprehensive sewer and water studies. [General Municipal Law, § 99-f]

Two or more municipalities may enter into contracts to jointly construct and operate a complete sewerage system including trunk lines, laterals and treatment plants, or to contract with a third person, corporation or municipality for the work. [General Municipal Law, Article 6]

**County, City, Town Village, School District, Fire District, Public Benefit Corporation and Improvement District** - may contract for disposal of its sewage with another State. [General Municipal Law, § 120-v]

**Counties** - Authorized to designate a water quality management agency to oversee a water quality management program. [County Law, § 220-a]

**Cities** - Authorized to construct, maintain and operate sewage systems and sewage disposal plants. [General City Law, §§ 20(2) and (7)]

**Towns** – Town board may issue permits for the filling or diverting of streams and watercourses and may deny a permit if it determines that a proposed diversion is detrimental to the drainage of the town. [Town Law, § 64(10-a)]

Town board may provide for drainage facilities, deepen streams, culverts, etc. by resolution subject to permissive referendum. [Town Law, § 64(11-a)]

Authorized to construct sewer lines and laterals connecting sewer districts. [Unconsolidated Laws, Title 16, Chapter 17] Provision applicable only to towns located in whole or in part within sanitary sewer district established by the legislature.

Authorized to provide sewer, drainage and wastewater disposal improvements. [Town Law, Article 12-C]

In any town where an outlet drain or sewer has been or is to be constructed in any public highway, the town board may construct storm water laterals within the town entirely at the expense of the owners of the lands benefited and fronting on the streets or highways containing the lateral sewers or drains. The action of the town board must be predicated upon its receipt of a petition signed and acknowledged by at least a majority of the owners of real property fronting on the street in which it is proposed to lay out and construct the storm sewers and drains. [Highway Law, § 218]

**Suburban Towns** - Authorized to provide sewage disposal improvements. [Town Law, Article 3-A]

**Villages** - Board of trustees may establish a sewage system for the removal, treatment and disposal of sewerage or wastewater. [Village Law, Article 14 and § 17-1718]

Board of Sewer Commissioners may sell to a private corporation or to an individual the right to connect to its sewerage system if the system will not be rendered inadequate for the village. May contract with the State and with the Federal Government to provide sewerage and sewerage disposal facilities for State and Federal facilities. [Village Law, §14-1404]

## **Special Districts**

**Counties** - Authorized to establish sewer, drainage, wastewater disposal and water quality treatment districts. [County Law, Article 5-A]

**Towns** - Authorized to establish sewer, drainage, and wastewater disposal districts. [Town Law, Article 12 and Article 12-A]

Authorized to establish sewage disposal districts. [Town Law, § 190-b]

In Suffolk County, authorized to establish duck waste disposal districts. [Town Law, § 198-a]

## 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.

The legislative body of a city, town or village, upon approval of the department of health, may establish a sewage-works corporation to supply facilities or make provision for the collection, treatment and disposal of sewage at fair, reasonable and adequate rates agreed to between the corporation and the local governing body. The local governing body has the right to continue the maintenance and operation of the system in the event of abandonment or discontinuance of the system. [Transportation Corporations Law, Article 10]

### Selected Court Cases

---

*Niagara Mohawk Power Corp. v. Town of Watertown* (2005) 6 NY3d 744. In a proceeding challenging an ad valorem levy imposed by respondent Town upon petitioner power corporation's transmission and distribution facilities to fund a sewer district, an Appellate Division order which had affirmed a judgment granting respondents' motion to dismiss the proceeding was reversed. The record was inadequate to determine whether any of the properties benefited from the sewer district. Questions of fact existed as to whether petitioner owned the land on or under which the transmission and distribution facilities were situated, and as to whether, even if petitioner did not own the land, the sewer district encompassed storm sewers that actually or might potentially safeguard petitioner's transmission and distribution facilities from flooding.

*Dutcher v. Town of Shandaken* (3d Dept. 2005) 23 A.D. 781, 803 N.Y.S.2d 756. Town had easement by prescription for drainage area for public highway located on landowner's property, given that culvert and swale area to brook were open, obvious, and continuously maintained by town for more than 30 years, such that landowner had notice of town's use of drainage area, and therefore town had right to maintain easement and did not trespass when, to reopen culvert and drainage area, it dug ditch through dirt that landowner had used to block culvert and drainage area and had refused to remove.

*Rezek v. Village of Richmondville* (3d Dept. 2005) 24 A.D.3d 1169, 806 N.Y.S.2d 772. Village may impose water and sewer rents that are rationally related to the use of such services; a rational basis, rather than mathematical certainty, is all that is required.

*Tappan Wire & Cable, Inc. v. County of Rockland* (2d Dept. 2004) 7 A.D.3d 781, 777 N.Y.S.2d 517, leave to appeal dismissed 3 N.Y.3d 738, 786 N.Y.S.2d 816, 820 N.E.2d 295. County was entitled to immunity from claims that it negligently designed sewerage system.

*Tappan Wire & Cable, Inc. v. County of Rockland* (2d Dept. 2004) 7 A.D.3d 781, 777 N.Y.S.2d 517, leave to appeal dismissed 3 N.Y.S.3d 738, 786 N.Y.S.2d 816, 820 N.E.2d 295. County was not entitled to governmental immunity from claims that it negligently maintained sewerage system, as these claims challenged conduct which was ministerial in nature; a municipality has a duty to maintain its sewage or drainage system.

*Frontier Ins. Co. v. Town Bd. of Town of Thompson* (3d Dept. 2001) 285 A.D.2d 953, 728 N.Y.S.2d 311. Test in determining whether a local law imposing sewer rents is consistent with requirements of General Municipal Law article 14-F is whether the local law reflects a reasonable and nonarbitrary interpretation of the statute.

*Welch Foods, Inc. v. Wilson* (4<sup>th</sup> Dept. 2000) 277 A.D.2d 882, 716 N.Y.S.2d 243. Village's sewer ordinance, an economic regulation, was presumed constitutional and burden was on party alleging unconstitutionality of the ordinance to establish that village acted in an arbitrary and irrational way.

*Arcuri v. Village of Remsen* (4<sup>th</sup> Dept. 1994) 202 A.D.2d 991, 609 N.Y.S.2d 507. Local law establishing sewer rate system requires rational basis and equity, not mathematical certainty, to withstand challenge; fact that occupancy or use of particular property may, on occasion, result in a disproportionate cost compared to that of other properties does not compel conclusion that village's "user unit" classification was irrational or inequitable; village's system took into consideration village's small size and antiquated water system, limited number of hookups, need to stabilize amount billed to each property owner, and tremendous billing swings if rates were based on water usage.

*Baglivi v. Town of Highlands* (2d Dept. 1989) 147 A.D.2d 432, 537 N.Y.S.2d 552. Town board could consider benefits sewer improvements would confer on unimproved land if it were developed for future residential purposes in determining amount of benefit conferred on property and in apportioning costs of improvement.

*Skinner v. Village of Sylvan Beach* (3d Dept. 1985) 113 A.D.2d 1000, 494 N.Y.S.2d 580, appeal withdrawn 67 N.Y.2d 758, 500 N.Y.S.2d 1029, 490 N.E.2d 1235. Village sewer assessment which imposed tax solely on users of sewer system and which determined charges against various residential properties on basis of arbitrary assumptions of water and sewer usage by particular category violated requirement that assessments be made in proportion to benefits derived from the improvement.

*Tom Sawyer Motor Inns, Inc. v. Chemung County Sewer Dist. No. 1* (3d Dept. 1969), 33 A.D.2d 720, 305 N.Y.S.2d 408; appeal den 31 N.Y.2d 642; affirmed after remand 32 N.Y.2d 775, 298 N.E.2d 120, 344 N.Y.S.2d 958. Sewer district is not an independent public corporate entity, but exists as a department or administrative unit of county government.

*YMCA v. Rochester Pure Waters Dist.* (1975) 37 N.Y.2d 371; 334 N.E.2d 586; 372 N.Y.S.2d 633. Under doctrine of exhaustion of administrative remedies, judicial review of charitable organization's claim that it was exempt from sewer district assessment was premature when organization did not appeal to county board of supervisors as a remedy.

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

*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.

*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 2002-12* : *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 one of the villages.

*Comptroller Opinion 2001-3*: *General Municipal Law, §§ 94, 453; State Constitution, Article IX, § 1(f)*. A village may not fix its sewer rents at an amount that would generate revenues in excess of costs attributable to the sewer system, in order to provide funds for general village purposes.

*Comptroller Opinion 99-12*: *Town Law, §§206, 206-a*. Subject to public hearing and permissive referendum requirements, a town, in connection with a proceeding to extend or consolidate water districts, may determine to spread the cost of all existing and future debt of the district over the entire district, including existing and future extensions. Similarly, subject to public hearing and permissive referendum requirements, a town, in connection with a proceeding to extend or consolidate sewer districts, may determine to spread the cost of all existing and future debt of the district over the entire district, including existing and future extensions.

*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 98-8*: *Municipal Home Rule Law, § 10(1)(ii)(e)(3); Village Law §§ 3-300, 4-412*. A village board may delegate to a single board member responsibility to manage a sewage treatment study on behalf of the board and compensate the trustee for the additional responsibilities.

*Attorney General Opinion 98-47*: *Limited Liability Company Law § 201; Transportation Corporations Law, Art 10, §§ 116, 118, 119; L 1960, Ch. 1067*. A sewage-works corporation organized under the New York Transportation Corporations Law may not reorganize as a limited liability company.

*Comptroller Opinion 97-18*: *County Law, §§ 215(5), (6); 275*. Pursuant to County Law, § 215, real property acquired for a county sewer district that is no longer needed for public use, may be sold, upon a two-thirds vote of the board of supervisors, to the highest bidder after public advertisement. Such sale would not be subject to a referendum within the district.

*Comptroller Opinion 95-17*: *Town Law, §§198, 202, 202-a; Municipal Home Rule Law, §10(1)*. A town board is without authority to gratuitously transfer personal property to an improvement district (such as a sewer district), so that the personal property may be sold to generate revenue for the improvement district. The town may not adopt a local law authorizing such a gratuitous transfer.

*Comptroller Opinion 95-21*: *Town Law, § 206*. A town board may, on its own motion, and must, upon the filing of a proper petition, initiate a proceeding to consolidate two or more sewer districts. The consolidation is subject to public hearing and permissive referendum requirements.

*Attorney General Opinion 95-49*: *County Law Art 5-A; General Municipal Law § 450 et. seq.; Town Law Art. 12, 12-A; Transportation Corporations Law, Art. 10, §§ 115(1) and (4), 116(1), 117, 118(1)(a), 119(4), 122(1); L. 1960 Ch. 1067*. Each sewage-works corporation must petition for a sewer rate that is directly related to the cost of operating and maintaining its own sewer system for its own users in its approved area of operation. There is no authority for the municipal approval of a combined sewer rate or increase for two sewage-works corporations, regardless of the revenue needs or circumstances of either corporation.

*Comptroller Opinion 94-1:* County Law, §267; Municipal Home Rule Law, §10(1). A county is not authorized to chargeback to a county sewer district a portion of the salaries of county employees attributable to the administration and operation of the sewer district.

*Comptroller Opinion 93-14:* County Law, §§256, 266, 268, 270, 271. It appears that, except in circumstances involving principles of equal protection or detrimental reliance on the part of a property owner, a county may not be compelled to construct sewer extensions.

*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 91-24:* County Law, §265; Town Law, §§198(1)(f), 202(5), 209; Village Law, §14-1436. A town, on behalf of a town sewer district, may contract with a county to provide sewer service to properties within a county sewer district. The cost of such a contract would be financed by the county in the same manner as other operation and maintenance costs incurred by the district.

*Comptroller Opinion 89-25:* General Municipal Law, §§6-c, 6-d, 119, 119-a, 119-o; Village Law, §14-1404. Moneys in a repair reserve fund may be appropriated to a duly authorized capital reserve fund. Moneys in a capital reserve fund may be expended to pay debt service on obligations only as authorized by General Municipal Law, §6-c(9-a). A village may not contract with a town sewer district for the conveyance, treatment, and disposal of sewage at the village treatment plant, if the use by the district will, during the life of the contract, render the plant inadequate for the needs of the village or its inhabitants.

*Comptroller Opinion 88-33:* Town Law §§68, 190, 209, 202(2), 202-a. Since the cost of improvements for a town sewer district must be raised wholly at the expense of the district, town general fund moneys may not be used to pay the cost of the improvements.

*Comptroller Opinion 88-72:* County Law, §250; Town Law, §§190, 209. The establishment of a county sewer district would not necessarily preclude the subsequent establishment of a town sewer district within the county district.

*Comptroller Opinion 84-1.* Village may require property owners to connect to village sewer system and, if they fail to, village can install connecting pipe to property line and assess cost against property

*Comptroller Opinion 83-16.* A sewer system shall be established for an entire village, rather than district areas thereof.

*Attorney General Opinion 83-34.* A village may not require that a school district connect to its sewage treatment project.

*Comptroller Opinion 83-210.* Town may extend a sewer district to include real property currently within a waste water disposal district.

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

*Comptroller Opinion 80-694.* A joint sewer agency established under a municipal corporation agreement may be given the power to enter into contracts for the joint sewer project, and the agreement may also designate who shall execute such contracts.

*Attorney General Opinion 78-46.* Counties, cities, towns and villages have authority to construct operate and maintain sewage disposal systems and may accept industrial wastes for treatment and may also require pretreatment of industrial wastes. The municipalities may refuse sewage wastes from particular users and may refuse sewage wastes from any community not complying with applicable area-wide waste treatment plans.

*Comptroller Opinion 67-1051.* A village cannot contract (a) to finance an expansion of its sewage plant to accommodate private persons and corporations located outside, (b) to maintain the extraterritorial private sewage facilities or (c) to enter into an agreement for sale of services beyond its capacity to serve its inhabitants.