

OPINIONS OF THE ATTORNEY GENERAL

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INFORMAL OPINIONS

No. 2003-3

General Municipal Law, §§ 239-c, 239-l, 239-m, 239-n; Town Law, §§ 271, 272-a, 274-a, 274-b, 276(1).

Under General Municipal Law, § 239-c(2)(c), a county planning board member must recuse himself or herself from voting on any matter that was the subject of a vote, proposal or application before any body in the municipality where the individual serves as an official. In determining whether to appoint an individual to the county planning board, the county legislative body may consider the frequency of recusals required by an individual who serves as an official in a town and two villages located within the county. However, if the individual is so appointed, the individual does not need to recuse himself or herself from matters referred back to the town planning board, on which the individual serves, after being reviewed by the county planning board. *March 2003*

No. 2003-4

N.Y. Const., Art. VIII, § 5, Art. IX, § 2(c); Criminal Procedure Law, §§ 390.20; Executive Law, Art. 12, Art. 12A, §§ 240, 243, 246(2), 247, 256, 257-c; Family Court Act, §§ 252-a, 651, 653; Municipal Home Rule Law, § 10; Penal Law, §§ 65.00, 65.10; Vehicle and Traffic Law, Art. 31, §1193(1)(f); 9 NYCRR Parts 346-369; L. 1985, ch. 134; L. 1970, ch. 479.

The State has preempted the area of provision of probation services. A County may not enact local legislation permitting fees for probation services except as specifically authorized by statute. *April 2003*

No. 2003-5

N.Y. Const. Art. VIII, §1, IX, § 2(c)(i) and 2 (c)(ii)(1), Art. IX, § 3(d)(1); County Law, §§ 2(b), 150, 203, 250, 261, 265, 266, 268, 411, Art. 5, Art. 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); 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. *April 2003*

FORMAL OPINIONS

No. 2003-F1

Public Health Law, §§ 2960, 2961, 2962, 2964, 2965, 2966, 2970, 2972, 2973; 10 NYCRR 405.43(f).

Where a patient is incapacitated and did not consent to the entry of a do-not-resuscitate order prior to becoming incapacitated, a physician must obtain the consent of the patient's surrogate or health care agent before entering a do-not-resuscitate order, even if the physician concludes that administration of cardiopulmonary resuscitation would be "medically futile." Only where no health care agent was appointed and no competent surrogate is reasonably available and willing to make a decision may the physician enter a do-not-resuscitate order based on medical futility without obtaining consent, and then only with the concurrence of another physician that resuscitative efforts would be medically futile or by obtaining a court order. To dispute the decision of the health care agent or surrogate, the physician must proceed to mediation and, if the dispute remains unresolved, commence a court action. *April 2003*

