

OPINIONS OF THE ATTORNEY GENERAL

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FORMAL OPINIONS

No. 2004-F1

Alcoholic Beverage Control Law, §§3, 64, 64-a, 141; County Law, §101(2); General Municipal Law, §350(2); Municipal Home Rule Law, §§23(1)m, 24(1)(a); Town Law, §§11, 12; Village Law, §19-1900; L. 1964, Ch. 531, §19; L. 1900, Ch. 367, §3; L. 1934, Ch. 478, §§2, 141; L. 1933, Ch. 180; L. 1933, Ch. 180, §111; L. 1921, Ch. 155, §2; L. 1917, Ch. 624, §15; L. 1896, Ch. 112, §16.

When a vote in a town on the question of whether to allow a particular type of retail sale of alcoholic beverages results in an equal number of affirmative and negative votes, the proposal passes. *February 2004*

No. 2004-F2

Education Law, Art. 8-b, §§390, 392, 393; Retirement and Social Security Law, §§40(c)(5), 40(g), 500(b), 600; 2 NYCRR §§302.1, 324.

SUNY hospital residents and interns, as mandatory members of a public retirement system or program, have a statutory right to retirement participation as of the date they commenced state service. *February 2004*

No. 2004-F3

Public Officers Law, § 17; Social Services Law, §473; 22 NYCRR §§137.3(b), 137.3(g), 137.4(b), 1230.1.

The bar associations through which the New York State Attorney-Client Fee Dispute Resolution Program is implemented, and the individuals who administer the program, are not eligible for defense and indemnification under Public Officers Law, §17. The individual arbitrators and mediators, however, are. *February 2004*

INFORMAL OPINIONS

No. 2004-1

CPLR, § 4502; Civil Rights Law, §40-c(2); Domestic Relations Law, Arts. 2, 3, 9, 10-12, §§5, 6, 7, 8, 10, 11, 11-a, 12, 13, 14, 15, 15-a, 16, 17, 22, 23, 25, 140, 170, 200, 221, 236, 248; Education Law, §313; Estates, Powers and Trusts Law, §§4-4.1, 5-1.1; Executive Law, § 296; Insurance Law, §§240.30, 485.05, 2701; Penal Law, Art. 210,

§§240.30, 255.00, 485.05; 9 NYCRR §2204.6; 18 NYCRR §421.16; L. 1907, Ch. 742; L. 1896, Ch. 272; Alaska Constitution, Art. I, § 25; Vermont Stat. Ann., Title 15, §§1201 *et seq.*

The language of the New York State Domestic Relations Law indicates that the Legislature did not intend to authorize same-sex marriages. *March 2004*

No. 2004-2

Penal Law, §§164.01, 265.00, 265.20.

A municipality may not lawfully display knives designated as illegal to possess under Penal Law, § 265.01(1), unless they are disabled in such a manner as to bring them outside the scope of the applicable Penal Law definitions. *April 2004*

No. 2004-3

N.Y. Const., Art. 9, §2(c); CPLR, Art. 9, Arts. 80, 8010, 8019, 8021; Education Law, §6305(3); Municipal Home Rule Law, §10; Real Property Law, §§145, 334, 334-a, 333-b, 335, 339-5; Real Property Tax Law, §§503, 560, 902, 1312, 1422; Statutes, §96; L. 1985, Ch. 689; L. 1944, Ch. 182; L. 1938, Ch. 649; L. 1936, Ch. 662.

The county treasurer should search as far back as practical to ascertain the existence of unpaid taxes and tax liens prior to issuing the tax payment certificate pursuant to Real Property Law, § 334. A county may not adopt a local law requiring that the tax payment certificate be provided by an abstract and title company or a local law permitting the county treasurer to charge a fee for providing this certificate. *April 2004*

No. 2004-4

N.Y. Const., Art. IX, §2(c); Municipal Home Rule Law, §§10, 22; Town Law, Art. 16, §§267(2), 267-a, 267-b, 267-c; Village Law, §§7-712, 7-712-a, 7-712-b, 7-712-c; L. 1991, Ch. 692.

Town Law, §267-a(4) permits a town to pass local laws or ordinances enabling its zoning board of appeals to hear non-appellate matters, but does not authorize a town to restrict the appellate jurisdiction of its zoning board of appeals. *May 2004*

