

OPINIONS OF THE ATTORNEY GENERAL

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INFORMAL OPINIONS

No. 2005-13

N.Y. Const., Art. IX, § 2(c); Education Law, §§ 1604(35), 1709(36), 2503(18), 2554(16-c), 2590-g(15); Executive Law, § 171; Family Court Act, §§ 301.2(1), 712(a); General Obligations Law, §§ 78-a, 3-112, 31-3; Municipal Home Rule Law, § 10(1)(ii)(a)(12); Penal Law, § 260.10(2); Statutes, § 125; L. 1995, Ch. 398.

A town may enact a juvenile curfew law pursuant to its home rule police powers if it proves that the provision bears a substantial relationship to an important governmental objective, but it may not charge parents with a violation, punishable by fine and/or imprisonment, if their minor children violate the curfew. *May 2005.*

No. 2005-14

Alcoholic Beverage Control Law, §§ 65-b, 65-c, 65-d; County Law, § 700; Criminal Procedure Law, §§ 1.20, 720.35; General Municipal Law, § 136; Penal Law, § 10.00; Vehicle and Traffic Law, § 155; L. 1993, Ch. 389; L. 1989, Ch. 592.

A violation of Alcoholic Beverage Control Law § 65-c constitutes a criminal offense subject to prosecution by the district attorney, or someone acting with the proper authorization of the district attorney. *May 2005.*

No. 2005-15

Vehicle and Traffic Law, §§ 1604, 1640, 1684; L. 1996, Ch. 663.

The delegation in VTL § 1640(a)(22) provides authority for cities and villages to enact regulations setting aside on-street parking for use by employees of an adjacent government facility belonging to another governmental entity, as long as such restrictions are reasonable and rationally related to a legitimate public purpose. *June 2005.*

No. 2005-16

County Law, Art. 5, §§ 150, 153, 154; Education Law, §§ 2103, 2112, 2502; Second Class Cities Law, §§ 11, 112, 210; Town Law, §§ 23, 29, 51; L. 1953, Ch. 878, § 15; L. 1950, Ch. 762; L. 1947.

A member of a board of education in a city of less than 125,000 inhabitants is not prohibited by Education Law § 2502(7) from also serving as city supervisor. *July 2005.*

No. 2005-17

Town Law, §§ 64, 267, 267-a.

Where the secretary to the Zoning Board of Appeals (ZBA) is appointed by the ZBA, a member of the ZBA may not simultaneously serve as secretary to the ZBA. *July 2005.*

No. 2005-18

Criminal Procedure Law, §§ 1.20, 10.20, 10.30, 340.40; Municipal Home Rule Law, §§ 10(1)(ii)(d)(3), 11; Penal Law, §§ 10.00, 55.10, 70.15, 80.05; Town Law, §§ 135, 268; L. 1958, Ch. 606, §§ 1, 2.

A town may supersede Town Law § 268 to adopt a local law eliminating the possibility of incarceration upon conviction of a local zoning code violation. *August 2005.*

No. 2005-19

N.Y. Const., Art. VI, 17(d), Art. IX, §§ 1, 2; Art. XIII, § 3; County Law, § 400(7); Election Law, § 1-102; Municipal Home Rule Law, §§ 2(5), 10, 11, 22, 23, 24; Public Officers Law, §§ 42(3), (5), 43; Town Law, Art. 8, §§ 64, 80, 81; L. 1995, Ch. 88.

A town may enact a local law that would eliminate the town board's power to fill vacancies in elective offices by appointment and instead require a special election to fill a vacancy. *August 2005.*

No. 2005-20

Town Law, Art. 11, §§ 170, 171, 173, 174, 175, 176, 176-a, 176-b, 181; Village Law, § 10-1008; L. 1931, Ch. 57, § 1; L. 1932, Ch. 634, § 340.

The positions of fire district assistant fire chief and fire district firehouse maintainer are incompatible. *August 2005.*

FORMAL OPINIONS

No. 2005-F1

N.Y. Const., Art. III, §§ 7, 8, Art. XII, § 2, 4; Military Law, §§ 2, 3, 5, 5-a, 170, 167, 168; L. 1832, Ch. 84; L. 1918, Ch. 239; L. 1921, Chs. 20, 588, §§ 12, 40, 43; L. 1934, Ch. 84; L. 1941, Ch. 874; L. 1942, Ch. 911; L. 1944, Ch. 294; L. 1947, Ch. 635; L. 1948, Ch. 201; L. 1950, Ch. 825, §§ 5-7; 42 U.S.C. §§ 102, 108.

A member of the Legislature may serve in the New York Guard, and receive compensation for such service, without vacating his or her legislative seat. *August 2005.*