TRAINING MANUAL
FOR
SMALL CLAIMS ASSESSMENT REVIEW
HEARING OFFICERS

New York State Judicial Institute
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NOTE:

Portions of this material are derived from Mr. Louis J Naftalson's Manual for hearing Officers in Administrative Adjudication in the State of New York, published by the New York State Civil Service Commission in 1972.

I. THE SMALL CLAIMS ASSESSMENT REVIEW PROGRAM - BACKGROUND

The SCAR Program was enacted in 1982, as RPTL 730, to provide owners of 1, 2 or 3 family owner occupied dwellings an opportunity to challenge the assessment on their home. It was designed to be an inexpensive alternative to a more formal Tax Certiorari proceeding. The program provides for review by a SCAR Hearing Officer for a filing fee of only $30.00 in a timely manner and in an informal setting. Since 1993, certain unbuildable vacant lots qualify. Condominiums do not qualify unless they are in the homestead class or are defined as class one properties (New York City and Nassau County only).

Note: **Freeze Provision** - If the petitioner gets a reduction at SCAR, he or she can't file again the next year and must wait until the following year. If no reduction is granted, then the petitioner may file again the next year.

AUTHORITY: Real Property Tax Law sections 729 Through 738,
§202.58 of 22NYCRR-Uniform Rules, NYS Trial Courts
§74 of the Public Officer's Law-Code of Ethics

FORMS USED:

1. SCAR Petition
2. SCAR Decision Form
3. SCAR Notice of Hearing
4. SCAR Notice of Assignment

II. JURISDICTIONAL REQUIREMENTS

1. The property must be improved by a 1, 2 or 3 family owner occupied dwelling used **exclusively** for residential purposes. According to **Town Of New Castle v. Kaufman**, exclusively really means **primarily**.
2. Since 1993, certain unbuildable lots also qualify. Condominiums don't qualify unless they are designated as homestead class, or as class one properties (NYC and Nassau only).
3. Each SCAR Petition is limited to only one parcel of land, as per **Klein v. City of Rye.**
4. The petitioner must have previously asked the Board of Assessment Review for a reduction in their assessment.
5. The petitioner must file, or mail, three (3) copies of the SCAR Petition with the County Clerk of the county in which the property is located within thirty (30) days of the filing of the final assessment roll.
   The date of the filing of the final assessment roll is the date defined by the statute or the date the roll is actually filed, whichever is later.
   The thirty (30) day clock begins the day after the filing of the final assessment roll and runs for thirty (30) consecutive days, including weekends and holidays. However, if the thirtieth (30th) day falls on a weekend or holiday then the petition must be postmarked or filed by the next business day.
6. The petitioner must also file or mail, a copy of the SCAR Petition, within ten (10) days of having filed with the County Clerk, with:
   A. Assessing Jurisdiction. (by **certified mail, return receipt requested**) Failure to file in a timely manner is fatal to the petition, as per **Dolan v. The City of New Rochelle**, but only if the issue is raised at the hearing.
   B. School District. Failure to file in a timely manner may be fatal, it is within the discretion of the Hearing Officer, but only if the issue is raised at the hearing.
   C. County Treasurer. School District. Failure to file in a timely manner may be fatal, it is within the discretion of the Hearing Officer, but only if the issue is raised at the hearing.
7. **The requested reduction in assessment is limited by two (2) factors.**
   A. The **amount of a reduction requested** in the SCAR Petition may not be more than that which was requested **before the Board of Assessment Review**. If a partial reduction was granted before the board, then the balance may be requested in the SCAR Petition.
   B. The second limiting factor is the **Equalized Value** determination, as follows: **Divide the final assessed value by the equalization rate** (use the class one ratio in NYC and Nassau). The **result is the equalized value**. If the result is **$150,000.00 or less**, then the **only restriction** on the petitioner **is the amount requested before the Board**. If the **result is $150,001.00 or more**, then there is a further calculation which must be performed. **Calculate 25% of the final assessed value and compare it to the amount** requested before the Board.

Whichever figure is **less of a reduction** is the limit.

Example # 1

$10,000(final assessed vale)

10% (equalization rate) = $100,000.00 (equalized value)

The equalized vale is less than $150,000.00, so the only limit on the requested reduction in assessment is the amount requested before the Board of Assessment Review.

Example # 2

$10,000 (final assessed value)

5% (equalization rate) = $200,000.00 (equalized value)

The equalized value is more than $150,000.00, so a further calculation is required. Multiply the final assessed value by 25% and compare the result to the amount requested before the Board.

$10,000 (final assessed value) X 25% = $2,500.00

25% of the final assessed value is $2,500.00. Compare this to the amount of the reduction requested before the Board of Assessment Review. **Whichever figure is lower becomes the limit**. So if the amount requested before the Board was a reduction from $10,000 to $7,000, or a reduction of $3,000, and the 25% of the final assessed value is $2,500, then the requested reduction is limited to $2,500 since that is less of a reduction than $3,000.

III. FLOW OF PROCEDURES

1. Publication of the tentative assessment roll by the assessing unit.
2. Grievance day is held before the Board of Assessment Review, and must have been attended by the SCAR petitioner.
3. Publication of final assessment roll.
4. Home owner files, or mails, three (3) copies of SCAR Petition with the County Clerk of the county in which the property is located. This is done within thirty (30) days of the filing of the final assessment roll. The thirty (30) days begins the day after the final roll is filed and runs for thirty (30) consecutive days, including weekends and holidays. If the 30th day falls on a weekend or holiday, then, the deadline is extended to the next business day.
5. The home owner files, or mails, a copy of the SCAR Petition to each of the following entities within ten (10) days of filing with the County Clerk.
   1. The Assessing Jurisdiction (by **certified mail**)
   2. The School District
   3. The County Treasurer

   Failure to file with the Assessing Jurisdiction in a timely manner is fatal to the petition but only if the issue is raised at the hearing. Failure to file with the School District or the County Treasurer may be fatal to the petition. Again, the issue must be raised at the hearing. In either of these cases, it is up to the jurisdiction of the Hearing Officer.
6. The County Clerk retains one (1) copy of the SCAR Petition and forwards two (2) copies to the Supreme Court Assessment Review Clerk.
7. The Supreme Court Assessment Review Clerk retains one (1) copy of the SCAR Petition and forwards one (1) copy of the petition along with three (3) copies of the SCAR Decision Form, a voucher, a Notice of Hearing Form, a Notice of Appointment to Serve, and a batch of at least six (6) cases to the SCAR Hearing Officer.
8. The SCAR Hearing Officer reviews the cases for any conflict of interest, such as:
   1. Family relationships,
   2. Business relationships,

   If there is a problem, contact the Supreme Court Assessment Review Clerk, and the case will be reassigned.
9. The SCAR Hearing Officer then schedules and hears the cases within forty five (45) days after the last day for the filing of SCAR Petitions. If either party requests an evening hearing this **must** be granted unless there is some unusual circumstance. The Hearing Officer must contact both parties and give at least 10 days notice when scheduling the hearing.
10. The SCAR Hearing Officer renders a decision within thirty (30) days of the hearing. The Hearing Officer completes three (3) copies of the Decision Form and mails one (1) signed copy each to:
    a. The petitioner, or , the designated representative,

b. The Assessing unit,

c. The Supreme Court Assessment Review Clerk.

11. The pay is $75.00 per case but not more than **$300.00** dollars may be earned in any one day.

12. No further filing is required. The signed decision is a judicial order and is the only legal notice the Assessing jurisdiction requires to modify assessments. It is also the only legal notice that the taxing jurisdiction needs to process any tax refunds which may be required.

IV. THE SCAR PETITION

1. The SCAR Petition is both a legal filing and a worksheet. Incomplete or inconsistent forms are not reasons for dismissal. The petition may be amended at the hearing.

2. The SCAR Petition consists of five parts, as follows:

   a. Part 1- General information - This section contains information about the property and the property owner.

   b. Part 2 - Grounds for the Petition - This part is divided into four sections. Section A reviews the assessment requested before the Board, Section B is a worksheet which helps the petitioner calculate the equalized value, sections C and D help the petitioner determine if the assessment is unequal or excessive. This is followed by six questions designed to help support the full market value claimed.

   c. Part 3 is a listing of Taxing Jurisdictions.

   d. Part 4 is the designation of the petitioner's representative. If a representative is to appear, this section must be filled out and must be signed by the petitioner. The representative need not be an attorney.

   e. Part 5 - Eligibility and Certification - This reviews the jurisdictional requirements of the program and requires the signature of the petitioner or the designated representative.

V. THE SCAR HEARING OFFICER

The Scar Hearing Officer Presides over the SCAR hearing and must meet one of the following qualifications:

1. An attorney admitted to the bar and practicing in New York State, and registered with the New York State Office of Court Administration

2. A trained, certified appraiser

3. A trained former assessor

4. A licensed real estate broker

5. Have possession of a residential appraisal license from the New York state Department of State.

Current assessors and members of the Board of Assessment Review are ineligible to serve as SCAR Hearing Officers.

Process of Approval as a SCAR Hearing Officer

1. Upon submission of an application, potential SCAR Hearing Officers must attend a three hour training class conducted jointly by the Office of Court Administration and the New York State Office of Real Property Tax Services.

2. After attendance at the seminar, applications are forwarded to the local Administrative Judge who reviews and approves the applicants. The approved list of candidates is forwarded to the Deputy Chief Administrative Judge for review and approval.

3. Upon approval by the Deputy Chief Administrative Judge, the approved list is forwarded to the SCAR Coordinator of the Office of Court Administration who prepares Administrative Orders appointing the new Hearing Officers.

4. The orders are forwarded to Counsel's office for review and then are sent to the Chief Administrative Judge for signature.

5. Upon being signed by the Chief Administrative Judge, copies of the orders are sent to the appropriate jurisdictions as well as to the newly appointed Hearing Officers.

6. Batches of at least six (6) cases are randomly assigned to Hearing Officers at the appropriate time of the year. The rate of pay is $75.00 per case up to a total of **$300.00** which may be earned in any one day.

7. SCAR Hearing Officers must be re-certified every four (4) years.

Skills To Be Possessed By SCAR Hearing Officers

1. Judicial temperament and poise
2. Patience and tact
3. Ability to exercise sound judgment and discretion
4. Ability to be objective and free from influence
5. Ability to approach the hearing with an open mind, without bias or prejudgment of the issues.
6. Knowledge of the appropriate laws, rule and regulations and the ability to interpret them fairly.
7. Ability to preside over and control hearings with dignity and decorum.
8. Articulateness in making yourself understood in simple language by all persons at hearings, through pertinent, fair and comprehensive interrogation and comment.
9. Ability to analyze and evaluate testimony and other evidence.
10. Ability to determine the credibility of witnesses.
11. Ability to write clearly and concisely.
12. Absolute impartiality and the aura of impartiality.
13. Good common sense in dealing with all persons and issues.
14. A constant realization that you are acting and speaking for the State of New York.
15. As a Hearing Officer, you will act as both judge and jury. You must guide parties who may be unrepresented by counsel. It is your responsibility to get al the facts and to apply the appropriate rules of law with sound reasoning, faith and impartiality. You will be required to keep your hearings simple and flexible; you will have to adapt to such problems as parties who don't understand the applicable substantive law, parties who are inadequately prepared, and parties who don't understand what is and is not relevant to the case.

As a SCAR Hearing Officer you will be bound by a code of ethics as set forth in section 74 of the Public Officer's Law. You should become familiar with this code. See Appendix.

VI. THE SCAR HEARING

1. The SCAR Hearing is a public hearing which is to be conducted in such a way as to guarantee substantial justice in an informal manner, where the rules of evidence and pleading do not apply.

2. Scheduling the Hearing:

   a. The SCAR hearing must be held within thirty (30) days after assignment, if practicable.

   b. Contact each party at least ten (10) days in advance by telephone and try to follow this up with a written Notice of Hearing.

   c. If either party requests an evening hearing it must be granted unless there is an unusual circumstance.

3. The location of the hearing should be within the county in which the property is located. The setting should be neutral, free of interference and interruptions. At all times the setting should be dignified. If a location cannot be found, contact the Supreme Court Assessment Review Clerk and space will be found for you.

4. The length of the hearing may vary, but allow each party sufficient time.

5. Adjournments are allowed but are discouraged except for good cause.

6. Appearance at the hearing is required. Failure to appear is not an automatic dismissal nor is it a reason to grant an automatic adjournment. The Hearing Officer may proceed with the hearing based only upon the petition.

7. The parties may be represented at the hearing but this representative need not be an attorney (Board. Of Assessors v. Hammer).

8. Settlements - Parties may settle before or during the hearing. At all times ask that the parties stipulate in writing so that there is no disagreement later. Attach the settlement to your signed decision. Under no circumstances should the Hearing Officer try to coerce a settlement. If costs should be awarded, please indicate this on the decision unless the costs were waived as part of the settlement.

CONDUCT OF THE HEARING

1. Introduce yourself and ask each party to do the same.
2. Since this is an informal proceeding, the rules of evidence and pleading do not apply. Hence, there is no discovery.

3. Witnesses may be sworn in, if you so choose. This is not necessary.

4. Allow the petitioner to go first and finish his or her presentation.

5. Cross-examination of witnesses is permitted but do not let it get out of hand.

6. You may carefully ask questions yourself if you feel it is necessary to ascertain the facts.

7. You may take notes but no recording devices of any kind are allowed.

8. You may retain possession of any exhibits until you render a decision. At that time they should be returned.

9. At the conclusion of the hearing ask all parties to leave the room. This gives you time to summarize your notes and it avoids the appearance of impropriety.

10. Do not accept any further evidence unless both parties agreed to this during the hearing.

11. At no time should there be ex-parte contact with either party, unless it is to schedule a hearing.

12. In every instance you must do justice and give the appearance of doing justice.

VII. THE DECISION FORM

This is the form upon which the SCAR Hearing Officer records the disposition of the case. It is the equivalent of a judicial order and is the only legal filing required as a result of a decision being rendered. It is the only notification that the assessing jurisdiction will get that there has been a change in the assessment and the only notification which the taxing jurisdiction will get that a tax refund may be required.

Rendering a Decision

1. When rendering a decision in a SCAR case the Hearing Officer may do one of four things:
   a. Grant the petition in part
   b. Grant the petition in full
   c. Deny the petition
   d. Dismiss the petition on jurisdictional grounds

2. The decision may not reduce the assessment to a figure which is lower than that requested by the petitioner.

3. The decision must be filed within thirty (30) days of the date that the hearing was held.

4. The decision must be completed and signed in triplicate. An original and two photostats are acceptable. However, all three copies should have an original signature by the Hearing Officer.

5. A copy of the signed decision must be sent to each of the following:
   a. The Supreme Court Assessment Review Clerk
   b. The petitioner, or, designated representative
   c. The assessing jurisdiction

6. The decision form should be filled out completely. The form is broken down as follows:

   a. The first box records the date of the hearing and the date the decision is submitted to the Supreme Court Clerk
   b. Part 1 - Case Identification, identifies the county, the owner and the property.
   c. Part 2 - Decision, is where the disposition is indicated. The following five dispositions may occur.
      1. Disqualification
      2. Unequal assessment
      3. Excessive assessment
      4. No change in assessment
      5. Settlement

   d. If the petition is disqualified for reasons 1a-1f, then check off the box labeled

Notice of Disqualification and Right to Judicial Review. This tells the petitioner that he or she has thirty (30) days from the receipt of the decision to pursue a Tax Certiorari proceeding in Supreme Court.

e. In the case of a settlement, check off disposition #5 and enter the agreed upon amount on the DECISION BY HEARING OFFICER line. Also fill out the FINAL ASSESSMENT ROLL and CLAIMED ASSESSMENT lines. Attach a copy of the signed settlement to the signed decision.

f. The next box is the award of costs. If the assessment is reduced by 50% or more, you **must** award costs. If the assessment is reduced by less than 50% then you **may** award costs if you feel it is warranted. If costs are to be awarded you **must** check the box in this section or else the assessing jurisdiction will refuse to pay.

g. If the petition is granted in full or in part, check the box labeled Notice of Required Action By Assessing And Taxing Jurisdiction. This informs the assessing jurisdiction that there has been a change in the assessment and it informs the taxing jurisdiction that a tax refund may be required if taxes have already been collected on the old assessment.

h. In the next box the Hearing officer must affix his or her signature.

i. The opposite side of the form is where the Hearing Officer must briefly indicate the findings of fact which were the basis for the decision.

7. There are a number of important points to remember when rendering a decision:

a. Never render a decision from the bench except to confirm a settlement.

b. Never assume that a petition is valid or invalid on its face. Acceptance by the County Clerk does <u>not</u> constitute a decision on jurisdiction.

c. Weigh all the evidence in each case separately. What is valid in one case may not be valid in another.

d. Do not interject your personal knowledge into the facts of the case.

e. Remember that **<u>the assessment is always presumed to be correct</u>**. The burden of proof is on the petitioner. The petitioner is held to a level of substantial evidence, that is evidence which is enough to convince a reasonable person.

8. If you conduct yourself in a way as to give the impression of impartiality, as well as consider the evidence in an impartial manner, then you will have met the objectives of the program.

APPENDIX I - REAL PROPERTY TAX LAW, §729 THROUGH 738

Chapter 517

REAL PROPERTY TAX LAW—SMALL CLAIMS TAX ASSESSMENT REVIEW PROCEEDING—PETITION TO COMMENCE—SERVICE

AN ACT to amend the real property tax law, in relation to service of a petition to commence a small claims tax assessment review proceeding

Approved September 3, 1997, effective as provided in § 2.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1 Section 1. Subdivision 8 of section 730 of the real property tax law, as amended by chapter 735 of the laws of 1983 and as renumbered by chapter 687 of the laws of 1985, is amended to read as follows:

8. The petitioner shall mail a copy of the petition within ten days from the date of filing with the clerk of the supreme court to: (a) the clerk of the assessing unit named in the petition, or if there be no such clerk, then to the officer who performs the customary duties of that official, or to the president of the tax commission in a city with a population of more than one million and having a tax commission; (b) the clerk of any school district, except a school district governed by the provisions of article fifty-two of the education law, within which any part of the real property on which the assessment to be reviewed is located, or if there be no clerk or [his] the clerk's name and address cannot be obtained, then to a trustee; (c) the treasurer of any county in which any part of the real property is located; and (d) the clerk of a village which has enacted a local law as provided in subdivision three of section fourteen hundred two of this chapter if the assessment to be reviewed is on a parcel located within such village. Service upon the clerk of the assessing unit or other appropriate official specified in paragraph (a) of this subdivision shall be made by personal delivery or by certified mail, return receipt requested. In the event that service is made by personal delivery, the clerk of the assessing unit or other appropriate person shall provide a receipt for such service to the petitioner stating the date and time of service. Neither the school district,

EXPLANATION—Matter underlined or in *italics* is new;

county nor such village shall be deemed to have been made a party to the proceeding. § 1

§ 2. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law. § 2

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matter in brackets [ ] is old law to be deleted.

Chapter 154

REAL PROPERTY TAX LAW--SMALL CLAIMS ASSESSMENT REVIEW

AN ACT to amend the real property tax law, in relation to small claims assessment review

Approved June 28, 1993, effective as provided in § 2.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1 Section 1. Paragraph (b) of subdivision 1 of section 730 of the real property tax law, as amended by chapter 552 of the laws of 1991, is amended to read as follows:

(b) the property is: (i) improved by a one, two or three family owner-occupied structure used exclusively for residential purposes other than property subject to the assessment limitations of section five hundred eighty-one of this chapter and article nine-B of the real property law or (ii) the property is unimproved and is not of sufficient size as determined by the assessing unit or special assessing unit to contain a one, two or three family residential structure;

§ 2 § 2. This act shall take effect immediately, and shall apply to petitions filed against assessment rolls prepared on or after the first day of January next succeeding the date on which it shall have become a law.

EXPLANATION--Matter underlined or in *italics* is new;

19_90_; that a copy of said resolution is hereto annexed marked Exhibit "__91_____", and made a part of this petition.

19. On the __92__ day of __93_____, 19__94_____, your petitioner caused to be served upon __95_____, Comptroller, of the County of __96_____, __97_____, Chairman of the Board of Supervisors of the County of __98_____, __99_____, Clerk of the Board of Supervisors of the County of __100_____, __101_____, Treasurer of the County of __102_____, and __103_____, attorney of the County of __104_____, a duly verified claim for the refund pursuant to the terms of said final order in the aforesaid review proceedings, a copy of which proof of claim is hereto annexed, marked Exhibit "__105_____," and made a part of this petition.

20. Thereafter and on or about the __106__ day of __107_____, 19_108_, the said Board of Supervisors adopted a resolution rejecting the said claim, a copy of which resolution is hereto annexed, marked Exhibit "__109_____", and made a part of this petition.

21. Theretofore in cases where refund of County taxes has been directed by the Supreme Court in review proceedings because of erroneous assessments, the amount of State and County taxes directed to be refunded has been paid by direction of the Board of Supervisors from County funds.

22. The said Board of Supervisors of the County of __110_____ has refused and neglected to take such proceedings as are necessary to refund to your petitioner the proportionate amount of the State and County Taxes paid by your petitioner as directed by the aforesaid final order in review proceedings, and has unlawfully rejected the same.

WHEREFORE your petitioner prays that the proceedings and determination of the Board of Supervisors of __111_____ County relating to the claim of your petitioner hereinbefore set forth be reviewed to the end that the action of said Board of Supervisors in rejecting the aforesaid claim of your petitioner may be annulled and your petitioner's said claim allowed; and for said other or different relief as may be proper.

[Signature]
[Attorney for petitioner]
[Address and Telephone No.]

[Verification]

TITLE 1-A

Special Proceeding for Small Claims Assessment Review

HISTORY:

Add, L 1981, ch 1022, § 1, eff Nov 6, 1981 (see 1981 note below).

NOTES:

Editor's Notes:

Laws 1981, ch 1022, § 4, eff Nov 6, 1981, provides as follows:

§ 4. This act shall take effect immediately, provided, however, petitions may only be filed against assessments on final assessment rolls filed on or after January first next succeeding the date on which it shall have become a law. (Amd, L 1982, ch 700, § 1, eff July 22, 1982, deemed eff Nov 6, 1981.).

CROSS REFERENCES:

This title referred to in § 731.

CODES, RULES AND REGULATIONS:

Assessor's report for equalization purposes and of exempt property for all assessment rolls beginning with those filed in the year 1984. 9 NCYRR §§ 193-3.1 et seq.

CASE NOTES

CLS Real P Tax Art 7 Title 1-A, establishing small claims assessment review program, is constitutional; differentiation between owners of one-, 2- and 3-family residences and other property owners is rationally related to legitimate government purpose, classification does not violate equal protection by establishing differentiation that is arbitrary, and small claims procedure, contemplating possibility of correction in assessment, is not in conflict with town's option under CLS Real P Tax Art 19. Tonawanda v Ayler (1986) 68 NY2d 836, 508 NYS2d 171, 500 NE2d 869.

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

§ 729. Definitions

When used in this title:

1. "Assessed valuation" or "assessed value" means the determination made by assessors or the board of assessment review of the valuation of real property, including the valuation of exempt real property.

2. "Excessive assessment" or an assessment which is excessive shall mean and include:

(a) an entry on an assessment roll of the assessed valuation of real property which exceeds the full value of such real property; or

(b) an entry on an assessment roll of the taxable assessed valuation of real property which is excessive because the real property failed to receive all or a portion of a partial exemption to which the real property or owner thereof is entitled pursuant to the law authorizing the partial exemption.

3. "Taxable assessed valuation" or "taxable assessed value" means the assessed valuation of real property less partial exemptions.

3-a. "Tax district" means a county, city, town, village, school district or special district by or on behalf of which a tax or special ad valorem levy is imposed.

4. "Unequal assessment" or an assessment which is unequal shall mean and include:

(a) an entry on an assessment roll of the assessed valuation of real property improved by a one, two or three family residential structure which is made at a higher proportion of full value than assessed valuation of other residential real property on the same roll; or

(b) an entry on an assessment roll of the assessed valuation of real property which is made at a higher proportion of full value than the assessed valuation of all real property on the same roll.

HISTORY:

Add, L 1982, ch 714, § 20, eff Jan 1, 1983.
Sub 3-a, add, L 1985, ch 687, § 1, eff Aug 1, 1985.

RESEARCH REFERENCES AND PRACTICE AIDS:

98 NY Jur 2d, Taxation and Assessment § 450.

Texts:

NY Real Property Service § 61:44.

CASE NOTES

Use of residential assessment ratios and residential comparables in small claims assessment review procedure is constitutional. Tonawanda v Ayler (1985, 4th Dept) 115 App Div 2d 940, 497 NYS2d 781, affd (1986) 68 NY2d 836, 508 NYS2d 171, 500 NE2d 869.

§ 730. Procedure to review small claims

1. The chief administrator of the courts shall establish a small claims assessment review program in the supreme court. An owner of real property claiming to be aggrieved by an assessment on real property on the ground that such assessment is unequal or excessive may file a petition for review pursuant to this article provided that:

(a) the property owner shall have first filed a complaint pursuant to section five hundred twenty-four or section fourteen hundred eight of this chapter or the provisions of a local law or charter providing for administrative review of assessments;

(b) the property is improved by a one, two or three family owner-occupied structure used exclusively for residential purposes other than property subject to the assessment limitations of section five hundred eighty-one of this chapter and article nine-B of the real property law;

(c) the equalized value of the property does not exceed one hundred fifty thousand dollars or, in the event such equalized value exceeds one hundred fifty thousand dollars, the total assessment reduction requested does not exceed twenty-five percent of the assessed value of the property; and

(d) the petition shall not request an assessment lower than that requested in the complaint filed pursuant to section five hundred twenty-four or fourteen hundred eight of this chapter or the provisions of a local law or charter providing for administrative review of assessments.

For the purpose of this section, the equalized value of the property shall equal the assessed value of the property divided by the most recent equalization rate or, in the case of a special assessing unit, the most recent class one ratio, when established. In the event there has been a material change in the

level of assessment the special equalization rate shall be used to determine the equalized value of the property.

2. Upon determining any such complaint every real property tax board of assessment review shall inform every owner of one, two or three family owner-occupied residential real property in writing of the right to small claims assessment review in the manner provided by subdivision four of section five hundred twenty-five of this chapter. Such notice shall specify the last date on which petitions must be filed and the location where small claims assessment review forms may be obtained. The petition form for small claims assessment review shall be provided to such property owner, upon request, at no cost in accordance with the rules promulgated pursuant to section seven hundred thirty-seven of this title.

3. The petition for review pursuant to this title shall be filed within thirty days after the completion and filing of the final assessment roll containing such assessment or, in a city with a population of one million or more, before the twenty-fifth day of October following the time when the determination sought to be reviewed was made, in accordance with the rules promulgated pursuant to section seven hundred thirty-seven of this title. A fee of twenty-five dollars shall be paid upon filing of each petition, which shall be the sole fee required for petitions filed pursuant to this title. The county clerk of each county outside the city of New York shall retain five dollars of each filing fee and shall pay the balance of each fee to the state commissioner of taxation and finance as provided in paragraph (e) of subdivision two of section thirty-nine of the judiciary law. For the purposes of this section an assessment roll shall not be considered finally completed and filed until the last day provided by law for the filing of such assessment roll or until notice thereof has been given as required by law, whichever is later. Failure to file the petition within such time shall constitute a complete defense to the petition and the petition must be dismissed.

4. The petition form for small claims assessment review shall be prescribed by the office of court administration after consultation with the state board. Such form shall require the petitioner to set forth his name, address and telephone number, a description of the real property for which small claims assessment review is sought, the name of the assessing unit having made the assessment, the amount of the assessment and of the reduction in assessed valuation or taxable assessed valuation requested, each tax district which utilizes such assessment and the tax rate or adjusted tax rate of each tax district or consolidated tax rate, if applicable, a concise statement of the ground or grounds upon which review is sought and any such other information as may be required by the office of court administration.

5. No petition for small claims assessment review shall relate to more than one parcel of real property.

6. The petition may be made by a person who has knowledge of the facts stated therein and who is authorized in writing by the property owner to file

such petition. Such written authorization must be made a part of such petition and bear a date within the same calendar year during which the complaint is filed.

7. Commencement of a proceeding under this article shall not stay the proceedings of the assessors or other persons against whom the proceeding is maintained or to whom the assessment is delivered, to be acted upon according to law.

8. The petitioner shall mail a copy of the petition within ten days from the date of filing with the clerk of the supreme court to: (a) the clerk of the assessing unit named in the petition, or if there be no such clerk, then to the officer who performs the customary duties of that official, or to the president of the tax commission in a city with a population of more than one million and having a tax commission; (b) the clerk of any school district, except a school district governed by the provisions of article fifty-two of the education law, within which any part of the real property on which the assessment to be reviewed is located, or if there be no clerk or his name and address cannot be obtained, then to a trustee; (c) the treasurer of any county in which any part of the real property is located; and (d) the clerk of a village which has enacted a local law as provided in subdivision three of section fourteen hundred two of this chapter if the assessment to be reviewed is on a parcel located within such village. Neither the school district, county nor such village shall be deemed to have been made a party to the proceeding.

HISTORY:

Add, L 1981, ch 1022, § 1, eff Nov 6, 1981 (see 1981 note below).
Sub 1, add, L 1984, ch 473, § 18; amd, L 1986, ch 858, § 1, L 1987, ch 221, § 1, L 1991, ch 552, § 1, eff Jan 1, 1992.
Former sub 1, amd, L 1982, ch 531, § 1, L 1982, ch 714, § 21; repealed, L 1984, ch 473, § 18, eff July 20, 1984.
Sub 1, par (a), amd, L 1991, ch 552, § 1, eff Jan 1, 1992.
Sub 1, par (b), amd, L 1991, ch 552, § 1, eff Jan 1, 1992.
Former sub 1, par (b), repealed, L 1985, ch 687, § 2, eff Aug 1, 1985.
Sub 1, par (d), amd, L 1991, ch 552, § 1, eff Jan 1, 1992.
Sub 2, amd, L 1982, ch 714, § 21, eff Jan 1, 1983.
Sub 3, amd, L 1982, ch 531, § 2, L 1983, ch 357, § 1, eff June 26, 1983 (see 1983 note below).
Sub 4, add, L 1984, ch 473, § 18, eff July 20, 1984.
Former sub 4, amd, L 1982, ch 531, § 3, L 1982, ch 714, § 21; repealed, L 1984, ch 473, § 18, eff July 20, 1984.
Sub 5, formerly sub 6, renumbered sub 5, L 1985, ch 687, § 2, eff Aug 1, 1985.
Former sub 5, amd, L 1982, ch 531, § 4; repealed, L 1985, ch 687, § 2, eff Aug 1, 1985.
Sub 6, formerly sub 7, renumbered sub 6, L 1985, ch 687, § 2, eff Aug 1, 1985.
Former sub 6, renumbered sub 5, L 1985, ch 687, § 2, eff Aug 1, 1985.
Sub 7, formerly sub 8, renumbered sub 7, L 1985, ch 687, § 2, eff Aug 1, 1985.
Former sub 7, renumbered sub 6, L 1985, ch 687, § 2, eff Aug 1, 1985.
Sub 8, formerly sub 9, add, L 1982, ch 531, § 5; amd, L 1983, ch 735, § 23; renumbered sub 8, L 1985, ch 687, § 2, eff Aug 1, 1985.
Former sub 8, renumbered sub 7, L 1985, ch 687, § 2, eff Aug 1, 1985.
Sub 9, renumbered sub 8, L 1985, ch 687, § 2, eff Aug 1, 1985.
Former sub 9, add, L 1981, ch 1022, § 1; repealed, L 1982, ch 531, § 5, eff July 13, 1982.

NOTES:

Editor's Notes:

Laws 1981, ch 1022, § 4, eff Nov 6, 1981, provides as follows:

§ 4. This act shall take effect immediately, provided, however, petitions may only be filed against assessments on final assessment rolls filed on or after January first next succeeding the date on which it shall have become a law. (Amd, L 1982, ch 700, § 1, eff July 22, 1982, deemed eff Nov 6, 1981.)

Laws 1983, ch 357, § 2, eff June 26, 1983, provides as follows:

§ 2. This act shall take effect immediately and shall be deemed to have been in full force and effect from and after July thirteenth, nineteen hundred eighty-two. For the purposes of this act, payments of moneys to the state comptroller pursuant to provisions of subdivision three of section seven hundred thirty of the real property tax law, in effect prior to amendment by the provisions of this act, shall be deemed to have been payments to the commissioner of taxation and finance.

CROSS REFERENCES:

This section referred to in § 733.

City school districts of cities with one hundred twenty-five thousand inhabitants or more, CLS Educ §§ 2550 et seq.

Condominium Act, CLS Real P §§ 339-d et seq.

RESEARCH REFERENCES AND PRACTICE AIDS:

98 NY Jur 2d, Taxation and Assessment §§ 450–464.

99 NY Jur 2d, Taxation and Assessment §§ 450, 453, 454.

24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes § 146:154.

72 Am Jur 2d, State and Local Taxation §§ 1142, 1143.

Texts:

NY Real Property Service §§ 61:44, 62:53, 62:54.

CASE NOTES

1. In general

In an Article 78 proceeding, brought to compel a town to comply with a decision of a hearing officer directing a reduction in petitioner's real property assessment and a refund in excess taxes paid by him, based on a small claims assessment review under Real P Tax Law § 730, Special Term should have dismissed the petition without prejudice on the basis that the hearing officer had no authority to entertain the application for small claims assessment review, where the petitioner had not complied with requirements of Real P Tax Law § 730(1)(a) by not occupying the property, and where the tax reduction sought clearly exceeded the $750 limit set forth in Real P Tax Law § 730(1)(a)(3) so that the hearing officer's decision was void for lack of subject matter jurisdiction. Tyrrell v Greenville (1985, 3d Dept) 108 App Div 2d 1092, 485 NYS2d 659.

In CPLR article 78 proceedings challenging the decisions by Hearing Officers in small claims assessment review proceedings (RPTL art 7, tit 1-A), petitioner homeowners have not waived their right to seek a determination of a different assessment ratio by not bringing a tax certiorari proceeding since the object of petitioners' small claims assessment review proceedings was to obtain a change in their individual assessments on the ground of inequality, relief that a title 1-A proceeding is expressly designed to provide, by application of the residential assessment ratio promulgated by the State Board of Equalization and Assessment, not by a change of that ratio. Agosh v Cicero Bd. of Assessment Review (1991) 150 Misc 2d 756, 570 NYS2d 876.

In determining eligibility for small claims assessment review in special assessing units, "equalized value" is determined by dividing assessed value of real property by latest class ratio established for class 1 property. 8 Op Counsel SBEA No. 87.

Whether to dismiss a small claims assessment review petition on the ground that copies of the petition were not mailed to local government officials as required by Real Prop Tax § 730(a) is within the discretion of the hearing officer. Although aware of the decision in Dolan v. City of New Rochelle, Supreme Court, Westchester County, Index No. 2679/84, n.o.r., which held that the failure of a petitioner to mail copies of the petition to the assessing unit and the school dis-

trict was jurisdictionally fatal, it was added, whether other courts would follow the ruling in the Dolan case is unclear, particularly in view of the harsh result in a proceeding which is, by statute, informal. 9 Op Counsel SBEA No. 19 (1987).

Award of costs to a small claims assessment review petitioner whose petition is dismissed on jurisdictional grounds, that is, on the ground that the eligibility requirements provided in § 730 of the Real Property Tax Law were not satisfied, is void and cannot be enforced against the respondent assessing unit. 9 Op Counsel SBEA No. 27 (1988).

2. Constitutionality

CLS Real P Tax Art 7 Title 1-A, establishing small claims assessment review program, is constitutional; differentiation between owners of one-, 2- and 3-family residences and other property owners is rationally related to legitimate government purpose, classification does not violate equal protection by establishing differentiation that is arbitrary, and small claims procedure, contemplating possibility of correction in assessment, is not in conflict with town's option under CLS Real P Tax Art 19. Tonawanda v Ayler (1986) 68 NY2d 836, 508 NYS2d 171, 500 NE2d 869.

Use of residential assessment ratios and residential comparables in small claims assessment review procedure is constitutional. Tonawanda v Ayler (1985, 4th Dept) 115 App Div 2d 940, 497 NYS2d 781, affd (1986) 68 NY2d 836, 508 NYS2d 171, 500 NE2d 869.

3. Mixed use parcel

Psychiatrist, as owner of single-family residence, was entitled to small claims assessment review under CLS RPTL § 730 to contest real property tax assessment, even though residence was used on occasion as part-time office in rendering professional services, since residential taxpayers who occasionally use portion of their homes for business are no more able to expend time and cost of regular tax certiorari proceeding than those who use their dwellings exclusively for residential purposes. New Castle v Kaufmann (1988) 72 NY2d 684, 536 NYS2d 37, 532 NE2d 1265.

Mixed-use parcels, which are improved by qualifying residential structures, are eligible for small claims assessment review; however, such review should be limited to the portion of the parcel used for residential purposes. The question of eligibility of mixed-use structures has been disposed of by Chapter 531 of Laws of 1982, which amended § 730(1)(a)(2) of the Real Property Tax Law to explicitly provide that only structures used exclusively for residential purposes qualify for small claims assessment review. However, there has been no legislation to resolve the status of mixed-use parcels (i.e., used partly for residential purposes and partly for commercial or other nonresidential purposes). In the analysis of the latter issue, there is an unstated presumption that the values attributed to the residential and nonresidential portions are readily identifiable. In nearly all the instances in which the question of eligibility of nonresidential portions of a parcel has arisen, the petitioners have based their challenges on the values attributed to such portion as shown on property record cards maintained by the assessor. The use of the data indicated on such cards and other work products of the assessor seem adequate for the purpose of ascertaining the value attributed to the respective portions of a parcel. Accordingly, while mixed-use parcels improved by residential structures and otherwise meeting the requisites for review do qualify for small claims review, such review should be limited to the portions of the parcel used for residential purposes. 9 Op Counsel SBEA No. 43 (1991).

4. Seasonal residence

A seasonal residence may qualify for small claims assessment review, provided that during the period it is in use it is occupied by its owner. 7 Op Counsel SBEA No. 80 (1982).

5. Corporate-owned property

Real property owned by corporation does not qualify for small claims assessment review. 8 Op Counsel SBEA No. 93.

6. Condominiums

Condominiums in special assessing units which are classified as "class one" properties and condominiums in approved assessing units which are classified as "homestead" properties are eligible for small claims assessment review under CLS RPTL 730. 9 Op Counsel SBEA No. 3.

7. Joining parcels

RPTL 730 (5) clearly and unequivocally prohibits petitioner from seeking to join his two separately assessed lots in one petition for small claims assessment review; RPTL 730 (5) provides that "[n]o petition for small claims assessment review shall relate to more than one parcel of real property", and "parcel" is defined as separately assessed lot, parcel, piece or portion of real property; lots for which petitioner seeks small claims assessment review are separately assessed lots covered by definition–fact that petitioner uses two lots, one containing his residence and other containing tennis court and guesthouse-servant quarters, as one parcel, will not permit him to treat his property as one parcel for purposes of small claims assessment review. Kline v Rye (1989, 2d Dept) 150 App Div 2d 576, 541 NYS2d 840, app den (1989) 74 NY2d 614, 547 NYS2d 848, 547 NE2d 103.

8. Limitations period

Four month time limitation period to review small claims real property tax assessment under CLS RPTL §§ 729 et seq., begins to run from date of hearing officer's decision and not from date of filing of final assessment role. Katz v Assessor of Southampton (1986) 131 Misc 2d 552, 500 NYS2d 588.

9. Miscellaneous

One person may serve simultaneously as town justice, as a member of the zoning board of ap-

peals of a village within the town and, where the town justice does not serve on the town board, as a member of the town board of assessment review. Ops Atty Gen 84-14.

§ 731. Appointment of hearing officers

1. The chief administrator of the courts shall appoint a panel of small claims hearing officers selected from persons requesting to serve as such hearing officers who shall have submitted resumes of qualifications. Hearing officers to be appointed to the panel shall be qualified by training, interest, experience, temperament and knowledge of real property assessment and valuation practices and provisions of state and local law governing the making of assessments, but need not be attorneys at law. The chief administrator of the court shall randomly assign a hearing officer or hearing officers, or may assign a judicial hearing officer designated pursuant to article twenty-two of the judiciary law, to conduct an informal hearing on the petition for review with the applicants for small claims and a representative of the assessing unit which made the assessment sought to be reviewed. Hearing officers assigned shall be familiar with the assessing unit in which the real property subject to review is located, and shall not possess any conflict of interest as defined by the public officers law with regard to the petitions to be heard. Hearing officers shall be compensated for their services in accordance with a fee schedule to be established by the chief administrator of the courts. For purposes of subdivisions two and three of this section and the other provisions of this title, the term "hearing officer" shall include a judicial hearing officer.

2. A hearing officer shall disqualify himself or herself from a hearing where such officer possesses a conflict of interest as defined by the public officers law. Such hearing officer shall also disqualify himself or herself from a hearing where such hearing officer has a direct or indirect interest in any property for which a petition has been filed. For the purposes of this title, a hearing officer shall be deemed to have a direct or indirect interest in any property for which a petition has been filed when the hearing officer, spouse, or any of his or her minor children:

(a) is the owner of such property; or

(b) is an officer, director, partner or associate of a law firm or real estate firm which has a financial interest with the owner of such property.

3. Where a hearing officer disqualifies himself or herself, such hearing officer shall notify the chief administrator of the court who shall reassign the case to another hearing officer.

HISTORY:

Add, L 1981, ch 1022, § 1, eff Nov 6, 1981 (see 1981 note below).
Sub 1, formerly entire section, so numbered, L 1985, ch 687, § 3; amd, L 1992, ch 55, § 413, eff April 10, 1992.
Sub 2, add, L 1985, ch 687, § 3, eff Aug 1, 1985.
Sub 3, add, L 1985, ch 687, § 3, eff Aug 1, 1985.

NOTES:

Editor's Notes:

Laws 1981, ch 1022, § 4, eff Nov 6, 1981, provides as follows:

§ 4. This act shall take effect immediately, provided, however, petitions may only be filed against assessments on final assessment rolls filed on or after January first next succeeding the date on which it shall have become a law. (Amd, L 1982, ch 700, § 1, eff July 22, 1982, deemed eff Nov 6, 1981.).

RESEARCH REFERENCES AND PRACTICE AIDS:

98 NY Jur 2d, Taxation and Assessment §§ 450-464.
24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes § 146:156.
72 Am Jur 2d, State and Local Taxation § 1151.

Texts:

NY Real Property Service § 62:56.

CASE NOTES

In small claims assessment review proceedings, the fact that the Hearing Officer had previously been the town's assessor and as such had fixed assessments on the subject properties, did not require that he disqualify himself by reason of a conflict of interest (RPTL 731 [2]) and, thus, the attack made on the participation of the Hearing Officer in the proceedings arising out of a previous employment is not a basis for disturbing his determinations. Agosh v Cicero Bd. of Assessment Review (1991) 150 Misc 2d 756, 570 NYS2d 876.

§ 732. Hearing procedures

1. Small claims hearings shall be held within forty-five days after the final day for filing petitions. In the event all such hearings cannot be held within forty-five days, hearings may be held at a later date in accordance with the rules promulgated pursuant to section seven hundred thirty-seven of this title. Such hearing, where practicable, shall be held at a location within the county in which the real property subject to review is located. The petitioner and assessing unit shall be advised by mail of the time and place of such hearing at least ten working days prior to the date of the hearing; provided, however, failure to receive such notice in such time period shall not bar the holding of a hearing.

2. The petitioner need not present expert witnesses nor be represented by an attorney at such hearing. Such proceedings shall be conducted on an informal basis in such manner as to do substantial justice between the parties according to the rules of substantive law. The petitioner shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence. All statements and presentation of evidence made at the hearing by either party shall be made or presented to the hearing officer who shall assure that decorum is maintained at the hearing. The hearing officer shall consider the best evidence presented in each particular case. Such evidence may include, but shall not be limited to, the most recent equalization rate established for such assessing unit, the residential assessment ratio promulgated by the state board pursuant to section seven hundred thirty-eight of this title, and the assessment of comparable residential properties within the same assessing unit. A village which has enacted a local law as provided in subdivision three of section fourteen hundred two of this chapter shall be deemed an assessing unit for purposes of this subdivision. The hearing officer may, if he deems appropriate, view or inspect the real property subject to review. The petitioner shall have the burden of proving entitlement to the relief sought.

3. All parties are required to appear at the hearing. Failure to appear shall result in the petition being determined upon inquest by the hearing officer based upon the available evidence submitted.

4. The hearing officer shall determine all questions of fact and law de novo.

HISTORY:

Add, L 1981, ch 1022, § 1; amd, L 1985, ch 687, § 4, eff Aug 1, 1985.
Sub 1, amd, L 1982, ch 531, § 6, L 1985, ch 687, § 4, eff Aug 1, 1985.
Sub 2, amd, L 1983, ch 735, § 24, L 1985, ch 687, § 4, eff Aug 1, 1985.
Sub 3, add, L 1986, ch 858, § 4, eff Aug 2, 1986.
Former sub 3, renumbered sub 4, L 1986, ch 858, § 4, eff Aug 2, 1986.
Sub 4, formerly sub 3, renumbered sub 4, L 1986, ch 858, § 4, eff Aug 2, 1986.

RESEARCH REFERENCES AND PRACTICE AIDS:

98 NY Jur 2d, Taxation and Assessment §§ 450–464.
24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes § 146:155.
72 Am Jur 2d, State and Local Taxation § 1151.

Texts:

NY Real Property Service §§ 61:44, 62:55.

CASE NOTES

Determination of small claims hearing officer that state equalization rate was best evidence presented of ratio of assessed value to fair value of other residential properties on assessment roll of village rather than residential assessment ratio promulgated by state board does not constitute error of law. Katz v Assessor of Southampton (1986) 131 Misc 2d 552, 500 NYS2d 588.

In a year in which the assessing unit implements a revaluation or update, the residential assessment ratio (RAR) should not be accorded any probative value in the review of assessment. The RAR is a simple arithmetic computation derived by dividing the total assessments by total sales prices of all residential parcels in an assessing unit which was sold at arms length between the filing of the latest final assessment roll, and would not be a valid measure of the level of assessment in the current assessment roll, because there has been a change in the level of assessment. The result is that the use of the RAR in reviewing assessments on the current or revalued assessment roll would be an inappropriate comparison. While § 738(2) of the RPTL does authorize the adjustment of the RAR to account for a change in level of assessment of 5 percent or more, State Board's Rules provide that such adjustment must be made no later than 60 days prior to the filing of the tentative assessment roll. The result is that only a change in the level of assessment on the previous assessment roll would be accounted for in the current RAR. A change in level of assessment on the current assessment roll would not be accounted for until the next RAR is established. 9 Op Counsel SBEA No. 40 (1991).

§ 733. Decision of petition for small claims assessment review

1. The hearing officer shall make a decision in writing with respect to the petition for small claims assessment review within thirty days after conclusion of the hearing conducted with respect thereto. The hearing officer's decision may grant the petition in full or in part or may deny the petition provided, however, that the decision of the hearing officer may not reduce the assessment lower than that requested by the petitioner. If the assessment is reduced by an amount equal to or greater than half the reduction sought, the hearing officer shall award the petitioner costs against the respondent assessing unit in an amount equal to the fee paid by the petitioner to file the petition for review. If the assessment is reduced by an amount less than half of the reduction sought, the hearing officer may award the petitioner costs against the respondent assessing unit in an amount not to exceed the fee paid by the petitioner to file the petition for review.

2. If the hearing officer determines from the petition and upon the evidence presented at the hearing that the assessment being reviewed is unequal or excessive, he shall order a correction of the assessment upon the roll, in whole or in part, in such manner as shall be in accordance with law or shall make it conform to other residential assessments upon the same roll.

3. If the hearing officer determines that the petitioner did not qualify for review pursuant to section seven hundred thirty of this title, the petition shall be denied without prejudice and the petitioner, notwithstanding any other provision of law, shall be permitted to commence a proceeding pursuant to title one of this article within thirty days after having been served with a certified copy of the decision; provided, however, that the petitioner may, with the consent of the hearing officer, amend the petition to reduce the amount of relief sought so as to conform with the requirements of section seven hundred thirty of this title.

4. The decision of the hearing officer shall state the findings of fact and the evidence upon which it is based. Such decisions shall be attached to and made part of the petition for review and shall be dated and signed. Where the decision of the hearing officer determines that the petitioner did not qualify for review pursuant to section seven hundred thirty of this article, a notice shall be attached to such decision stating that the petitioner may seek judicial review of such assessment pursuant to this article, and that the last day to file for judicial review is thirty days after having been served with a certified copy of such decision. Where the decision of the hearing officer determines that the petition is granted in full or in part, a notice shall be attached to such decision stating that the assessment will be changed in compliance with such decision and that such change shall be made on the assessment and tax rolls before the levy of taxes, if possible, or that a refund of taxes shall be made within ninety days after such decision is made, or as is provided in Nassau and Suffolk counties, followed by name, telephone number and/or address of a person or department responsible to take the actions required by section seven hundred thirty-four of this article.

5. The hearing officer shall promptly transmit the decision to the clerk of the court, who shall file and enter it in accordance with the rules promulgated pursuant to section seven hundred thirty-seven of this title.

6. The hearing officer shall, promptly mail a copy of the decision to the petitioner, the clerk of the assessing unit, and the clerk of each tax district named in the petition.

HISTORY:

Add, L 1981, ch 1022, § 1, eff Nov 6, 1981 (see 1981 note below).
Sub 1, amd, L 1981, ch 1023, § 1, L 1986, ch 858, § 2, eff Aug 2, 1986.
Sub 2, amd, L 1982, ch 714, § 22, eff Jan 1, 1983.
Sub 3, amd, L 1982, ch 531, § 7, eff July 13, 1982.
Sub 4, amd, L 1986, ch 858, § 3, eff Aug 2, 1986.

NOTES:

Editor's Notes:

Laws 1981, ch 1022, § 4, eff Nov 6, 1981, provides as follows:

§ 4. This act shall take effect immediately, provided, however, petitions may only be

filed against assessments on final assessment rolls filed on or after January first next succeeding the date on which it shall have become a law. (Amd, L 1982, ch 700, § 1, eff July 22, 1982, deemed eff Nov 6, 1981.).

CROSS REFERENCES:

This section referred to in § 736.

RESEARCH REFERENCES AND PRACTICE AIDS:

98 NY Jur 2d, Taxation and Assessment §§ 450–464.

24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes §§ 146:157, 146:160.

72 Am Jur 2d, State and Local Taxation § 1152.

Texts:

NY Real Property Service § 62:57.

CASE NOTES

A petition to compel a town to comply with the determination of a hearing officer pursuant to Real P Tax Law Title 1-a, directing a reduction of the assessment of petitioner's real property and a refund of the excess taxes paid, would be dismissed, without prejudice to petitioner's commencing a new proceeding; the hearing officer had no authority to entertain the application for a small claims assessment review since petitioner did not comply with the requirements of § 730(1)(a) as petitioner did not occupy the property and the tax reduction sought clearly exceeded the $750 limit. The hearing officer's decision was thus void for lack of subject matter jurisdiction. Tyrrell v Greenville (1985, 3d Dept) 108 App Div 2d 1092, 485 NYS2d 659.

In small claims assessment review proceedings, the determinations of the Hearing Officers were not rendered arbitrary and capricious by their failure to state the appropriate percentage of fair value to be applied in determining each assessment since there is no statutory requirement that a ratio be stated in a Hearing Officer's decision (RPTL 733 [4]) or even that one be computed by the Hearing Officer, whose task is to determine whether the challenged assessment is unequal or excessive, a function that could be performed by comparisons of values and assessments without the intermediate step of ratio computation. In addition, the finding that each petitioner failed to present sufficient proof to overcome a presumption that the assessment was correct or to support the claim of unequal assessment provides a basis for the decisions rendered. Agosh v Cicero Bd. of Assessment Review (1991) 150 Misc 2d 756, 570 NYS2d 876.

A board of assessment review may not reduce an assessment to an amount less than that requested in a complaint, notwithstanding authority of a court to do so under appropriate circumstances. 7 Op Counsel SBEA No. 83 (1982).

The failure to enter on the current assessment roll small claims assessment review deductions ordered upon the prior year's roll does not constitute a "clerical error" pursuant to CLS RPTL 550. 9 Op Counsel SBEA No. 12.

Award of costs to a small claims assessment review petitioner whose petition is dismissed on jurisdictional grounds, that is, on the ground that the eligibility requirements provided in § 730 of the Real Property Tax Law were not satisfied, is void and cannot be enforced against the respondent assessing unit. 9 Op Counsel SBEA No. 27 (1988).

§ 734. Refund of taxes resulting from small claims assessment review

1. If in a final order in any proceeding under this title, it is determined that the assessment reviewed was excessive or unequal pursuant to section seven hundred thirty of this title and ordered or directed that the same be corrected and such order is not made in time to enable the assessors or other appropriate officer, board or body to make a new or corrected assessment prior to the expiration of the warrant for the collection of any tax or special ad valorem levy upon the real property the assessment of which has been determined to be excessive or unequal, then any amount at any time collected upon such excessive or unequal assessments shall be refunded within ninety days of such decision in the same manner as provided for in section seven hundred twenty-six of this chapter or as is otherwise provided

by law with respect to Nassau and Suffolk counties, provided, however, that no application need be made by the petitioner for such refund. The notice of the hearing officer to the clerk of the tax district shall constitute an application for refund for the purpose of this section. Where a refund is not made within ninety days, interest in the amount of one percent per month shall be added to the amount to be refunded for each month or part thereof in excess of ninety days and paid to the petitioner. Notwithstanding paragraph (a) or (b) of subdivision one of section seven hundred twenty-six of this chapter, where an assessment reduction is not in excess of ten thousand dollars the amount of tax or other levy, including interest thereon, to be refunded shall be charged to the municipal corporation or special district by or on behalf of which they were levied; or as is otherwise provided by law with respect to Nassau and Suffolk counties.

2. In a city having a population of one million or more, the notice of the hearing officer shall be mailed to the office of the city collector.

HISTORY:

Add, L 1981, ch 1022, § 1; amd, L 1982, ch 531, § 8, L 1982, ch 714, § 23, eff Jan 1, 1983.

Sub 1, formerly entire section, so numbered and amd, L 1982, ch 531, § 8; amd, L 1984, ch 832, § 1, eff Jan 1, 1985.

Sub 2, add, L 1982, ch 531, § 8, eff July 13, 1982.

CROSS REFERENCES:

This section referred to in § 733.

RESEARCH REFERENCES AND PRACTICE AIDS:

98 NY Jur 2d, Taxation and Assessment §§ 450–464.

24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes § 146:158.

72 Am Jur 2d, State and Local Taxation § 1064.

Texts:

NY Real Property Service § 62:58.

CASE NOTES

Rate of interest applicable to a refund in a small claims assessment review proceeding is 1 percent per month (or fraction thereof) beginning on the ninety-first day after receipt of the hearing officer's decision by clerk of tax district. 7 Op Counsel SBEA No. 109 (1982).

Refund of taxes due as result of judicially ordered reduction in assessed value should be paid to mortgagor rather than mortgagee holding escrow account, unless mortgagor has defaulted in mortgage. 8 Op Counsel SBEA No. 123.

§ 735. Determination not precedent

No transcript of testimony shall be made of a small claims assessment review hearing. The hearing officer's decision of a petition for small claims assessment review shall not constitute precedent for any purpose or proceeding involving the parties or any other person or persons.

HISTORY:

Add, L 1981, ch 1022, § 1, eff Nov 6, 1981 (see 1981 note below).

NOTES:

Editor's Notes:

Laws 1981, ch 1022, § 4, eff Nov 6, 1981, provides as follows:

§ 4. This act shall take effect immediately, provided, however, petitions may only be filed against assessments on final assessment rolls filed on or after January first next succeeding the date on which it shall have become a law. (Amd, L 1982, ch 700, § 1, eff July 22, 1982, deemed eff Nov 6, 1981.).

RESEARCH REFERENCES AND PRACTICE AIDS:

98 NY Jur 2d, Taxation and Assessment §§ 450-464.

24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes § 146:159.

Texts:

NY Real Property Service § 62:59.

§ 736. Waiver of other remedies and right to judicial review

1. Except as provided in subdivision three of section seven hundred thirty-three of this title, the election to file a small claims real property assessment review petition shall be irrevocable and shall constitute a waiver of the right to commence a review proceeding under title one of this article upon the conclusion of the hearing.

2. A petitioner to an action pursuant to this title may seek judicial review pursuant to article seventy-eight of the civil practice law and rules provided that such review shall be maintained against the same parties named in the small claims petition.

HISTORY:

Add, L 1981, ch 1022, § 1; amd, L 1982, ch 531, § 9, eff July 13, 1982.

CROSS REFERENCES:

Proceeding against body or officer, CLS CPLR §§ 7801 et seq.

RESEARCH REFERENCES AND PRACTICE AIDS:

98 NY Jur 2d, Taxation and Assessment §§ 450–464.

24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes § 146:160.

Texts:

NY Real Property Service § 62:60.

CASE NOTES

Appeal does not lie from decision of hearing officer in proceeding brought under CLS RPTL Art 7, Title 1-A; review is by way of CLS CPLR § 7801. Kuchmak v Waldmiller (1987, 4th Dept) 135 App Div 2d 1147, 523 NYS2d 329.

A petition to compel a town to comply with the determination of a hearing officer pursuant to Real P Tax Law Title 1-a, directing a reduction of the assessment of petitioner's real property and a refund of the excess taxes paid would be dismissed, without prejudice to petitioner's commencing a new proceeding; the hearing officer had no authority to entertain the application for a small claims assessment review since petitioner did not comply with the requirements of § 730(1)(a) as petitioner did not occupy the property and the tax reduction sought clearly exceeded the $750 limit. The hearing officer's decision was thus void for lack of subject matter jurisdiction. Tyrrell v Greenville (1984) 124 Misc 2d 54, 475 NYS2d 779, revd on other grounds (1985, 3d Dept) 108 App Div 2d 1092, 485 NYS2d 659.

§ 737. Rules of practice and procedure

The chief administrator of the courts shall adopt such rules of practice and procedure, not inconsistent herewith, as may be necessary to implement the small claims assessment review procedure hereby established. Such rules shall provide for the scheduling of evening hearings where practicable, the

availability of petition forms, and the procedures for the filing of decision rendered by hearing officers pursuant to the provisions of this title.

HISTORY:
Add, L 1981, ch 1022, § 1; amd, L 1982, ch 531, § 10, eff July 13, 1982.

CROSS REFERENCES:
This section referred to in §§ 730, 732, 733.

RESEARCH REFERENCES AND PRACTICE AIDS:
98 NY Jur 2d, Taxation and Assessment §§ 450–464.
24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes §§ 146:155, 146:161.

Texts:
NY Real Property Service § 62:61.

§ 738. Residential assessment ratio

1.(a) For the purposes of this title, thirty days prior to the date for the filing of the tentative assessment roll of an assessing unit, the state board shall determine the residential assessment ratio for such assessing unit provided that (i) at least five arms length sales of residential property have occurred between the filing of the latest final assessment roll and the filing of the preceding final assessment roll, and (ii) during the current year the assessing unit is not completing a revaluation or update.

(b) Such ratio shall be established as the median ratio in the list of ratios of assessments to sales prices sorted in ascending order. The ratios in such list shall be calculated by dividing the assessment of each residential property sold at arms length during this period by the sales price of each such property located in each assessing unit as reported pursuant to section five hundred seventy-four of this chapter or, in the city of New York, chapter twenty-one of title eleven of the administrative code of the city of New York; provided that the state board shall correct to the extent practicable or disregard materially erroneous reports and shall increase or decrease the residential assessment ratio to account for a change in level of assessment of five percent or more in the total assessed value of residential real property or, if not available, of all taxable real property. For purposes of this section, "change in level of assessment" has the meaning set forth in section twelve hundred twenty of this chapter except that a change in level of assessment shall be determined with reference only to residential real property if the necessary information is available. The state board shall, in addition to promulgating such ratio, indicate the number of sales upon which such ratio is determined.

(c) The residential assessment ratio shall be made available at the office of the county director of real property tax services, the office of the county clerk and the office of the assessor or, in a city with a population of one million or more, the office of the tax commissioner of such city. Such ratio shall be provided to the office of court administration for distribution to small claims hearing officers.

2. If, no later than thirty days prior to the filing and completion of the final assessment roll, an assessor or county director of real property tax services presents to the state board adequate documentation or such documentation is otherwise made available to the state board that the residential assessment ratio is materially in error because it includes sales of non-residential properties or because the full sales prices or applicable assessed values as stated on real property transfer report forms or, in the case of the city of New York, their equivalent are incorrect, then the state board shall recompute such ratio by excluding the sales of such properties or making the appropriate corrections. Where such recomputation results in a substantial change the state board shall establish a new ratio prior to the filing of the final assessment roll by such assessing unit and such new ratio shall supersede for all purposes the original ratio. Such new ratio shall be made available in the same manner as provided in subdivision one of this section.

3. For the purposes of this section, "residential properties" shall mean real property, other than a cooperative or a condominium, improved by a one, two or three family residential structure as of the date of the sale and as of the taxable status date for the assessment roll from which the assessments reported pursuant to section five hundred seventy-four of this chapter were obtained.

HISTORY:

Add, L 1981, ch 1022, § 1; amd, L 1982, ch 531, § 11, eff Dec 1, 1982 (see 1982 note below).

Sub 1, formerly entire section, so numbered sub 1 and amd, L 1982, ch 531, § 11 (see 1982 note below); amd, L 1986, ch 858, § 5, L 1988, ch 776, § 3, L 1991, ch 552, § 2, eff Jan 1, 1992.

Sub 1, par (a), formerly part of sub 1, so designated par (a) and amd, L 1991, ch 552, § 2, eff Jan 1, 1992.

Sub 1, par (b), formerly part of sub 1, so designated par (b) and amd, L 1991, ch 552, § 2, eff Jan 1, 1992.

Sub 1, par (c), formerly part of sub 1, so designated par (c), L 1991, ch 552, § 2, eff Jan 1, 1992.

Sub 2, add, L 1982, ch 531, § 11, eff Dec 1, 1982 (see 1982 note below).

Sub 3, add, L 1982, ch 531, § 11 (see 1982 note below); amd, L 1983, ch 735, § 25, L 1985, ch 280, § 19, eff July 1, 1985.

NOTES:

Editor's Notes:

Laws 1982, ch 531, §§ 16, 17, provides as follows:

§ 16. Where a residential assessment ratio has been or is established pursuant to section seven hundred thirty-eight of the real property tax law for any assessing unit or special assessing unit prior to the effective date of section eleven of this act and the final assessment roll for such assessing unit or special assessing unit has not been completed and filed, and where the state board is aware or made aware no later than ten days prior to the last day for the completion and filing of the final assessment roll, that such residential assessment ratio includes inappropriate sales or does not reflect a change in the level of assessment due to a physical revaluation of all real property, then the state board of equalization and assessment shall recompute such ratio by excluding such inappropriate sales or by adjusting for such change in level of assessment. Where such recomputation

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results in a substantial change, such state board shall establish a new ratio prior to the filing of the final assessment roll of such assessing unit and such new ratio shall supersede for all purposes the original ratio. Such new ratio shall be made available in the same manner as the original ratio. For the purposes of this section, inappropriate sales shall include (a) sales of residential property held in cooperative or condominium form of ownership, (b) sales of property not improved by a one, two or three family residential structure as of the date of sale and as of the taxable status date for the assessment roll on which the assessment reported pursuant to section five hundred seventy-four of the real property tax law appears, and (c) sales reported pursuant to section five hundred seventy-four of the real property tax law where the full sales price or applicable assessment was incorrect.

§ 17. This act shall take effect immediately, provided, however, section eleven of this act shall take effect December first, nineteen hundred eighty-two and such section shall be first utilized in establishing residential assessment ratios for tentative assessment rolls filed on or after such date.

CROSS REFERENCES:

This section referred to in §§ 458-a, 525, 732.

Information to be furnished by recording officers and assessors § 574.

RESEARCH REFERENCES AND PRACTICE AIDS:

98 NY Jur 2d, Taxation and Assessment §§ 377, 378, 385, 450–464.

24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes § 146:162.

Texts:

NY Real Property Service §§ 61:39, 62:62, 62:63.

CASE NOTES

Use of residential assessment ratios and residential comparables in small claims assessment review procedure is constitutional. Tonawanda v Ayler (1985, 4th Dept) 115 App Div 2d 940, 497 NYS2d 781, affd (1986) 68 NY2d 836, 508 NYS2d 171, 500 NE2d 869.

In small claims assessment review proceedings (RPTL art 7, tit 1-A), it was not improper for the Hearing Officers to take into consideration evidence offered by the Board of Assessment to impeach and demonstrate the inaccuracy of the "residential assessment ratio" (RAR) of 6.64% which had been promulgated by the State Board of Equalization and Assessment (SBEA) and had been introduced by petitioners as the major component of their proof to show inequality of their assessments since there is no statutory prohibition preventing the Board from mounting a collateral attack on the RAR in small claims assessment review proceedings. The statutory process through which the assessing officer may challenge the RAR by presenting documentation to the SBEA showing material error in the ratio (RPTL 738 [2]) does not bar the impeachment of a RAR or an attack on the weight to be given to it in small claims assessment review proceedings. Accordingly, the determinations of the Hearing Officers were not arbitrary and capricious by reason of not having applied the RAR submitted by petitioners. Agosh v Cicero Bd. of Assessment Review (1991) 150 Misc 2d 756, 570 NYS2d 876.

TITLE 2

Special Provisions Relating to Special Franchise Assessments

APPENDIX II - §202.58 OF 22NYCRR- UNIFORM RULES, NYS TRIAL COURTS

even though statement of readiness had been filed, since party in medical malpractice action may amend his or her bill of particulars as of right under CLS CPLR § 3042(g) before note of issue is filed; under circumstances, plaintiff was not required to obtain permission to amend by showing adequate reason for delay and merit under CLS CPLR § 3025(b). Whalen v Marshall (1989, Sup) 146 Misc 2d 149, 548 NYS2d 878.

Court would deny defendants' motion for order precluding plaintiff from introducing evidence concerning new allegations of malpractice allegedly first set forth in plaintiff's amended bill of particulars, even though statement of readiness had been filed, since party in medical malpractice action may amend his or her bill of particulars as of right under CLS CPLR § 3042(g) before note of issue is filed; under circumstances, plaintiff was not required to obtain permission to amend by showing adequate reason for delay and merit under CLS CPLR § 3025(b). Whalen v Marshall (1989, Sup) 146 Misc 2d 149, 548 NYS2d 878.

2.-5. [Reserved for future use.]

6. Under former § 684.1

Where patient properly instituted malpractice action seeking $50,000 in damages in Supreme Court and where that action would have continued in Court but for order of removal made without her knowledge, and where removal to civil court would preclude patient from exercising her right to hearing before medical malpractice panel, removal to civil court was improper. La Placa v Boorstein (1976) 87 Misc 2d 45, 385 NYS2d 250.

§ 202.57. Judicial review of orders of the State Division of Human Rights; procedure

(a) Any complainant, respondent or other person aggrieved by any order of the State Commissioner of Human Rights or the State Division of Human Rights may obtain judicial review of such order by commencing a special proceeding, within 60 days after service of the order, in the Supreme Court in the county where the alleged discriminatory practice which is the subject of the order occurred or where any person required by the order to cease and desist from an unlawful discriminatory practice or to take other affirmative action resides or transacts business. Such proceeding shall be commenced by the filing of a notice of petition and petition naming as respondents the State Division of Human Rights and all other parties appearing in the proceeding before the State Division of Human Rights.

(b) Except as set forth in subdivision (c) of this section, and unless otherwise ordered by the court, the State Division of Human Rights shall have 20 days after service of the notice of petition and petition to file with the court the written transcript of the record of all prior proceedings upon which its order was made.

(c) Where the petition seeks review of an order issued after a public hearing held pursuant to section 297(4)(a) of the Executive Law:

(1) the petition shall have annexed to it a copy of such order;

(2) the Supreme Court, upon the filing of the petition, shall make an order directing that the proceeding be transferred for disposition to the Appellate Division in the judicial department embracing the county in which the proceeding was commenced; and

(3) the time and manner of the filing of the written transcript of the record of all prior proceedings shall be determined by the Appellate Division to which the proceeding is transferred.

§ 202.58. Small claims tax assessment review proceedings; small claims sidewalk assessment review proceedings; special rules

(a) Establishment. (1) There is hereby established in the Supreme Court of the

State of New York in each county a program to hear special proceedings for small claims tax assessment review pursuant to title 1-A of Article 7 of the Real Property Tax Law; provided, however, that insofar as Hamilton County may lack required personnel and facilities, Fulton and Hamilton Counties shall be deemed one county for the purposes of this rule.

(2) There also is established in the Supreme Court in each county within the City of New York a program to hear special proceedings for small claims sidewalk assessment review pursuant to section 19-152.3 of the Administrative Code of the City of New York.

(b) Commencement of small claims tax assessment review proceeding. (1) A special proceeding pursuant to title 1-A of article 7 of the Real Property Tax Law shall be commenced by a petition in a form in substantial compliance with the forms prescribed by the Chief Administrator of the Courts. Forms shall be available at no cost at each county clerk's office.

(2) Three copies of the petition shall be filed with the county clerk in the county in which the property is located within 30 days after the final completion and filing of the assessment roll containing the assessment at issue, except that in the City of New York, the petition shall be filed before the 25th day of October following the time when the determination sought to be reviewed was made. The petition may be filed with the county clerk by ordinary mail if mailed within the 30-day time period, or in the City of New York, if mailed prior to the 25th day of October, as evidenced by the postmark. A filing fee of $25 shall be paid at the time of filing, which may be in the form of a check payable to the county clerk.

(3) Within 10 days of filing the petition with the county clerk, the petitioner shall send by mail, a copy of the petition to:

(i) the clerk of the assessing unit named in the petition or, if there is no such clerk, to the officer who performs the customary duties of the clerk, except that in the City of New York the petition shall be mailed to the president of the New York City Tax Commission or to a designee of the president;

(ii) except in the cities of Buffalo, New York, Rochester, Syracuse and Yonkers, to the clerk of any school district within which any part of the real property on which the assessment to be reviewed is located or, if there is no clerk of the school district or such name and address cannot be obtained, to a trustee of the school district;

(iii) the treasurer of any county in which any part of the real property is located; and

(iv) the clerk of a village which has enacted a local law, in accordance with the provisions of subdivision 3 of section 1402 of the Real Property Tax Law, providing that the village shall cease to be an assessing unit and that village taxes shall be levied on a copy of the part of the town or county assessment roll.

(4) The county clerk shall assign a small claims assessment review filing number to each petition, shall retain one copy and shall forward two copies

within two days of filing to the clerk designated by the appropriate administrative judge to process assessment review petitions.

(c) Commencement of small claims sidewalk assessment review proceeding. (1) A special proceeding pursuant to section 19-152.3 of the Administrative Code of the City of New York shall be commenced by a petition in a form prescribed by the Department of Transportation of the City of New York in consultation with the Office of Court Administration. Forms shall be available at no cost at each county clerk's office within the City of New York.

(2) Three copies of the petition shall be filed with the county clerk in the county in which the property is located, provided that at least 30 days have elapsed from the presentation of the notice of claim to the Office of the Comptroller pursuant to section 19-152.2 of the Administrative Code. The petition may be filed with the county clerk by ordinary mail. A filing fee of $25 shall be paid at the time of filing, which may be in the form of a check payable to the county clerk.

(3) Within seven days of filing the petition with the county clerk, the petitioner personally shall deliver or send by certified mail, return receipt requested, a copy of the petition to the Commissioner of Transportation of the City of New York or the Commissioner's designee.

(4) The county clerk shall assign a sidewalk assessment review filing number to each petition, shall retain one copy and shall forward two copies within two days of filing to the clerk designated by the appropriate administrative judge to process sidewalk assessment review petitions.

(d) Selection of hearing officer panels. (1) The Chief Administrator of the Courts shall establish panels of small claims hearing officers found qualified to hear small claims tax assessment review proceedings pursuant to title 1-A of article 7 of the Real Property Tax Law and panels of small claims hearing officers found qualified to hear small claims sidewalk assessment review proceedings pursuant to section 19-152.3(d) of the Administrative Code of New York.

(2) The administrative judge of the county in which the panel will serve, or the deputy chief administrative judge for the courts within the City of New York, if the panel is to serve in New York City, shall invite applicants to apply by publishing an announcement in the appropriate law journals, papers of general circulation or trade journals, and by communicating directly with such groups as may produce qualified candidates.

(3) The announcements and communications shall set forth the nature of the position, the qualifications for selection as contained in section 731 of the Real Property Tax Law or section 19-152.3(d) of the Administrative Code of the City of New York, and the compensation.

(4) The administrative judge shall screen each applicant in conformance with the requirements set forth in section 731 of the Real Property Tax Law or section 19-152.3(d) of the Administrative Code of the City of New York, for qualifications, character and ability to handle the hearing officer responsibilities, and shall forward the names of recommended nominees, with a summary of their qualifications, to the Chief Administrator for appointment.

(5) Hearing officers shall serve at the pleasure of the chief administrator, and their appointments may be rescinded by the chief administrator at any time.

(6) The chief administrator may provide for such orientation courses, training courses and continuing education courses for persons applying to be hearing officers and for persons serving on hearing officer panels as the chief administrator may deem necessary and desirable.

(e) Assignment of hearing officers. (1) The assessment review clerk of the county in which the panel will serve shall draw names of hearing officers at random from the panel and shall assign to each hearing officer at least the first three, but no more than six, petitions filed with the county clerk pursuant to these rules; provided, however, where necessary to ensure the fair and expeditious administration of justice, the Chief Administrator may authorize the assignment of related petitions and the assignment of more than six petitions to a single hearing officer.

(2) No person who has served as a hearing officer shall be eligible to serve again until all other hearing officers on the panel have had an opportunity to serve.

(3) A hearing officer shall disqualify himself or herself from hearing a matter where a conflict exists as defined by the Public Officers Law or, with respect to small claims tax assessment review hearing officers, by subdivision 2 of section 731 of the Real Property Tax Law. Where a hearing officer disqualifies himself or herself, such hearing officer shall notify the chief administrator or designee and the matter shall be reassigned to another hearing officer.

(4) The hearing officer shall determine, after contacting the parties, the date, time and place for the hearing, which shall be held within 45 days with respect to a small claims tax assessment review proceeding, and within 30 days with respect to a small claims sidewalk assessment review proceeding, after the filing of the petition, or as soon thereafter as is practicable, and which shall be held, where practicable, at a location within the county where the real property is located. The hearing officer shall schedule hearings in the evening at the request of any party, unless special circumstances require otherwise. Written notice of the date, time and place of the hearing shall be sent by mail by the hearing officer to the parties or their attorneys, if represented, at least 10 working days prior to the date of the hearing, provided however, failure to receive such notice in such period shall not bar the holding of a hearing.

(5) Adjournments shall not be granted by the hearing officer except upon good cause shown.

(6) All parties are required to appear at the hearing. Failure to appear shall result in the petition being dismissed or in the petition being determined upon inquest by the hearing officer based upon the available evidence submitted.

(f) Decision and order. (1) The decision and order of the hearing officer shall be rendered expeditiously, and, in a small claims tax assessment review

proceeding, the notice required by section 733(4) of the Real Property Tax Law shall be attached to the petition form.

(2) Costs. (i) In a small claims tax assessment review proceeding, if the assessment is reduced by an amount equal to or greater than half the reduction sought, the hearing officer shall award the petitioner costs against the respondent assessing unit in the amount of $25. If the assessment is reduced by an amount less than half of the reduction sought, the hearing officer may award the petitioner costs against the respondent assessing unit in an amount not to exceed $25. (ii) In a small claims sidewalk assessment review proceeding, if the hearing officer grants the petition in full or in part, the hearing officer shall award the petitioner costs against the respondent in the amount of $25. In any other case, the hearing officer, in his or her discretion, may award the petitioner costs in the amount of $25, if he or she deems it appropriate.

(3) The hearing officer in a small claims tax assessment review proceeding shall transmit one copy of the decision and order, by ordinary mail, to the petitioner, the clerk of the assessing unit and the assessment review clerk of the court. The hearing officer in a small claims sidewalk assessment review proceeding shall transmit one copy of the decision and order, by ordinary mail, to the petitioner, the Commissioner of Transportation of the City of New York or the Commissioner's designee, and the assessment review clerk of the court.

(4) The assessment review clerk shall file the petition and the attached decision and order with the county clerk.

(5) The assessment review clerk shall make additional copies of the decision and order, as necessary, and, in the case of the small claims tax assessment review proceeding, shall transmit a copy to the clerk of each tax district relying on the assessment that is named in the petition and to the treasurer of any county in which any part of the real property is located. In the case of a small claims sidewalk assessment review proceeding, where the order grants the petition in full or in part, the assessment review clerk shall mail a copy of the decision and order to the Collector of the City of New York.

(g) Advertising by hearing officers. No person who is appointed a hearing officer shall, in any public advertisement published or distributed to advance such person's business or professional interests, refer to his or her status as a hearing officer. No hearing officer shall use letterhead or business cards bearing the title of hearing officer except in direct connection with such person's official duties as hearing officer.

(h)(1) Proceedings pursuant to title 1-A of article 7 of Real Property Tax Law may be heard and determined by a judicial hearing officer. The judicial hearing officer shall be designated and assigned by the appropriate administrative judge to hear such proceedings as determined by that judge or by the assessment review clerk, and the hearing shall be conducted in accordance with this section.

(2) Judicial hearing officers appointed to hear proceedings pursuant to this section shall receive compensation as provided in section 122.8 of the rules

of this Title. A location in which a hearing is held pursuant to this section shall be deemed a "facility designated for court appearances" within the meaning of section 122.8 of this Title.

(i) Collateral proceedings. All applications for judicial relief shall be made in the Supreme Court in the county where the real property subject to review is located. If a judicial hearing officer has heard and determined a proceeding under this section, any application for judicial relief may not be heard by a judicial hearing officer, except upon consent of the parties.

RESEARCH REFERENCES AND PRACTICE AIDS:

24B Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes §§ 146:172–146:175.

Texts:

NY Real Property Service § 62:53.

§ 202.59. Tax assessment review proceedings in counties outside the City of New York; special rules

(a) Applicability. This section shall apply to every tax assessment review proceeding brought pursuant to title 1 of article 7 of the Real Property Tax Law in counties outside the City of New York.

(b) Statement of income and expenses. Before the note of issue and certificate of readiness may be filed, the petitioner shall have served on the respondent, in triplicate, a statement that the property is not income-producing or a copy of a verified or certified statement of the income and expenses on the property for each tax year under review. For the purposes of this section, a cooperative or condominium apartment building shall be considered income-producing property; an owner-occupied business property shall be considered income-producing as determined by the amount reasonably allocable for rent, but the petitioner is not required to make an estimate of rental income.

(c) Audit. Within 60 days after the service of the statement of income and expenses, the respondent, for the purpose of substantiating petitioner's statement of income and expenses, may request in writing an audit of the petitioner's books and records for the tax years under review. If requested, the audit must be completed within 120 days after the request has been made unless the court, upon good cause shown, extends the time for the audit. Failure of the respondent to request or complete the audit within the time limits shall be deemed a waiver of such privilege. If an audit is requested and the petitioner fails to furnish its books and records within a reasonable time after receipt of the request, or otherwise unreasonably impedes or delays the audit, the court, on motion of the respondent, may dismiss the petition or petitions or make such other order as the interest of justice requires.

(d) Filing note of issue and certificate of readiness; additional requirements.

(1) A note of issue and certificate of readiness shall not be filed unless all disclosure proceedings have been completed and the statement of income and expenses has been served and filed.

(2) A separate note of issue shall be filed for each property for each tax year.

APPENDIX III - §74 OF THE PUBLIC OFFICER'S LAW-CODE OF ETHICS

of the Ogdensburg Bridge and Port Authority. 1982 Op Atty Gen Dec 9 (Formal).

An officer of the State Liquor Authority who jointly owns one-third of the stock of a corporation selling insurance to businesses licensed by the Authority would be in violation of ethics standards established by law. 1983 Ops Atty Gen 83-F15.

7. —Education-related activities

There appears to be no statutory or common-law bar to a correction officer's part-time employment by the New York City Board of Education outside the hours of his regular employment. 1964 Ops Atty Gen Nov. 25.

There is no inherent or statutory conflict of interest between the positions of dean at a college of State University and a member of the State Legislature, and election to the Assembly does not vacate the other State employment. 1974 Ops Atty Gen Dec. 16.

The part-time employment of the Chief Executive Officer of the State Liquor Authority as a teacher at the New York City Technical College does not violate sections 73 and 74 of the Public Officers Law. This private employment is also under the jurisdiction of the Board of Public Disclosure. 1983 Ops Atty Gen 83-F-13.

§ 73-a. [Repealed]

HISTORY:

Add, L 1965, ch 1031, § 182; repealed, L 1967, ch 680, § 116, eff Sept 1, 1967.
Derived from CLS Penal § 1878, which was repealed, L 1965, ch 1012, eff Jan 1, 1966.

NOTES:

See notes under § 3-b, supra, relative to Laws 1967, ch 680.

§ 74. Code of ethics

1. Definition.

As used in this section:

The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor.

The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

2. Rule with respect to conflicts of interest.

No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

3. Standards.

a. No officer or employee of a state agency, member of the legislature or legislative employee should accept other employment which will impair his independence of judgment in the exercise of his official duties.

b. No officer or employee of a state agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

e. No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

g. An officer or employee of a state agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

i. No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.

j. If any officer or employee of a state agency shall have a financial interest, direct or indirect, having a value of ten thousand dollars or more in any activity which is subject to the jurisdiction of a regulatory agency, he should file with the secretary of state a written statement that he has such a financial interest in such activity which statement shall be open to public inspection.

4. Violations.

In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law.

HISTORY:

Add, L 1954, ch 696, § 2; amd, L 1964, ch 941, § 6, L 1965, ch 1012, eff Jan 1, 1966.
Sub 1, opening par, amd, L 1983, ch 764, § 2, eff Sept 1, 1983.
Sub 1, second par, add, L 1965, ch 1012, eff Jan 1, 1966.
Sub 1, former second par, deleted, L 1965, ch 1012, eff Jan 1, 1966.
Sub 4, add, L 1965, ch 1012, eff Jan 1, 1966.

EDITOR'S NOTES:

Laws of 1954, ch 696, § 1, provides as follows:

Declaration of intent. A continuing problem of a free government is the maintenance among its public servants of moral and ethical standards which are worthy and warrant the confidence of the people. The people are entitled to expect from their public servants a set of standards set above the morals of the market place. A public official of a free government is entrusted with the welfare, prosperity, security and safety of the people he serves. In return for this trust, the people are entitled to know that no substantial conflict between private interests and official duties exists in those who serve them.

Government is and should be representative of all the people who elect it, and some conflict of interest is inherent in any representative form of government. Some conflicts of material interests which are improper for public officials may be prohibited by legislation. Others may arise in so many different forms and under such a variety of circumstances, that it would be unwise and unjust to proscribe them by statute with inflexible and penal sanctions which would limit public service to the very wealthy or the very poor. For matters of such complexity and close distinctions, the legislature finds that a code of ethics is desirable to set forth for the guidance of state officers and employees the general standards of conduct to be reasonably expected of them.

CROSS REFERENCES:

This section referred to in § 78; CLS Bank § 420-a; CLS Educ §§ 371, 6274; CLS Elec § 3-100; CLS ECL § 71-2706; CLS Exec §§ 63, 74, 814; CLS Gen Mun § 305; CLS Legis § 80; CLS Men Hyg §§ 7.33, 13.33, 80.05; CLS Priv Hous Fin § 43; CLS Pub A §§ 1045-c, 1048-c, 1225-e, 1263, 1282, 1299-c, 1299-dd, 1303, 1328, 1802, 1840-b, 1852, 1973, 2403, 2433, 2463, 2534, 2608, 2703, 3011; CLS Racing & Wagering § 253; CLS Trans § 32; CLS Unconsol ch 214 § 4; ch 214-B § 4; ch 252 § 4; ch 252-C § 4.

Service on state urban job incentive board, CLS Com § 116.

Incompatibility of office of member of board of education with other elective office, CLS Educ § 2553.

Membership on regional criminal justice committees not a disqualification for holding public office or employment, CLS Exec § 845.

Code of ethics authorized for municipal officers and employees, CLS Gen Mun § 806.

Members of boards of visitors of hospitals and schools in the department of mental hygiene as state officers, CLS Men Hyg § 7.19.

Participation on advisory council for drug abuse by members from outside state government representing agencies or organizations funded by commission not violation of code of ethics, CLS Men Hyg § 81.05.

Service as trustee, officer, or agent of transit construction fund not incompatible with other public office, CLS Pub A § 1225-e.

Metropolitan Commuter Transportation Authority as "state agency", CLS Pub A § 1262.

Nonforfeiture of office or employment by acceptance of membership on or chairmanship of Metropolitan Commuter Transportation Authority, CLS Pub A § 1263.

Environmental facilities corporation as "state agency", CLS Pub A § 1282.

Niagara frontier transportation authority as "state agency", CLS Pub A § 1299-c.

Capital District Transportation Authority as state agency, CLS Pub A § 1303.

Central New York Regional Transportation Authority as state agency, CLS Pub A § 1328.
Interest of members or employees of Central New York Transportation Authority in contracts prohibited, CLS Pub A § 1344.
State mortgage agency, its directors, etc., subject to this section, CLS Pub A § 2403.
New York state sports authority as public agency for purposes of this section, CLS Pub A § 2463.
Membership on New York State Urban Development Corporation, CLS Unconsol Ch 252 §§ 4, 12.
Membership on New York State Urban Development and Research Corporation, CLS Unconsol Ch 252-A § 4.

RESEARCH REFERENCES AND PRACTICE AIDS:

2 NY Jur 2d, Administrative Law §§ 3, 21, 85.
18 NY Jur 2d, Civil Servants and Other Public Officers and Employees §§ 13, 159, 160.
19 NY Jur 2d, Civil Servants and Other Public Officers and Employees § 187.
55 NY Jur, State of New York §§ 154, 171–173.

Annotations:

Validity, construction, and application of regulation regarding outside employment of governmental employees or officers. 94 ALR3d 1230.
Validity, construction, and effect of state statutes restricting political activities of public officers or employees. 51 ALR4th 702.
What constitutes acts affecting personal financial interest within meaning of 18 USCS § 208(a), penalizing participation by government employees in matters in which they have personal financial interest. 59 ALR Fed 872.

Law Reviews:

Constitutionality of financial disclosure laws. 59 Cornell L Rev 345.
Office of township attorney not incompatible with office of state senator. 12 Syracuse L Rev 536.
Mayor of town may not be member of governing body of county. 13 Syracuse L Rev 335.

CASE NOTES

1. In general

An executive order of the Governor which presumes to prohibit service in political party office by a wide range of State employees within the executive branch, many of whom are not subject to removal by the Governor, and to prohibit, except on permission of the Board of Public Disclosure, all types of privately compensated employment by them, nullifies, rather than implements, section 74 of the Public Officers Law, the code of ethics for State officers and employees, which provides broad guidelines designed to eliminate substantial conflicts of interest between State duties and private interests, and which, together with section 73 of that law, proscribing specified transactions peculiarly vulnerable to conflicts of interest, constitutes the legislative policy of the State in the conflict of interest area; implicit in the enactment of the code of ethics is a determination by the Legislature that the existence of conflicts in those areas not specifically covered by section 73 is to be determined on a case-by-case basis, not by the use of blanket prohibitions. Rapp v Carey (1978) 44 NY2d 157, 404 NYS2d 565, 375 NE2d 745.

A milk and food inspector who had previously been disciplined for falsification of reports was properly dismissed upon evidence of misconduct involving using the power of his office for his own benefit at the expense of store owners and insurance companies and in failing to take proper steps to destroy condemned food. Hanley v Wickham (1969, 3d Dept) 32 AD2d 680, 299 NYS2d 745.

An alleged conflict of interest by one of the four board members casting affirmative votes is not sufficient to nullify the legislative act of the Urban Development Corp., since there are other statutory remedies to punish any improper conflict of inter-

est on the part of any UDC board member. New York State Urban Dev. Corp. v Vanderlex Merchandise Co. (1979) 98 Misc 2d 264, 413 NYS2d 982.

In the circumstances described, a State officer is deemed employed on a full-time basis and a general insurance agency is considered as selling services to its customers, both within the meaning of the cited provision of the Public Officers Law (Code of Ethics). 1954 Ops Atty Gen Dec. 30.

A new appointee need only be furnished with a copy of the cited sections, which deal with ethical standards and conflicts of interest. 1965 Ops Atty Gen Aug. 13.

Section 74 of the Public Officers Law is not violated under circumstances where a bid proposal contained the name of a person as project director whose name, among others, was suggested to the bidder by one of the evaluators and, in fact, was his subordinate, where the relatively few participants in the field (here, wrap-up insurance) tend to know each other and there was an absence of any evidence that the evaluator sought to exert undue influence upon his fellow evaluators. A public authority is within the intended coverage of the section. 1979 Op Atty Gen Oct 25 (formal).

Contemplated "no fee" checking service which Banking Department, in conjunction with regulated institution, would offer to its employees, is not prohibited gift under § 73(5) of Public Officers Law; also, offering of this service would not constitute violation of § 74 of that Law. 1985 Op Atty Gen No. 85-F10.

2. Applicability of statute

This section is inapplicable to local officers and employees except with respect to certain political party activities. 1954 Ops Atty Gen June 3 (informal).

By reason of the definition of "state agency" in this section, such section is inapplicable to a district attorney except with respect to certain political party activities. Such activities do not include service as a delegate to a state convention or as a member of a county committee. 1954 Ops Atty Gen 52 (informal).

Except in respect of certain political party positions, this section is inapplicable to a political party officer or county attorney. 1954 Ops Atty Gen 103 (informal).

A member of the board of trustees of the public library of a school district is not within the application of the law. 1955 Ops Atty Gen 8 (informal).

A member of the County Alcoholic Beverage Control Board appointed by the Chairman of the County Board of Supervisors is not within the application of the Code. 1955 Ops Atty Gen 284.

Members of the State University Board of Trustees and of the councils of the State-operated institutions within the University are within the scope of appropriate provisions of this section. 1955 Ops Atty Gen 286.

Public Officers Law §§ 73, 74, dealing with conflicts between official duties and private interest, are inapplicable to an assistant district attorney. 1957 Ops Atty Gen 100 (informal).

Members of the Law Revision Commission who are appointed by the Governor are not subject to the provisions of Public Officers Law, §§ 73 and 74, but those members who serve ex officio are subject thereto as "members of the legislature". 1976 Ops Atty Gen June 29.

Directors of the New York Convention Center Development Corporation are subject to the provisions of Public Officers Law, §§ 73 and 74. 1980 Op Atty Gen April 22 (Formal).

The members of the Executive Advisory Commission on Insurance Industry Regulatory Reform are not subject to sections 73 and 74 of the Public Officers Law. Neither are professional staff members who are engaged as consultants under contractual consulting agreements. 1982 Op Atty Gen Feb 17.

The members of the Temporary State Commission on Banking, Insurance and Financial Services are subject to the standards contained in section 74 of the Public Officers Law but not to those in section 73 thereof. 1983 Ops Atty Gen 83-F20.

The private members and staff of the Temporary State Commission on Workers' Compensation and Disability Benefits are subject to the provisions of section 74, but not section 73 of the Public Officers Law. 1984 Ops Atty Gen 84-F8.

3. Ownership of financial interest

Although an administrative agency possesses no inherent legislative power, it may constitutionally exercise its authority by promulgating rules within the boundaries of its legislative delegation; accordingly, rules promulgated by the Chairman of the Public Service Commission which prohibit employees of the commission and the Department of Public Services, along with their spouses and minor children, from owning any interest in certain business concerns whose performance is related, at least in part, to companies regulated by the commission, are well within the legislative delegation and are therefore valid inasmuch as under the code of ethics for State officers and employees (Public Officers Law, § 74) and its enabling legislation (Executive Law, § 74), the Legislature has recognized that the task of implementing and defining the ethical considerations set forth in the statute are to be vested in the person ultimately responsible for the performance of the commission's function, i.e., its chairman. Nicholas v Kahn (1979) 47 NY2d 24, 416 NYS2d 565, 389 NE2d 1086.

Rules promulgated by the Chairman of the Public Service Commission, which prohibit employees of the commission and the Department of Public Service, along with their spouses and minor children, from owning any interest in certain business concerns whose performance is related, at least in part, to companies regulated by the commission

although permitting a limited class of employees and their families to apply for an exemption from the operation of the rules, may not be applied, in their present form, to those employees who have previously sought an exemption until such time as a valid exemption rule is promulgated or the chairman determines that no exemptions from the operation of the rules are warranted under circumstances where that portion of the rules pertaining to the right of an employee to secure an exemption vests that decision in the unfettered discretion of the chairman, thereby circumventing the procedural safeguards available to those applying for an exemption through judicial review inasmuch as any denial of an exemption by the chairman is arbitrary and capricious as a matter of law due to the lack of guidelines. Nicholas v Kahn (1979) 47 NY2d 24, 416 NYS2d 565, 389 NE2d 1086.

The State has a legitimate interest in the financial privacy of employees working in a State agency charged with critical and sensitive duties of supervision, and statutes which express that interest (Public Service Law, § 9; Public Officers Law, § 74; Executive Law, § 74) are constitutional. Nicholas v Kahn (1978) 62 AD2d 302, 405 NYS2d 135, mod on other grounds 47 NY2d 24, 416 NYS2d 565, 389 NE2d 1086.

Executive order issued by Governor requiring financial disclosure by certain public employees went far beyond mere enforcement of Public Officers Law so as to expand requirements of legislation and thus was unwarranted exercise of legislative power; moreover, order was additionally invalid on ground that it violated express intent of legislature when it enacted conflict-of-interest statute. Rapp v Carey (1977) 88 Misc 2d 428, 390 NYS2d 573, affd (3d Dept) 58 AD2d 918, 396 NYS2d 805, affd 44 NY2d 157, 404 NYS2d 565, 375 NE2d 745.

Because the legislature has so decreed, the rules of the Public Service Commission with respect to disclosure of private financial holding of employees of the Commission and the Department of Public Service must be consonant with the Public Officers Law or fail on the grounds of preemption. Dwyer v Kahn (1976) 88 Misc 2d 73, 387 NYS2d 535.

In the circumstances described, goods and services valued at greater than $25, sold by a private corporation, more than 10% of the stock of which is owned by a State employee, to a State agency without public notice and competitive bidding constitutes a violation of sections 73 and 74 of the Public Officers Law by such employee. 1972 Ops Atty Gen May 5.

An officer of the State Liquor Authority who jointly owns one-third of the stock of a corporation selling insurance to businesses licensed by the Authority would be in violation of ethics standards established by law. 1983 Ops Atty Gen 83-F15.

4. —Filing of statement

A Surrogate is not within the application of subdivision (3-j) requiring filing with the Secretary o State of a statement of financial interest in excess of $10,000 in a regulated activity. 1955 Ops Atty Gen 16 (informal).

An employee of a State agency who is also privately engaged in the real estate brokerage business should file a statement of financial interest. 1955 Ops Atty Gen 59 (informal).

An employee of a State hospital who is also privately engaged in the real estate brokerage business should file a statement of financial interest. 1955 Ops Atty Gen 59, 62 (informal).

The Temporary State Housing Rent Commission is not within the [former] definition of a regulatory agency under Subdivision 1 of Section 74 of the Public Officers Law and consequently interests regulated by that agency do not for that reason require the filing of a financial statement with the Secretary of State even though the financial interest is in excess of $10,000. 1955 Ops Atty Gen 279.

The fact that the husband of an employee of a State Agency has a financial interest of $10,000 or more in a liquor business will not require her to file a statement with the Secretary of State under this section provided she did not invest any of her own funds or property in such business. 1955 Ops Atty Gen 280.

Accredited veterinarians employed by the State Department of Agriculture and Markets are required to file a statement. 1955 Ops Atty Gen 282.

Deposits in mutual banks as well as life and annuity insurance policies with mutual companies are not the types of financial interest which require filing. 1955 Ops Atty Gen 285.

5. Holding another office or position

There appears to be no statutory or common law bar to a correction officer's part-time employment by the New York City Board of Education outside the hours of his regular employment. 1964 Ops Atty Gen Nov. 25 (formal).

There is no statutory prohibition against the service of the Chairman of the State Athletic Commission as a Trustee of the Mayor's Commission for Physical Fitness, an educational corporation for the promotion of the President's Council on Physical Fitness. 1965 Ops Atty Gen April 30.

There is no inherent or statutory conflict of interest between the positions of dean at a college of State University and a member of the State Legislature and election to the Assembly does not vacate the other State employment. 1974 Ops Atty Gen Dec. 16.

A member of the New York State Assembly may simultaneously serve as chairman of a village housing authority located within his assembly district. 1976 Ops Atty Gen Dec 30 (informal).

Where an inspector of the State Athletic Commission is also licensed by the Commission as a judge, situations could arise where there would be actual or apparent conflict and therefore the performance

of both functions by the same person is inappropriate. 1977 Op Atty Gen Dec 8 (formal).

Employees of the Department of Motor Vehicles may serve on the Advisory Committee of the Traffic Safety Management and Research Institute created by the Research Foundation of the State University of New York. 1978 Op Atty Gen Oct 2.

The chairman of the state commission of correction may be a member of a criminal justice panel without creating a conflict of interest. 1979 Op Atty Gen Aug 27 (formal).

The head of a State bureau charged with monitoring and reviewing the operation of a local government agency may not act as a consultant to that agency in the area so subject to monitoring and review. 1981 Op Atty Gen June 1 (formal).

One person may simultaneously serve as a county legislator and as the Executive Director of the Adirondack Park Local Government Review Board so long as he avoids conflicts of interest in discrete situations as they may arise. 1981 Op Atty Gen July 23 (Informal).

One person may not simultaneously serve as a member of a board of trustees of a community college and as an adjunct professor at that college. 1981 Op Atty Gen July 24 (Informal opinion).

Persons serving as full-time employees of state in field of emergency management, who also serve as part-time members of Federal disaster inspection teams, do not have prohibited conflict of interest in performance of their state jobs. 1985 Op Atty Gen No. 85-F6.

There is no express legal prohibition against a State veterans counselor holding an elective town office, or the office of twon assessor or member of the board of assessment review. However, other considerations may bear on the propriety thereof. 1974 Ops St Compt File #7.

The applicability of the Hatch Act (prohibiting political activity by federal and certain state and municipal employees) should be ascertained in connection with the veterans counselor acting as committeeman of a political party within the town or seeking elective office. 1974 Ops St Compt File #7.

6. Private employment of public officer or employee

Mere employment by a member of the Legislature in a firm not having any business relationship with any State agency does not offend the cited statute dealing with conflicts between official duties and private interests. 1954 Ops Atty Gen Nov. 29.

The employment of an insurance department employee by a prospective company which, if organized, would be subject to the Insurance Law may become a violation of the Code of Ethics and is in violation of Insurance Law § 15. 1957 Ops Atty Gen July 19.

Employees of the License Division of the Department of State are ineligible for employment at harness race tracks at which pari-mutuel racing is conducted. 1958 Ops Atty Gen June 11.

A member of a firm of attorneys which receives over twenty-five dollars ($25) in fees from a State agency and who shares in the profits of such firm may not at the same time be a member of the State Board of Social Welfare. 1975 Ops Atty Gen Oct. 28 (informal).

No potential violation of Section 73 of the Public Officers Law was found where the President of the Urban Development Corporation is placed in the position of negotiating on behalf of the UDC with a corporation in which he has no financial or other interest but by which he had been employed. Whether his past associations and present conduct come within the purview of Section 74 of the Public Officers Law would require a complete review of pertinent facts. 1978 Op Atty Gen November 20.

A public employee on leave from an executive position with a private employer may continue to receive a salary from such employer if no reasonable inference of impropriety may be drawn from the particular circumstances. 1979 Op Atty Gen May 14. (Formal)

The deputy commissioner of the division of adult residential care in the department of social services may not accept a position on the advisory board of a foundation affiliated with an association of operators of adult homes without creating a conflict of interest and violating the Code of Ethics contained in Public Officers Law, § 74. 1979 Op Atty Gen August 1. (Formal)

The Deputy Commissioner of the State Athletic Commission may accept assignments as a referee and official of the World Boxing Council so long as the assignments are outside the State of New York and the duties in either organization do not involve participation in the formulation of policies that might have an impact upon the other organization. 1981 Op Atty Gen Dec 31.

The part-time employment of the Chief Executive Officer of the State Liquor Authority as a teacher at the New York City Technical College does not violate sections 73 and 74 of the Public Officers Law. This private employment is also under the jurisdiction of the Board of Public Disclosure. 1983 Ops Atty Gen 83-F-13.

Acting as counsel to an organization representing property owners' interests while a member of a Rent Guidelines Board would constitute a violation of the ethics provisions of the General Municipal Law. 1984 Ops Atty Gen 84-F11.

The Workers' Compensation Board is not required to permit employees of the Board and of other State agencies to take the examination required to be licensed to represent claimants and other persons appearing before the Board. However, the Board may elect to promulgate regulations providing for a manner of testing these employees which eliminates apparent or perceived conflicts of interest. 1984 Ops Atty Gen 84-F22.

§ 74-a. Duty of public officers regarding the physically handicapped

It shall be the duty of each public officer responsible for the scheduling or siting of any public hearing to make reasonable efforts to ensure that such hearings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision five of section fifty of the public buildings law.

HISTORY:

Add, L 1977, ch 368, eff Sept 1, 1977.

CROSS REFERENCES:

"Physically handicapped", defined, CLS Pub B § 50.

RESEARCH REFERENCES AND PRACTICE AIDS:

18 NY Jur 2d, Civil Servants and Other Public Officers and Employees §§ 13, 148.

CASE NOTES

In light of the strong public policy considerations underlying the statutory requirement in the Open Meetings Law that public bodies make "reasonable efforts to ensure that meetings are held in facilities that permit barrier-free physical access to the physically handicapped" (Public Officers Law, § 93, subd [b], renum § 98 by L 1977, ch 933, § 2; § 74-a), respondent Town Board of the Town of Brookhaven, which has been conducting its meetings on the second floor in the town hall in a meeting room which is accessible only by ascending a winding staircase, is directed to conduct all of its public meetings at barrier-free facilities commencing January 1, 1978. "Reasonable efforts" can take the form of altering existing owned meeting facilities which contain barriers, moving to other available facilities or combining these options when necessary. Although the town board's efforts to alter the town hall by the construction of an elevator have been expeditious, the failure to move town board meetings to other available barrier-free facilities since September 1, 1977, the effective date of the statutes involved, requires judicial intervention particularly because there has been no showing that such movement would disrupt governmental operations in any fashion. In fact, over the years numerous meetings of the town board have been held in public school facilities. Fenton v Randolph (1977) 92 Misc 2d 514, 400 NYS2d 987.

§ 75. Bribery of members of the legislature

A person who gives or offers, or causes to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, to a member of the legislature, or to a person who has been elected a member of the legislature, or attempts, directly or indirectly, by menace, deceit, suppression of truth, or other corrupt means, to influence such a member or person to give or withhold his vote, or to absent himself from the house of which he is, or is to become, a member, or from any committee thereof, is punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or by both.

HISTORY:

Add, L 1965, ch 1012, eff Jan 1, 1966.
Former § 75, add L 1962, ch 310, § 381 (Substance transferred from former Civil Practice Act § 1302.); renumbered § 79, L 1965, ch 1012, eff Jan 1, 1966.

CROSS REFERENCES:

This section referred to in §§ 77-a, 78.
Bribery and related offenses, CLS Penal §§ 200.00–200.50.

RESEARCH REFERENCES AND PRACTICE AIDS:

18 NY Jur 2d, Civil Servants and Other Public Officers and Employees §§ 13, 92.
19 NY Jur 2d, Civil Servants and Other Public Officers and Employees § 187.

55 NY Jur, State of New York §§ 168, 169.
12 Am Jur 2d, Bribery §§ 12–14, 19–30.

Annotations:

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137.
Furnishing public official with meals, lodging, or travel, or receipt of such benefits, as bribery. 67 ALR3d 1231.
Who is public official within meaning of federal statute punishing bribery of public officials (18 USCS § 201). 65 ALR Fed 461.

CASE NOTES

A new appointee need only be furnished with a copy of the cited sections, which deal with ethical standards and conflicts of interest. 1965 Ops Atty Gen Aug. 13.

The appointment of a village attorney is a mayor's appointment, subject only to approval by the board of trustees, but the village mayor alone has the power to remove the village attorney and this power is not subject to consent or approval by the board of trustees. 1974 Ops Atty Gen Aug 6 (informal).

§ 76. Receiving bribes by members of legislature

A member of either of the houses composing the legislature of this state, or a person elected to become a member thereof, who asks, receives, or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment or action shall be influenced thereby, or shall be given in any particular manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or who gives or offers or promises to give any official vote in consideration that another member of the legislature, or person elected to become such member, shall give any such vote, either upon the same or another question, is punishable by imprisonment in a state prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both.

HISTORY:

Add, L 1965, ch 1012, eff Jan 1, 1966.

CROSS REFERENCES:

This section referred to in §§ 77-a, 78.

RESEARCH REFERENCES AND PRACTICE AIDS:

18 NY Jur 2d, Civil Servants and Other Public Officers and Employees §§ 13, 92.
19 NY Jur 2d, Civil Servants and Other Public Officers and Employees § 187.
55 NY Jur, State of New York §§ 168, 169.
12 Am Jur 2d, Bribery §§ 12–14, 19–30.
63A Am Jur 2d, Public Officers and Employees §§ 48, 49, 214, 215, 238, 241, 243, 319, 335, 389, 400-421.

Annotations:

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137.
Furnishing public official with meals, lodging, or travel or receipt of such benefits, as bribery. 67 ALR3d 1231.
Who is public official within meaning of federal statute punishing bribery of public officials (18 USCS § 201). 65 ALR Fed 461.

form financial disclosure filing. State Ethics Comm Adv Op No. 92-5.

Financial disclosure filing requirements for individuals serving in academic titles at State University of New York and City University of New York would be extended pending State Ethics Commission's review of staff recommendations and action to modify, renew or adopt all or part of financial disclosure filing process for academics. State Ethics Comm Adv Op No. 92-15.

State employees in Cancer Research Scientist series would be required to file with State Ethics Commission same abbreviated financial disclosure form (Form "RS-3") as required of Research Scientists. State Ethics Comm Adv Op No. 94-10.

Members of county alcoholic beverage control boards are not state officers subject to CLS Pub O §§ 73, 73-a and 74 and, therefore, provisions of those statutes would not prohibit candidate for such board from continuing active workers' compensation practice. State Ethics Comm Adv Op No. 93-1.

With regard to financial disclosure filing requirements for individuals serving in academic titles at State University of New York and City University of New York, State Ethics Commission would maintain existing 2 step filing system with minor changes to text of questions asked. State Ethics Comm Adv Op No. 93-6.

Individual under subcontract to serve as clinical director of state correctional facility was state employee for purposes of CLS Pub O §§ 73, 73-a and 74 because of responsibilities of his position as executive-clinical director of facility and because of degree of control state agency exercised over him in performance of his duties, regardless of compensation, if any, that he earned. State Ethics Comm Adv Op No. 93-7.

Independent Living Council is not state agency, and neither its members nor employees are subject to CLS Pub O §§ 73, 73-a and 74. State Ethics Comm Adv Op No. 96-5.

Commissioner of Department of Environmental Conservation would not be required to list, on his annual statement of financial disclosure required by CLS Pub O § 73-a, each board and commission on which he sat as ex officio member solely by reason of his being Commissioner; Commissioner's service on each of such boards and commissions was matter of public record, listing them on his financial disclosure statement would not add to public's knowledge, and his service on such boards and commissions was part of his public responsibilities and presumptively not in conflict with his official duties. State Ethics Comm Adv Op No. 96-10.

Watershed Protection and Partnership Council (WPPC) is "state agency" within meaning of CLS Pub O §§ 73, 73-a and 74, and thus WPPC employees will have to file financial disclosure statements pursuant to § 73-a and will be subject to § 74 if WPPC is designated as policymaking council; however, unlike WPPC employees, WPPC members are not subject to § 73 because they are uncompensated. State Ethics Comm Adv Op No. 97-14.

§ 74. Code of ethics

CROSS REFERENCES:

This section referred to in CLS ECL § 49-0211; . CLS St Fin § 31.

RESEARCH REFERENCES AND PRACTICE AIDS:

50 NY Jur 2d, Elections § 21.
88 NY Jur 2d, Public Welfare and Old Age Assistance § 13.
95 NY Jur 2d, Schools, Universities, and Colleges §§ 702, 710.
96 NY Jur 2d, State of New York §§ 58, 134, 144.

Law Reviews:

Dellay, Curbing influence peddling in Albany: The 1987 Ethics in Government Act. 53 Brooklyn L Rev 1051, Winter, 1988.

Josephson & Ross, Validity of New York state ethics commission rule 932.2 barring public officers from holding political party office. 8 Touro L Rev 55.

Texts:

Employment in New York § 24:255.1.
New York Insurance Law (Matthew Bender's New York Practice Series) § 2.01[4].

CASE NOTES

1. In general

Investigating and adjudicative authority of State Ethics Commission under CLS Exec § 94(12) ends when subject of commission ethics probe leaves service; nowhere do enactments in Executive Law or Public Officers Law, created and modified respectively by Ethics in Government Act, expressly confer jurisdiction on commission as to former state officers and employees. Flynn v State Ethics Comm'n (1995) 87 NY2d 199, 638 NYS2d 418, 661 NE2d 991.

It was not inconsistent to find police investigator guilty of acting in manner which tended to bring discredit on State Police in connection with his son's arrest at college for driving while intoxicated, while finding him not guilty in connection with

charge that he sought special treatment for his son and violated CLS Pub O § 74. Brown v Constantine (1993, 3d Dept) 199 AD2d 912, 606 NYS2d 65.

Small Claims Assessment Review hearing officer was not obligated to recuse himself on basis that he happened to be judgment debtor of one client of petitioning taxpayer's law firm, since such status did not constitute conflict of interest within meaning of Public Officers Law. Meola v Assessor of the Town of Colonie (1994, 3d Dept) 207 AD2d 593, 615 NYS2d 506, app den 84 NY2d 812, 622 NYS2d 915, 647 NE2d 121.

Court properly set aside jury verdict in combined Article 78 and declaratory judgment action brought by campground worker against Department of Environmental Conservation, claiming that department had violated CLS NY Const Art V § 6 and CLS Pub O § 74(3)(f) by giving employment preference to friends and relatives of campground supervisor, where jury's special verdict found that special preferences had been given to supervisor's brother for employment during particular year, but evidence showed that brother had not accepted any position during that year, and thus could not have been given preferential treatment; moreover, witnesses related rational explanation of department's hiring policies and practices at campground operations, and thus Supreme Court correctly determined that department's actions were not arbitrary or capricious. Barboza v Department of Envtl. Conservation (1995, 3d Dept) 216 AD2d 817, 628 NYS2d 460.

In Article 78 proceeding to annul advisory opinion in which State Ethics Commission concluded that former employee of Public Employment Relations Board (PERB) violated CLS Pub O §§ 73 and 74 by serving on PERB's Mediation/Fact Finding Panel and Grievance Arbitration Panel within 2 years after he retired, PERB was not aggrieved by court's finding that advisory opinion was valid, as commission's opinion was final and binding only as it pertained to former PERB employee who requested it; PERB could still assemble panels, and was not deprived of any rights. Kelly v New York State Ethics Comm'n (1996, 3d Dept) 229 AD2d 848, 645 NYS2d 930.

Petition stated viable claim for relief in nature of prohibition by alleging that commissioners of State Department of Transportation (DOT) and Office of General Services had engaged in policy of blacklisting firms from participating as contractors, subcontractors, or suppliers of blacktop for construction projects awarded pursuant to public bidding, that firm was blacklisted if it failed to comply with affirmative action quotas or was somehow involved with criminality in public works contracts, and that firm could only obtain removal from blacklist by agreeing to pay DOT or one of its designees significant amount of money and promising not to sue DOT employees regarding blacklists or "buy off" agreements, since (1) agencies had no authority to punish firms they considered to be irresponsible bidders by prospectively prohibiting them from submitting bids, (2) determinations that firm was irresponsible bidder due to possible criminality gave rise to due process protections requiring notice and hearing, and (3) such activity by agencies constituted unethical and possibly criminal conduct. New York State Asphalt Pavement Asso. v White (1988) 138 Misc 2d 836, 525 NYS2d 561.

In proceeding brought by trade association alleging (1) that certain contractors were blacklisted and prevented from bidding on public works contracts, and (2) that contractor could only obtain removal from blacklist by agreeing to pay state agencies or their designees significant amount of money and promising not to file suit against agency employees, contractors which entered such agreements were not necessary parties since proceeding sought to compel agencies to abide by law and prohibit them from entering into and enforcing such agreements, and such relief could be directed by court without joinder of contractors. New York State Asphalt Pavement Asso. v White (1988) 138 Misc 2d 836, 525 NYS2d 561.

CLS Exec § 94(12) did not apply, and Ethics Commission was therefore not required to give written notice of violations to petitioner, where inquiry was initiated by letter from petitioner to commission which requested advisory opinion. Kelly v New York State Ethics Comm'n (1994, Sup) 161 Misc 2d 706, 614 NYS2d 996.

By submitting his application for appointment to panels administered by state agency prior to termination from state service, former state employee violated CLS Pub O § 74(3)(d) and (h). State Ethics Comm Adv Op No. 91-9.

Employees of Office of Mental Retardation and Developmental Disabilities on approved leaves of absence are subject to all provisions of CLS Pub O §§ 73 and 74, with exception of post-employment restrictions of CLS Pub O § 73(8). State Ethics Comm Adv Op No. 91-11.

It would violate CLS Pub O § 74 for Automotive Facility Inspector employed by Department of Motor Vehicles to inspect, certify or license facility to which he or she or family member took their car for service or conducted other personal business. State Ethics Comm Adv Op No. 91-14.

Although State Ethics Commission had jurisdiction only over state officers and employees, and did not have jurisdiction over their spouses, any restrictions imposed on state employees for participating in state foster care programs under CLS Pub O §§ 73 and 74 would also impact on eligibility of employees' spouses to be foster parents, since Division For Youth considered status of spouses in certification process and issued certificates jointly to foster parents. State Ethics Comm Adv Op No. 91-15.

State employees may not be compensated for their appearances or rendition of services before any state agency in relation to their certification as foster parent or to their receipt of reimbursement funds for their services as foster parent; any appearance or rendition of services before state agency to seek reimbursement funds or to obtain certification as foster parent must be uncompensated. State Ethics Comm Adv Op No. 91-15.

Conflict of interest does not exist simply because senior manager's sibling's firm is conducting business with state agency; violation of CLS Pub O § 74(3)(f) will be found only if there is reasonable basis for impression that state employee is affected

by kinship or influence of any party or person. State Ethics Comm Adv Op No. 91-21.

Authority of commissioner of Department of Agriculture and Markets to accept contributions to Farm Products Publicity Fund from regulated persons and entities must be tempered by consideration of CLS Pub O § 73(5), which precludes accepting gifts under certain circumstances, and by CLS Pub O § 74, which prohibits conflicts of interest, and thus commissioner was required to take reasonable steps to assure that he did not accept, on department's behalf, contributions to Fund from persons and entities who are under department's investigation or in litigation against Department and, for all other donations, he was required to consider source, timing and value before accepting; further, commissioner would be required to exercise care in acknowledging contributions. State Ethics Comm Adv Op No. 92-1.

If corporation of which state employee owned 40 percent were to hold training seminar open to public, which was publicly advertised in general media and not targeted to state employees, state employees could attend and pay by state voucher since state agency would not have initiated contracting process, either by issuing request for proposals, conducting polls of qualified vendors to solicit bids to provide goods or services, or other method allowed by law. State Ethics Comm Adv Op No. 92-2.

Pursuant to CLS Pub O § 74, state officers and employees may not engage in commercial activities over which their state agency, or employees themselves, have authority. State Ethics Comm Adv Op No. 92-3.

Environmental Conservation Officer (ECO) who owns, operates or is employed by business regulated by Department of Environmental Conservation cannot resolve his or her conflict of interest under CLS Pub O § 74 simply by recusing him or herself from enforcement of requirements as to that business; although public must expect fair and even enforcement of environmental and other laws under police power of ECOs, question would still exist about how diligently ECO could enforce law against fellow officer or even competitor. State Ethics Comm Adv Op No. 92-3.

Conflicts of commitment, "subset" of conflicts of interest, exist when external or other activities and undertakings of state officer or employee are so substantial or demanding of officer's or employee's time and attention as to interfere, or appear to interfere, with individual's responsibilities to agency to which individual is assigned or to state as whole. State Ethics Comm Adv Op No. 92-8.

Determination of whether there are conflicts of commitment is usually best left to individual supervisor or appointing authority. State Ethics Comm Adv Op No. 92-8.

CLS Pub O § 74(3)(i) prohibits state agency policymakers from providing consulting services of any kind to regulated and licensed entities. State Ethics Comm Adv Op No. 92-12.

While CLS Pub O § 73(8), state's revolving door provision, exempts from its coverage former state employees who become employees of federal, state or local governments, there is no similar "government-to-government" exception to CLS Pub O § 74(3)(i). State Ethics Comm Adv Op No. 92-12.

CLS Pub O § 74 does not preclude state officers and employees who conduct business with general public from participating in political process. State Ethics Comm Adv Op No. 92-16.

State employee whose position included surveying and inspecting available space and determining suitability for state rental, who sought permission to seek election to city council or school board in geographic area in which he worked, would be required to form separate entity for receipt of campaign contributions and to refuse any campaign contributions or other support from persons or entities which were current lessors with employing state agency in state employee's geographic area or which were under state agency's consideration during campaign to become lessor in order to prevent violation of CLS Pub O § 74(3)(f). State Ethics Comm Adv Op No. 92-16.

Where state employee, whose position included surveying and inspecting available space and determining suitability for state rental, sought permission to seek election to city council or school board in geographic area in which he worked, receipt of campaign contributions or other support from persons or entities which were current lessors with employing state agency from geographic area overseen by state employee or which were under state agency's consideration during campaign could jeopardize objectivity of state employee, even though campaign contributions may not constitute prohibited "gifts" under law, and receipt of such contributions for any office would thus violate CLS Pub O § 74(3)(h). State Ethics Comm Adv Op No. 92-16.

State officers and employees could advise and assist not-for-profit corporation which contracted with employing state agency if such activities furthered state agency purpose. State Ethics Comm Adv Op No. 92-18.

Graduate assistants and teaching assistants at State University of New York are "state employees" for purposes of CLS Pub O §§ 73 and 74 and are fully subject to those provisions. State Ethics Comm Adv Op No. 92-21.

Government-to-government exception to revolving door restriction is contained only in CLS Pub O § 73(8); it has no application by its explicit language to CLS Pub O § 73(7)(a) or § 74. State Ethics Comm Adv Op No. 94-7.

State Ethics Commission would adopt presumption that action by member of state board concerning former employer, or business that board member left within last 2 years, violated CLS Pub O § 74. State Ethics Comm Adv Op No. 94-11.

Under CLS Pub O § 74, state officers and employees who receive no compensation or who are compensated on per diem basis are subject to same standards as compensated state officers and employees. State Ethics Comm Adv Op No. 94-11.

Under CLS Pub O § 74, appearance of conflict is present if there is reasonable belief that state employee benefited from access to official information or otherwise from his or her official position; moreover, appearance of conflict may be heightened by perception that activities could have been under-

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Appearance standards found in CLS Pub O § 74(3)(h) would bar state employee with responsibilities for research, evaluation and development efforts in federal maximization areas pertaining to various expenditures from outside business which would involve selling federal revenue maximization consulting services to other states since such work could create appearance that employee was trading on his state position for personal financial gain. State Ethics Comm Adv Op No. 94-12.

For purposes of CLS Pub O §§ 73 and 74, "gift" includes any thing of value given to state officer or employee and may be in any form, such as money, service, loan, travel, meals, refreshments, entertainment, hospitality, promise, discount or forbearance; further, gift may be provided in kind, or by purchase of ticket, payment in advance or reimbursement for expense that has been incurred. State Ethics Comm Adv Op No. 94-16.

In order to determine whether gift is permissible under CLS Pub O §§ 73 and 74, 2 important factors are identity of donor and relationship of donor to state officer or employee and his or her state agency. State Ethics Comm Adv Op No. 94-16.

There are few, if any, circumstances in which solicitation by state officer or employee in his or her official capacity of personal gift of any value would be appropriate behavior or be authorized by provisions of CLS Pub O § 74. State Ethics Comm Adv Op No. 94-16.

Gift that could not be given to state officer or employee is impermissible when it is made with officer or employee's knowledge and acquiescence, and is solicited, accepted, or received by, or given to (1) his or her parent, sibling, spouse, child, relative or friend because of that person's relationship to state officer or employee, or (2) any other person or entity, including charitable organization, on state officer or employee's designation or recommendation, or on his or her behalf. State Ethics Comm Adv Op No. 94-16.

State officer or employee may accept invitation to attend occasional personal, family or private events or functions with no or de minimis nexus to state, where state employee receives only that received by other invitees. State Ethics Comm Adv Op No. 94-16.

State officer or employee may accept any thing given by person or entity with family or personal relationship with state officer or employee when circumstances make it clear that it is that personal relationship, rather than recipient's state position, that is primary motivating factor; in determining motivation, factors considered will include (1) history of relationship between donor and recipient, including whether or not items have previously been exchanged, (2) whether item was purchased by donor, (3) whether donor at same time gave same or similar items to other state officers and employees; giving of item will not be considered to be motivated by family or personal relationship if donor seeks to charge or deduct value of such item as business expense or seeks reimbursement from client. State Ethics Comm Adv Op No. 94-16.

State officer or employee may accept unsolicited advertising or promotional material of little intrinsic value, such as pens, pencils, note pads, and calendars. State Ethics Comm Adv Op No. 94-16.

State officer or employee may accept presents which are modest, reasonable and customary, given on special occasions, such as marriage, illness or retirement. State Ethics Comm Adv Op No. 94-16.

State officer or employee may accept awards and plaques which are publicly presented in recognition of state service or non-job-related service to community, although awards or plaques accepted and valued at more than $75 presented in recognition of job-related state service by disqualified source will become property of state; value of plaque will be cost of basic materials and will not include cost of inscription. State Ethics Comm Adv Op No. 94-16.

State officer or employee may accept meals received when state officer or employee serves as participant or speaker in job-related professional or educational program where meals are made available to all participants. State Ethics Comm Adv Op No. 94-16.

State officer or employee may accept modest items of food and refreshments, such as soft drinks, coffee and doughnuts, offered other than as part of meal. State Ethics Comm Adv Op No. 94-16.

Invitation to statewide elected official or to state agency head to attend function or event in his or her official capacity sponsored by any person or organization may be accepted, and elected official or agency head may designate staff member to attend in his or her place; however, such events should be those that would normally appear on such elected official or agency head's work schedule and would likely be publicized, and purpose of attendance must be appropriate to performance of attendee's official duties or to permit attendee to perform ceremonial function appropriate to his or her official position. State Ethics Comm Adv Op No. 94-16.

When state agency determines that employee's attendance at event is for state agency purpose because it will further agency programs and operations, employee may accept unsolicited gift from sponsor, even from disqualified source, of free attendance at all or part of widely attended gathering of mutual interest to number of parties. State Ethics Comm Adv Op No. 94-16.

When others in attendance at event will generally be accompanied by spouses, state agency may authorize state employee to accept sponsor's invitation to accompanying spouse to participate in all or portion of event at which employee's free attendance is permitted; however, travel expenses, lodging, entertainment collateral to event, or meals taken other than in group setting with all others in attendance may not be included as part of gift, either to employee or employee's spouse. State Ethics Comm Adv Op No. 94-16.

State agency heads have affirmative duty to take reasonable steps to assure that officers and employees of their agencies comply with minimum standards of all provisions of ethics law and opinions of State Ethics Commission; to assure accountability for compliance with rules pertaining to gifts, state agency heads should (1) communicate clearly and

frequently to agency officers and employees, vendors, prospective vendors, regulated parties and any one else with interest in agency actions, Public Officers Law and agency's code, if any, concerning gifts, (2) establish procedures by which agency officers and employees either seek prior approval of receipt of gifts or report them after fact and for approval, and (3) consult with State Ethics Commission to resolve any outstanding issues on gifts. State Ethics Comm Adv Op No. 94-16.

State officers and employees who are offered gift should either consult with agency's ethics officer or other official designated by agency head to ascertain whether it is permissible to accept it, or report gift after fact for approval; if it is determined that acceptance of gift was inappropriate, state officer or employee should be directed to return gift to donor or pay donor its market value. State Ethics Comm Adv Op No. 94-16.

In connection with proposed public/private joint venture for further implementation and marketing of automated fare collection network developed by Metropolitan Transportation Authority Card Company (MTACC), which was subsidiary of Metropolitan Transportation Authority (MTA), neither CLS Pub O § 73 nor § 74 would prevent MTA Group from lending employees to joint venture. State Ethics Comm Adv Op No. 95-4.

Potential for conflict of interest in violation of CLS Pub O § 74 is greatest when state officer or employee has competing interests between his or her state employment and his or her outside employment or affiliation with private for-profit entity; potential is less when individual is engaged in dual service for state and for not-for-profit organization, or another public entity other than state such as local governmental entity, because neither individual nor not-for-profit or public entity reap profit, and public's interest may be advanced by dual service. State Ethics Comm Adv Op No. 93-4.

Individual under subcontract to serve as clinical director of state correctional facility was state employee for purposes of CLS Pub O §§ 73, 73-a and 74 because of responsibilities of his position as executive-clinical director of facility and because of degree of control state agency exercised over him in performance of his duties, regardless of compensation, if any, that he earned. State Ethics Comm Adv Op No. 93-7.

It is obligation of covered state officers and employees to familiarize themselves with their obligations under CLS Pub O § 74 and, therefore, it is not relevant that state officer or employee was not told of any provisions of Public Officers Law when he entered state service. State Ethics Comm Adv Op No. 94-3.

Thoroughbred Breeding and Development Fund Corporation could continue to pay over to New York Thoroughbred Breeders, Inc. (NYTB) percentage of New York-bred foal registration fees and New York stallion registration fees collected by Fund's New York Bred Registry for which NYTB did not, in fact, render any services. State Ethics Comm Adv Op No. 95-13.

Member of Public Health Council could not appear before other components of Department of Health with respect to matters not pending before Council as it might create appearance of conflict of interest. State Ethics Comm Adv Op No. 95-27.

There would be no violation of CLS Pub O § 74 on part of state employee if clients of her husband were to have contact with bureau over which she had oversight if state employee disclosed spousal relationship, recused herself from any matter involving her husband's clients and abided by other specified conditions. State Ethics Comm Adv Op No. 95-35.

In order avoid appearance of conflict of interest under CLS Pub O § 74, state employee would be required to recuse herself from serving as management's representative as reviewer on contract or disciplinary grievance arising at state facility at which her spouse was senior level employee. State Ethics Comm Adv Op No. 95-39.

State employee could represent state facility at disciplinary arbitration without violation of Ethics Law, notwithstanding that her husband was senior level employee at state facility. State Ethics Comm Adv Op No. 95-39.

Department of Environmental Conservation engineer who wished to assist his family to apply for permit to build dam could provide such assistance without violating CLS Pub O § 74. State Ethics Comm Adv Op No. 95-43.

Department of Environmental Conservation engineer could assist organization of which he was member in applying for permit to repair dam without violating CLS Pub O § 74. State Ethics Comm Adv Op No. 95-43.

Department of Environmental Conservation (DEC) may accept tuition waivers in return for its support for student intern programs, as waivers are part of agreement for consideration and do not constitute gifts to individual employees or DEC and, even if they were gifts, there would be no violation of CLS Pub O §§ 73(5) or 74(2). State Ethics Comm Adv Op No. 96-22.

Neither State Ethics Commission's regulations limiting receipt of reimbursement for travel expenses, nor CLS Pub O §§ 73(5) or 74(3)(h), prohibits Cancer Research Scientist employed by Department of Health (DOH) from receiving travel reimbursement from corporation that has contracts with DOH; it is for DOH to interpret its own internal policy with respect to this matter. State Ethics Comm Adv Op No. 96-28.

Assuming Consumer Protection Board (CPB) has authority to accept gifts, it may accept donations from private sector sources to underwrite certain of its activities in connection with Consumer Week, but source, timing and amount of each donation must be carefully considered in light of CPB's role as protector of consumer interests; furthermore, given its statutory authority, CPB may not accept donations from entities subject to proceedings conducted by Public Service Commission, nor may it accept any gift conditioned in any way by donor, or gift where donor's logo or other identifiable marking will primarily serve as means of advertising. State Ethics Comm Adv Op No. 96-06.

Institute of Basic Research in Developmental Disabilities (IBR), as entity within Office of Mental

Retardation and Developmental Disabilities, may not accept grants or financial assistance from vendors to support its training and education programs, and when one corporate division serves as vendor, entire corporation (including all its divisions) is deemed vendor; however, IBR may accept donations from other private sector entities subject to conditions set forth in Federal Drug Administration's Draft Policy Statement on Industry-Supported Scientific Educational Activities and this opinion. State Ethics Comm Adv Op No. 96-10.

Department of Environmental Conservation employee may solicit funds in his personal capacity for charitable purpose, but he should not solicit from business entities or individuals where there are open pending cases in which he is involved or where there were cases within last 12 months in which he was involved, and he should recuse himself if entity from which he accepts contribution has matter that comes before him within one year (although one year period may vary depending on circumstances); finally, he may not use his official title, position or authority in fundraising efforts, or solicit from subordinates in his unit. State Ethics Comm Adv Op No. 97-28.

Department of Correctional Services employees who authored workbook series for people dealing with substance abuse addictions were not precluded from accepting royalties from sales of their workbooks, where series was not developed as part of their job duties or specifically for agency use; however, they could not accept royalties from use of workbooks by any state agency. State Ethics Comm Adv Op No. 98-15.

2. Applicability of statute

CLS Pub O § 74(3)(i) does not apply to restrict sale of real property to regulated persons or entities. State Ethics Comm Adv Op No. 91-19.

Willingness of state employee to recuse herself from any consideration of project involving her brother's firm obviated applicability of CLS Pub O § 74(3)(d) with respect to her. State Ethics Comm Adv Op No. 91-21.

Authority of employees of Department of Agriculture and Markets to accept contributions to Farm Products Publicity Fund, as delegated by commissioner of Department, must be tempered by consideration of CLS Pub O § 73(5), which precludes accepting gifts under certain circumstances, and by CLS Pub O § 74, which prohibits conflicts of interest; thus, department employees involved in regulatory activities may not accept, on department's behalf, contributions to Fund, and any other employees' acceptance of contributions would be required to take same precautions required of commissioner of department. State Ethics Comm Adv Op No. 92-1.

Political party chairs are not covered by CLS Pub O § 74. State Ethics Comm Adv Op No. 92-9.

It would not violate CLS Pub O § 74 if member of state board who previously sat on board of trustees of pension and welfare fund, in which several employers and organizations participated, were to consider grant application from one of employers or organizations served by that fund. State Ethics Comm Adv Op No. 94-11.

CLS Pub O § 74 applies to all state officers and employees, whether or not paid. State Ethics Comm Adv Op No. 94-16.

Relevant proscriptions of CLS Pub O § 74 apply to all gifts, including those valued at less than $75. State Ethics Comm Adv Op No. 94-16.

Members of county alcoholic beverage control boards are not state officers subject to CLS Pub O §§ 73, 73-a and 74 and, therefore, provisions of those statutes would not prohibit candidate for such board from continuing active workers' compensation practice. State Ethics Comm Adv Op No. 93-1.

CLS Pub O § 74 applies to state officer or employee while on leave of absence. State Ethics Comm Adv Op No. 95-15.

Although CLS Pub O §§ 73 and 74 are specifically applicable to gifts made to individual state employees, they are not enforceable with respect to gifts to agencies. State Ethics Comm Adv Op No. 95-38.

Independent Living Council is not state agency, and neither its members nor employees are subject to CLS Pub O §§ 73, 73-a and 74. State Ethics Comm Adv Op No. 96-5.

Counsel to Governor did not violate Public Officers Law by accepting transportation and tickets to attend Super Bowl in New Orleans from state senator, as there was no gift where he promptly reimbursed senator for market value of benefit he received and promptly (although after accepting transportation and tickets) requested opinion of State Ethics Commission. State Ethics Comm Adv Op No. 96-03.

CLS Pub O § 74 precludes employee of state agency from seeking elective office in city where state agency represents that his job responsibilities are likely to require that he negotiate leases on property located in city. State Ethics Comm Adv Op No. 97-4.

CLS Pub O § 74 precluded university Trustee from participating as member of Board of Trustees of university in matters relating to legal actions brought against university, where he was previously associated with plaintiffs and shared confidences with their attorneys. State Ethics Comm Adv Op No. 97-8.

Former president of Empire State Development Corporation (ESDC) could continue to serve as director of ESDC and, as such, was still subject to CLS Pub O § 74 but, as former president, she was also subject to 2-year bar and lifetime bar contained in CLS Pub O § 73(8) except when exercising her regular duties as director. State Ethics Comm Adv Op No. 97-11.

There is no bar to executives or staff members of state board participating in educational seminar or conference sponsored by profit making organization. State Ethics Comm Adv Op No. 97-18.

Unit leader of Department of Environmental Conservation licensing unit does not violate CLS Pub O § 74 by continuing to carry out his functions after marrying president of organization which regularly deals with his unit and whose membership includes licensees of that unit, but he must recuse himself when direct conflict would result or when his wife appears before his unit or personally advocates in

controverted matter, and he must take other steps set forth in this advisory opinion. State Ethics Comm Adv Op No. 97-19.

CLS Pub O § 74 applied to members of state's advisory boards when they were designated as policymakers, or when at least one board member had been appointed by governor. State Ethics Comm Adv Op No. 98-07.

3. Ownership of financial interest

It would not violate CLS Pub O § 74(3) for nonpolicy-making employees of Office of Mental Retardation and Developmental Disabilities (OMRDD) who were not involved in certification process to sell real property to provider of services that was certified and had its rates set by OMRDD under circumstances where employee-seller negotiated sale with provider rather than with OMRDD employees. State Ethics Comm Adv Op No. 91-19.

It did not violate CLS Pub O § 74 for agency to award no-bid consulting contract to firm owned and operated by sibling of senior manager of that agency, designated as policymaker, as long as (1) manager had no interest, financial or otherwise, in sibling's firm, (2) manager's regular job duties did not encompass selection of consultant or review or oversight of consultant contract, or, if job duties involved encompass such involvement, manager was completely screened out from consideration and appointment of such firm or contract, (3) manager made full disclosure to state agency's staff of her relationship to firm's principals and recused herself from any role in consideration or approval of contract to firm, and (4) on selection of firm for contract, manager's supervisor approved selection of contract on its merits. State Ethics Comm Adv Op No. 91-21.

It does not violate CLS Pub O § 74 for state employee or corporation of which he owns 40 percent to provide services to state agency which employs him through competitively awarded contract, provided that employee has no role in preparing specifications for services, does not improperly use his state position to obtain contract and there is no indication that fulfilling contract would impair employee's ability to fulfill his state responsibilities. State Ethics Comm Adv Op No. 92-2.

It would violate CLS Pub O § 74 for Environmental Conservation Officers (ECOs) to (1) sell ginseng, (2) operate charter fishing business, or (3) operate marina with bar and restaurant since ECOs had official enforcement responsibility over such activities. State Ethics Comm Adv Op No. 92-3.

Public benefit corporation could retain law firm in which one of its members was partner, without member's having conflict under code of ethics contained in CLS Pub O § 74, provided that member made full disclosure of relationship to law firm to entire public benefit corporation board of directors, took no part in public benefit corporation decisions involving selection of law firm or firm's work performed for public benefit corporation, did not share in "net revenues" generated from law firm's public benefit corporation work, and abided by certain other conditions. State Ethics Comm Adv Op No. 92-11.

Existence of former familial relationship between employee of state agency and individual who operated transcription and typing service did not bar state agency from contracting with service, providing state employee abided by specified conditions. State Ethics Comm Adv Op No. 94-22.

Employee of state facility could lease his home to Office of Mental Retardation and Developmental Disabilities (OMRDD) since OMRDD followed standard public notice and competitive bidding procedures, there were 2 other state agencies involved in assessing property and reviewing contract, and there was no evidence that state employee exerted any influence over state employees involved in decisions. State Ethics Comm Adv Op No. 93-10.

CLS Pub O § 74 did not prohibit law firm of member of appeals board from representing clients in litigation in which state agency of which appeals board was part was party as long as appeals board member did not share in net revenues generated by such representation. State Ethics Comm Adv Op No. 93-17.

President of State University of New York at particular campus could not accept stock option offered by for-profit corporation to its non-employee directors since personal, equity interest in for-profit corporation would create appearance of impropriety under CLS Pub O § 74 even after her recusal in certain situations. State Ethics Comm Adv Op No. 95-21.

Spouse of non-policymaking state employee could competitively bid for agency contract where purchase recommendations and specifications were prepared and reviewed by employee's unit at agency but employee was completely removed from all aspects of purchase and contract as long as contract was awarded after public notice and competitive bidding and employee had no involvement with contract or establishment of criteria for bid products. State Ethics Comm Adv Op No. 95-30.

Creation of trust for his ownership interests in 2 stallions by Chair of Racing and Wagering Board would not place him in compliance with CLS Pub O § 74, since he would not be sufficiently screened from information regarding sale of his breeding rights in stallions, and purchasers of such breeding rights would not be guaranteed to be unaware of his ownership. State Ethics Comm Adv Op No. 96-9.

Chair of Racing and Wagering Board would avoid future violations of CLS Pub O § 74 with respect to matters described in notice of reasonable cause if he were to divest his breeding rights in 2 stallions during period of his membership on Board, if he were not to acquire any interests in foals born or conceived as result of exercise of such rights, and if he were to resign as officer of corporation which sold goods and services to licensees of Board. State Ethics Comm Adv Op No. 96-14.

Employees of State Liquor Authority (SLA) may continue to own and operate franchises from sports association which are outside of New York state, but they may not inspect or conduct investigations with respect to any SLA-licensed facility in New York that is site of sports association league play. State Ethics Comm Adv Op No. 97-24.

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te University of New York at
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and Wagering Board would avoid
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ate Liquor Authority (SLA) may
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axation and Finance employee is

not required to recuse himself from supervising department's audit of publicly traded corporation in which he owns stock, or audit of corporations based on his holdings in certain funds which in turn own securities issued by those corporations; however, with respect to corporation in which he is shareholder, he should recuse himself if he believes that audit is likely to affect value of his holdings or be of significance to financial community or investing public. State Ethics Comm Adv Op No. 98-5.

4. —Filing of statement

Watershed Protection and Partnership Council (WPPC) is "state agency" within meaning of CLS Pub O §§ 73, 73-a and 74, and thus WPPC employees will have to file financial disclosure statements pursuant to § 73-a and will be subject to § 74 if WPPC is designated as policymaking council; however, unlike WPPC employees, WPPC members are not subject to § 73 because they are uncompensated. State Ethics Comm Adv Op No. 97-14.

5. Holding another office or position

State Department of Social Services (DSS) improperly denied request by DSS hearing officer seeking approval for employment as acting village justice; given types of matters adjudicated in respective forums, it was unlikely that hearing officer would be called on as village justice to preside over matter involving party who had previously appeared before him in his role as DSS hearing officer, and if such event did occur, hearing officer had option of recusing himself. Kastoff v New York State Dep't of Social Servs. (1993, 3d Dept) 195 AD2d 808, 600 NYS2d 349.

It was irrational to deny, as violative of CLS Pub O § 74, outside activity request submitted by petitioner, who was employed by Office of State Comptroller (OSC) in title of principal state accounts auditor, seeking permission to serve as member of city school district board of education where (1) it was uncontroverted that division of OSC to which petitioner was assigned (Division of Management Audit and Financial Reporting) was separate and distinct from Division of Municipal Affairs (DMA), which was division of OSC responsible for auditing school districts within state, (2) there was nothing in petitioner's job description suggesting that those divisions overlapped or that he had any professional contact with employees of DMA, (3) petitioner had had no involvement with audits of State Education Department or any local school district in past, (4) his supervisor had confirmed that petitioner, if elected to board of education, would not be assigned to any such audit in future and that petitioner was not responsible for developing audit plans for audits relating to local school districts, and (5) petitioner was but one of approximately 2,100 people employed by OSC and only one of its 295 designated policy makers. Hancox v Bress (1994, 3d Dept) 208 AD2d 1031, 617 NYS2d 398.

Petitioner, employed as senior examiner of municipal affairs by Office of State Comptroller (OSC) in city of Buffalo, could not serve as member of city water board where he was employed by same division of OSC that was responsible for auditing city of Buffalo and Buffalo Municipal Water Finance Authority, and he conceded that if such audit occurred, it would be conducted by his fellow employees; under circumstances, petitioner's offer to recuse himself was insufficient to guard against, much less remove, appearance of conflict of interest. Speers v New York State Ethics Comm'n (1994, 3d Dept) 209 AD2d 919, 619 NYS2d 201, app den 85 NY2d 805, 626 NYS2d 756, 650 NE2d 415.

Ethics Commission had jurisdiction to issue advisory opinion that former employee of Public Employment Relations Board (PERB) violated CLS Pub O § 74(3)(d) and (h) by submitting his application for appointment to mediation/fact-finding and grievance arbitration panels of PERB prior to his retirement from PERB, since former employee requested such advisory opinion in letter to commission. Kelly v New York State Ethics Comm'n (1994, Sup) 161 Misc 2d 706, 614 NYS2d 996.

Municipality by local law may establish exception to common law prohibition on holding incompatible offices where public interest would be served. 1994 Ops Atty Gen I 94-2.

Conflict of interest standards contained in CLS Pub O § 74 did not prohibit state employee from continuing to serve public through 2 public or quasi-public entities after he became full time state employee as long as those activities did not affect performance of his full-time duties with employing state agency. State Ethics Comm Adv Op No. 92-8.

It does not violate CLS Pub O § 74 for parole officer to serve as member of Local Conditional Release Commission. State Ethics Comm Adv Op No. 92-10.

Because potential exists for parole officer to be, or appear to be, inappropriately influenced by information or opinions concerning inmateparolee obtained by serving on Local Conditional Release Commission (LCRC), CLS Pub O § 74 requires Division of Parole parole officers to recuse themselves at state level from matters relating to inmate/parolees with whom they have had official contact as members of LCRC and at LCRC level from matters relating to inmate/parolees with whom they have had official contact as parole officers. State Ethics Comm Adv Op No. 92-10.

Division of Parole is responsible for determining whether its parole officers can meet their state responsibilities given time demands of serving on Local Conditional Release Commissions and requirements for recusals. State Ethics Comm Adv Op No. 92-10.

CLS Pub O § 74 did not preclude state employee for specific state agency from serving as chair of town planning board. State Ethics Comm Adv Op No. 92-14.

Because potential existed for state employee to be, or appear to be, inappropriately influenced by information or opinions concerning particular project, obtained through his service as planning board member, CLS Pub O § 74 required state employee to recuse himself in his state position from matters that were before or predictably might come before planning board on which he served. State Ethics Comm Adv Op No. 92-14.

State agency was responsible for determining whether its employee could meet his state responsi-

bilities, given anticipated recusals and time demands of serving on town planning board. State Ethics Comm Adv Op No. 92-14.

Because of sensitive nature of state employee's position (which included surveying and inspecting available space and determining suitability for state rental), CLS Pub O § 74 prohibited him from seeking election to and serving on city council of municipality in geographic area in which he worked, but did not prohibit his campaign for or service on local school board in same geographic area. State Ethics Comm Adv Op No. 92-16.

State employee whose position included surveying and inspecting available space and determining suitability for state rental, who sought permission to seek election to city council or school board in geographic area in which he worked, would have to decline not only monetary, but also any other support from current or potential landlords from his area of jurisdiction in order to prevent violation of CLS Pub O § 74(3)(d) during campaign. State Ethics Comm Adv Op No. 92-16.

If proper application of CLS Pub O § 74 requires state employee to repeatedly recuse himself as publicly elected official, 2 positions are incompatible and employee should not seek that office. State Ethics Comm Adv Op No. 92-16.

There would be appearance of conflict of interest under CLS Pub O § 74 were state agency employee to serve on municipal board since state employee performed on-site field examinations of affairs of small units of local government such as towns and special districts to determine compliance with General Municipal Law, State Finance Law and appropriate local laws. State Ethics Comm Adv Op No. 92-19.

Proposed public/private joint venture to further implement and market automated fare collection network developed by Metropolitan Transportation Authority Card Company (MTACC), which was subsidiary of Metropolitan Transportation Authority (MTA), could be established without violating CLS Pub O §§ 73 and 74; salaried and uncompensated members of MTA board of directors and employees of MTA Group could serve without compensation on governing body of joint venture, as long as joint venture was not incorporated. State Ethics Comm Adv Op No. 95-4.

There is no statutory conflict of interest posed by one individual serving as both Executive Director of Consumer Protection Board and chair of Long Island Power Authority. State Ethics Comm Adv Op No. 93-4.

CLS Pub O § 74 does not prohibit officer or employee of state from seeking and holding elective office when responsibilities of elective office do not conflict with employee's state responsibilities. State Ethics Comm Adv Op No. 93-9.

Neither CLS Pub O § 74 nor regulations of State Ethics Commission prohibit state employee who is non-policymaker from serving as member of local political party committee. State Ethics Comm Adv Op No. 93-9.

Nonpolicymaking state employee might be required, through his duties as elected legislator or committeeperson, to make appearance before state agency; in such circumstance, since state employee would be compensated for his services as county legislator but not as committeeperson, he would be prohibited from making compensated appearances, for example, on behalf of any one including county, to obtain contract, apply for grant of money or loan, from any state agency. State Ethics Comm Adv Op No. 93-9.

In connection with state employee who sought permission to run for election as county legislator, while there was potential for discussion of programs supported by employing state agency during course of campaign or during course of state employee's political activities, such potential did not exclude state employee from seeking and holding elective office; however, he would be required to ensure that his political literature and speeches did not demonstrate, to any degree, that either employing state agency or supported programs endorsed his campaign or positions or that he had been influential in bringing those programs to county. State Ethics Comm Adv Op No. 93-9.

In connection with state employee who sought permission to run for election as county legislator, state employee would be required to disclose to his supervisor his campaign and potential service as legislator and committeeman and recuse himself from state agency matters affecting county regardless of whether his actual state agency duties concerned any aspect of matters under consideration. State Ethics Comm Adv Op No. 93-9.

In connection with state employee who sought permission to run for election as county legislator, in order to avoid appearance of improper influence under CLS Pub O § 74(3)(f), state employee in his campaign would be required to form separate entity for receipt of campaign contributions and refuse any campaign contributions or other support from persons or entities which were regulated by, negotiating with or in any manner doing business with or representing employing state agency during his campaign. State Ethics Comm Adv Op No. 93-9.

State employees may serve as independent contractors in State University of New York and City University of New York systems only if requirements of CLS Pub O § 73(4) and (7) have been met and if there are no CLS Pub O § 74 issues with such service. State Ethics Comm Adv Op No. 93-14.

Members of board of directors of Thoroughbred Breeding and Development Fund Corporation, who were eligible to receive awards from Fund, could participate in matters involving allocation of Fund's resources and in matters concerning requirements for qualification of thoroughbreds as New York-bred without violating CLS Pub O § 74; however, they would be required to recuse themselves from deliberating and voting on any matter from which they might directly and personally benefit due to their activities as owners or breeders of thoroughbred horses and, moreover, any member of board of directors of Fund who was also director or officer of New York Thoroughbred Breeders, Inc. (NYTB) would be required to recuse himself or herself from consideration of and vote on any matter involving

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payment or subsidies to NYTB or involving contract between Fund and NYTB. State Ethics Comm Adv Op No. 95-13.

Directors of Thoroughbred Breeding and Development Fund Corporation, who were eligible to receive payments from Fund as breeders or owners of stallion or New York-breds, could participate in deliberations of Fund board and vote on resolutions dealing with allocation of Fund's resources respecting percentages to be paid to breeders and stallion owners in owner awards and purses. State Ethics Comm Adv Op No. 95-13.

Directors of Thoroughbred Breeding and Development Fund Corporation who were eligible to receive payments from Fund in form of breeder awards, stallion owner awards, owner awards, or purses could participate in deliberations of board and vote on resolutions fixing amount of awards and purses and conditions of New York-bred races. State Ethics Comm Adv Op No. 95-13.

Directors of Thoroughbred Breeding and Development Fund Corporation who were eligible to receive awards from Fund and to earn purses in races for New York-breds funded by Fund could participate in deliberations and vote on resolutions to set qualifications of horses earning those payments, although they would be required to recuse themselves from participation in any matter from which they might directly and personally benefit. State Ethics Comm Adv Op No. 95-13.

CLS Pub O § 74 did not prohibit member of state board from serving as trustee of foundation that was chartered by state board and provided grants to institutions of higher learning in New York State, subject to disclosure and recusal in appropriate situations State Ethics Comm Adv Op No. 95-18.

CLS Pub O § 74 would not prohibit state employee from serving as board member of Industrial Development Agency (IDA), provided that he recuse himself, in his state position, from matters concerning IDAs, and that he disclose his state position to IDA board and recuse himself on any state regulatory matter that came before board. State Ethics Comm Adv Op No. 95-29.

CLS Pub O § 74 would prohibit State University of New York employees from serving on corporate board of hospital network of which University Hospital was member and with which Hospital contracted for hospital services. State Ethics Comm Adv Op No. 95-36.

Employee on leave of absence from Office of Real Property Services was barred by CLS Pub O § 74 from continued involvement on behalf of utility in Real Property Taxation Administration Committee's Subcommittee on Utility Valuation. State Ethics Comm Adv Op No. 95-37.

Attorney who was president and 50 percent owner of title abstract company could, without violation of CLS Pub O § 74, work in legal department at Housing Finance Agency (HFA) and simultaneously retain his position with and ownership interest in title abstract company, provided he recused himself at HFA with regard to selection of title insurers and agreed that abstract company would decline as clients those who had current or past business with HFA. State Ethics Comm Adv Op No. 96-3.

State Education Department's policy of prohibiting board members from concurrently serving in leadership and advocacy positions with professional associations was consistent with Code of Ethics of CLS Pub O § 74. State Ethics Comm Adv Op No. 96-13.

CLS Pub O § 74 does not prohibit newly appointed director at State University of New York (SUNY) from continuing to hold elective office as member of county legislature and serving as chair of its education committee; however, as SUNY director he must recuse himself from all matters involving county and county's community college, and as legislator he should recuse himself from matters dealing with SUNY or community college and resign from education committee, to avoid conflict with his State position. State Ethics Comm Adv Op No. 96-30.

CLS Pub O § 74 precludes employee of state agency from seeking elective office in certain city where agency has represented that his responsibilities are likely to require that he negotiate leases on property located in that city; should agency determine in future that employee would not generally be assigned to city projects, he could, at that time, hold such office subject to appropriate recusal requirements. State Ethics Comm Adv Op No. 96-04.

Employee of state psychiatric center may, consistent with CLS Pub O § 74, seek election to and serve as member of governing board of town located 25 miles away from psychiatric center; in unlikely event that specific matter should arise which might create conflict of interest or appearance of conflict, such individual should recuse himself from dealing with that matter. State Ethics Comm Adv Op No. 97-17.

Engineer employed by state authority, who has not been designated as policymaker, may seek elective office of county legislator; in unlikely event that specific matter should arise which might create conflict of interest or appearance of conflict, he should recuse himself from dealing with that matter. State Ethics Comm Adv Op No. 97-21.

Employees of state psychiatric center who perform evaluations of individuals and families on reference from Family Court may not engage in outside activity of overseeing court-ordered "supervised visits," because there is reasonable perception that their evaluations cannot be made on fair and independent basis. State Ethics Comm Adv Op No. 97-26.

Petitioner, who was recently appointed as member of Board of Trustees of City University of New York, could continue her 20 years of service as adjunct instructor as long as, when acting as trustee, she recused herself from any discussion or vote on matters that would affect her personally in her position as adjunct instructor. State Ethics Comm Adv Op No. 98-10.

6. Private employment of public officer or employee

It is a conflict of interest for a person to serve as a town code enforcement officer and to be a partner in a private home inspection business performing functions in the municipality where he serves as enforcement officer. 1991 Ops Atty Gen I 91-38.

The assistant chief of a volunteer fire company should not solicit or accept private towing work at an accident scene where he appears in his official capacity. 1991 Ops Atty Gen I 91-41.

Conflict of interest did not result from village attorney's private practice before town planning board, of which mayor was member. 1997 Ops Atty Gen I 97-38.

Employees of county water authority should not accept off-duty employment to install private service lines for homeowners where those service lines have to be approved by authority prior to connection with authority mains. 1998 Ops Atty Gen I 98-51.

Conflict of interests exists when real property appraisal technician undertakes private sector appraisal work involving representation of persons challenging their assessments in assessing units wherein technician exercises his official duties. Op Atty Gen 88-48 (Informal).

It would violate CLS Pub O §§ 73(4)(a) and 74 for employees of Office of Mental Retardation and Developmental Disabilities on approved leaves of absence to serve as certified family care providers under proposal submitted by that agency. State Ethics Comm Adv Op No. 91-11.

It did not violate CLS Pub O § 73(4)(a) or § 74 for Division For Youth (DFY) employees to serve as certified DFY foster parents, with exception of certain supervisory DFY employees and employees who had been designated as serving in policymaking positions by DFY. State Ethics Comm Adv Op No. 91-15.

It would not violate CLS Pub O § 73(4)(a) or § 74 for employees of Division For Youth to serve as foster parents for programs administered by other state agencies, provided that they obtained permission of their appointing authority to engage in outside activity. State Ethics Comm Adv Op No. 91-15.

It did not violate CLS Pub O § 73(4)(a) or § 74 for employees of other state agencies to be certified by Division for Youth as foster care parents, provided that employees received permission of their appointing authority to engage in outside activity. State Ethics Comm Adv Op No. 91-15.

To avoid conflict of interest in violation of CLS Pub O § 74, employees of Division For Youth (DFY) who act as certified DFY foster parents should only be eligible to receive same reimbursement amounts as any non-employee foster parents. State Ethics Comm Adv Op No. 91-15.

Motor Vehicle Violations Bureau Referee (MVR) who represents clients in traffic violations cases violates Code of Ethics as set forth in CLS Pub O § 74(2) and (3)(h) regardless of whether private practice takes place in county in which MVR is employed. State Ethics Comm Adv Op No. 91-16.

It did not violate CLS Pub O § 74 for commissioner of Department of Health (DOH) to receive annual salary of $61,601 from Health Research, Incorporated (HRI) for his services as president of that corporation since HRI's purpose was to advance interests of DOH; however, if commissioner were to find himself in position in his capacity as president of HRI that would place HRI's interests over those of DOH, he should recuse himself from taking any action because of conflict of interest. State Ethics Comm Adv Op No. 91-20.

Employee of Office of Mental Health (OMH), by virtue of his designation as policymaker by agency and his particular job duties, could not serve on board of directors of not-for-profit adult home that had significant contacts with OMH because of appearance of conflict of interest which would occur in violation of CLS Pub O § 74. State Ethics Comm Adv Op No. 92-4.

CLS Pub O § 74 precluded state employee from engaging in business activity for compensation when in his state position he had regulatory responsibilities over those who would be his private competitors. State Ethics Comm Adv Op No. 92-11.

Although state employee proposed to undertake only consulting aspect of specific business, distinction between sale of consulting and sale of applications was immaterial because state employee and private business had same market and those in specific business were, to significant degree, regulated by state employee and, state employee, in his official capacity, could inspect specific sites treated by his competitors. State Ethics Comm Adv Op No. 92-11.

It would not violate CLS Pub O § 73(7)(a) or § 74 for state agency employee designated as policymaker to engage in compensated outside employment for entity subject to state agency's regulatory jurisdiction provided that policymaker engaged only in clinical activities (i.e., treating patients) for outside entity. State Ethics Comm Adv Op No. 92-12.

Head of state facility could not serve as director of for-profit corporation which was sole shareholder/parent of corporation which controlled corporation that conducted considerable business with state facility. State Ethics Comm Adv Op No. 92-17.

CLS Pub O § 74 precluded state agency policymakers and those employees directly or indirectly responsible for contracts involving not-for-profit corporation from serving on board of not-for-profit corporation that contracted with agency. State Ethics Comm Adv Op No. 92-18.

It violates CLS Pub O § 74 for supervisor to select certain of his employees to participate in outside employment, which he will supervise, for compensation. State Ethics Comm Adv Op No. 92-23.

Department of Health surveyors, whether full or part-time and whether or not policymakers, generally may not engage in compensated outside employment with regulated and licensed hospitals. State Ethics Comm Adv Op No. 92-24.

Department of Health emergency medical services representatives may perform voluntary services for regulated and licensed voluntary emergency organizations consistent with Department's conditions on this type of outside activities and other specified conditions. State Ethics Comm Adv Op No. 92-24.

Department of Health (DOH) surveyors with outside clinical practices may have privileges at DOH licensed facilities as long as they are not paid directly from hospital and they do not involve themselves directly or indirectly with survey process on behalf of hospital. State Ethics Comm Adv Op No. 92-24.

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Presumption, that action by member of state board concerning former employer or business that he or she left within last 2 years violates CLS Pub O § 74, can be rebutted by various factors, such as nature and duration of relationship. State Ethics Comm Adv Op No. 94-11.

Members of state board must disclose to board any prior employment or business relationship with applicant within last 2 years, and, unless there are special factors surrounding prior relationship, recuse themselves from participating in any board action; similarly, if member of state board has entered into negotiations regarding future services to be rendered to applicant, he or she must disclose that information to board and refrain from participating in any board action involving applicant. State Ethics Comm Adv Op No. 94-11.

There would be no conflict of interest for member of state board to consider application submitted by his former employer where such employment ended more than 2 years ago, even though board member was vested in pension plan in which his former employer participated. State Ethics Comm Adv Op No. 94-11.

CLS Pub O § 74 does not automatically preclude state officers and employees from engaging in outside business practice solely because business is in same "field" as their public employment; substantial conflict must exist with proper discharge of employee's duties in public interest, which will be found when there is inherent incompatibility between private interests and official responsibilities of person holding position of trust. State Ethics Comm Adv Op No. 94-12.

Provisions of CLS Pub O § 74 applied to employee of Developmental Disabilities Services Office (DDSO) and she would be required to choose between continuing her outside activity as family care provider or securing position with DDSO's Family Care Division in which she would work directly with family care providers, assisting them in provision of services to consumers and providing recommendations on individual placements, and in which she would also participate in ongoing team meetings where recommendations would be made regarding family care policy and placements. State Ethics Comm Adv Op No. 94-17.

Due to nature and terms of joint venture agreement between Health Research, Incorporated (not-for-profit corporation closely affiliated with Department of Health) and private for-profit corporation, and due to Department of Health's vast authority over matters concerning public health, there was appearance of conflict of interest in violation of CLS Pub O § 74 for Commissioner of Health to serve as chair or member of board of directors of for-profit corporation. State Ethics Comm Adv Op No. 93-3.

Due to broad responsibilities of Public Health Council, there was appearance of conflict of interest under CLS Pub O § 74 for chair of Public Health Council to sit on board of directors of private for-profit corporation involved in joint venture with Health Research, Incorporated (not-for-profit corporation closely affiliated with Department of Health). State Ethics Comm Adv Op No. 93-3.

It violated CLS Pub O § 74 for executive director of Health Research, Incorporated (not-for-profit corporation closely affiliated with Department of Health), in his position as executive director or as member of Department of Health's Institutional Review Board for Human Research Review, to serve as member of board of directors and secretary/treasurer of private for-profit corporation involved in joint venture with Health Research, Incorporated. State Ethics Comm Adv Op No. 93-3.

CLS Pub O § 74 precluded Department of Environmental Conservation foresters from performing services as forestry consultants because they had significant responsibilities for forests owned by potential clients and over activities of forestry consultants with whom they would be competing; such outside activity could (1) cause public to suspect that they were using their state positions for personal gain in conflict with their state positions and in violation of their trust, (2) create substantial conflict between duties of foresters and their private interests, or (3) result in use of official position to secure unwarranted privileges. State Ethics Comm Adv Op No. 93-5.

It is generally permissible under CLS Pub O § 74 for state officers and employees, whether or not designated as policymakers, to serve in employee status as part-time faculty, advisors and mentors/tutors in State University of New York and City University of New York systems, assuming Civil Service Law dual employment requirements are met. State Ethics Comm Adv Op No. 93-14.

Member of state board was required to recuse himself from voting on applications from members of 2 private organizations which employed him; moreover, he could not provide any assistance to members of 2 private organizations that were preparing applications for state board or consult with any other member of state board as to merits of such applications. State Ethics Comm Adv Op No. 93-16.

Appeals board member would violate conflict of interest provisions of CLS Pub O § 74 if he were to represent clients before either appeals board or state agency of which it was part; however, other lawyers in firm could represent clients before state agency of which appeals board was part, including appeals board if appeals board member recused himself from involvement in any matter in which his firm represented or had represented client. State Ethics Comm Adv Op No. 93-17.

CLS Pub O § 74 precluded state employee from engaging in proposed outside activity which involved production of directory of qualified providers of service, since it could appear that state employee would be influenced in his state position with regard to purchase of advertisements in directory by businesses with which he dealt or wished to deal as state employee. State Ethics Comm Adv Op No. 94-3.

State employee could not obtain part-time job at fast food franchise to which employing state agency provided funds to train its clients. State Ethics Comm Adv Op No. 94-3.

Policymaking employee at Adirondack Park Agency (APA) would not violate CLS Pub O § 74

by serving as member of board of directors of not-for-profit organization that had interests similar to those of APA as long as she recused herself in appropriate situations and also disclosed her organization board membership to APA with regard to appropriate matters. State Ethics Comm Adv Op No. 95-9.

CLS Pub O § 74 prohibited employees of Office of Mental Retardation and Developmental Disabilities (OMRDD) from accompanying, as outside activity, individuals with developmental disabilities under care of OMRDD on trips paid for by parents of those individuals. State Ethics Comm Adv Op No. 95-10.

Nonpolicymaking employee of Office of Mental Retardation and Developmental Disabilities (OMRDD) would not violate CLS Pub O § 74 by serving as member of board of directors of not-for-profit corporation that received funding from OMRDD and was subject to its oversight as long as he recused himself from discussions or votes on issues on which OMRDD had interest or was likely to take position or must issue determination, and as long as he informed OMRDD of his membership on board with regard to each such matter. State Ethics Comm Adv Op No. 95-12.

President of State University of New York (SUNY) at particular campus could serve with compensation on board of directors of for-profit corporation that did business with SUNY, subject to her recusing herself in certain situations. State Ethics Comm Adv Op No. 95-21.

CLS Pub O § 74 prohibited non-policymaking Department of Environmental Conservation attorneys, as outside activity, from contributing chapters to "New York Environmental Law Series" (practice guide for lawyers whose work involves New York environmental law matters) for compensation, except as to program to which he was no longer assigned and to which he did not anticipate reassignment State Ethics Comm Adv Op No. 95-25.

Division of Housing and Community Renewal employee could not act as tenants' representative in appeal from order of Rent Administrator pending before agency without violating CLS Pub O § 74; even though employee was supervisor in one bureau and appeal would be processed by another bureau, it would result in order of senior official of division which included state employee's bureau and would, in fact, be issued by individual who had authority to oversee state employee's work. State Ethics Comm Adv Op No. 96-6.

CLS Pub O § 74 does not prohibit Assistant Attorney General with New York State Department of Law from entering into proposed contract to publish book he has written on criminal law and procedure, where he has met all conditions established by Commission in Advisory Opinion No. 89-10 for state employee to receive royalties from publication of book. State Ethics Comm Adv Op No. 96-21.

President of campus of State University of New York may accept form of compensation due to her for serving as board member of for-profit corporation, pursuant to corporation's deferred stock plan created for non-employee directors, as there would no violation of CLS Pub O § 74 as interpreted by Advisory Opinion No. 95-21, because plan would not give campus president, during her service as director, any equity interest in corporation that would create appearance of impropriety. State Ethics Comm Adv Op No. 96-29.

When participating in matters relating to legal actions brought against public university, member of university board of trustees who was previously associated with plaintiffs and shared confidences with their attorneys must (1) disclose to board his prior relationship with plaintiffs and their attorneys, and recuse himself from participating in these matters, (2) absent himself from board executive session in which litigation strategy is discussed, and (3) refrain from speaking before any civic or fraternal organization regarding litigation or related issues; however, such board member may recommend to trustees, at public meeting of board, that they invite both sides to attend future public meeting. State Ethics Comm Adv Op No. 96-08.

There will be appearance of prohibited conflict of interest if research scientist employed by Office of Mental Retardation and Developmental Disabilities serves as consultant to pharmaceutical company while it is funding research at state laboratory that he heads. State Ethics Comm Adv Op No. 97-22.

Attorney who was recently hired as state agency's director of internal audit may, consistent with CLS Pub O § 74, continue to serve as member of board of directors of not-for-profit corporation licensed by and funded through state agency, subject to certain recusal requirements. State Ethics Comm Adv Op No. 97-25.

Attorney who serves as member of board may, while serving on board, engage in practice of law before agency in which board is created. State Ethics Comm Adv Op No. 97-27.

Senior employee of state public authority may not serve on advisory board of bank. State Ethics Comm Adv Op No. 98-2.

Non-policymaking employee of Department of Environmental Conservation (DEC) was precluded under CLS Pub O § 74 from serving as officer of not-for-profit corporation which entered into memorandum of understanding (MOU) with DEC, where MOU was administered by division in which employee in question was employed. State Ethics Comm Adv Op No. 98-11.

Department of Transportation employee, who was agency expert in worker safety, could not receive compensation for outside activity of teaching 10-hour OSHA training course. State Ethics Comm Adv Op No. 98-16.

Long Island Rail Road (LIRR) employee was not precluded by CLS Pub O § 73(7) or CLS Pub O § 74 from engaging in part-time outside employment as quality assurance engineer for contractors doing work for Metropolitan Transportation Authority and its affiliates and subsidiaries other than LIRR, as well as for other state agencies. State Ethics Comm Adv Op No. 99-02.

§ 74-a. Duty of public officers regarding the physically handicapped

RESEARCH REFERENCES AND PRACTICE AIDS:
2 NY Jur 2d, Administrative Law § 226.

CASE NOTES

Petitioner was entitled to mandamus directing town to comply with CLS Pub O §§ 74-a and 103 by conducting future public meetings at location other than present town hall, and requiring that such location provide barrier-free facilities for physically handicapped persons, where evidence established that town hall was not accessible to physically handicapped persons, that attempt to remedy defect by installation of ramp had been inadequate, and that no further efforts to remedy defect had been made. Smith v Warwick (1991, 3d Dept) 169 AD2d 976, 564 NYS2d 874.

§ 75-a. Appearance by a person convicted of a crime of corruption

Upon conviction for any of the following crimes: bribery in the first degree, bribery in the second degree, bribery in the third degree, rewarding official misconduct in the first degree, rewarding official misconduct in the second degree, giving unlawful gratuities, and when any such crime is committed for the purpose of corrupting a public office, agency or public official of the state, or any political subdivision, public authority, or public benefit corporation of the state, in the performance of public duty, such public office, agency or public official of the state, or any political subdivision or public authority may bar that person or entity convicted of such enumerated crimes from appearing before the affected public office, agency or public official of the state, or any such political subdivision or public authority in any professional or representative capacity. Such bar shall be for a period of five years from the date of judgment for such conviction.

HISTORY:
Add, L 1998, ch 251, § 1, eff July 7, 1998.

§ 76. Receiving bribes by members of legislature

A member of either of the houses composing the legislature of this state, or a person elected to become a member thereof, who asks, receives, or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment or action shall be influenced thereby, or shall be given in any particular manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity,[1] *shall be guilty of a class D felony.*

HISTORY:
Amd, L 1987, ch 813, § 4, eff Jan 1, 1989.
The 1987 act deleted at fig 1 "or who gives or offers or promises to give any official vote in consideration that another member of the legislature, or person elected to become such member, shall give any such vote, either upon the same or another question, is punishable by imprisonment in a state prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both.

NOTES:
Laws 1987, ch 813, § 1, eff Aug 7, 1987, provides as follows:
Section 1. Short title. Sections two through seventeen of this act shall be known and may be cited as the "Ethics in Government Act".

§ 77. Unlawful fees and payments

RESEARCH REFERENCES AND PRACTICE AIDS:
94 NY Jur 2d, Schools, Universities, and Colleges § 332.

Texts:
New York Insurance Law (Matthew Bender's New York Practice Series) § 2.01[4].

APPENDIX IV

SCAR PETITION - UCS 900

SMALL CLAIMS ASSESSMENT REVIEW
GENERAL INFORMATION AND FILING REQUIREMENTS
FOR COUNTIES OUTSIDE NEW YORK CITY
UCS 900 (Rev. September 2003)

WHO MAY FILE? Any person aggrieved by an assessment of a one, two or three-family, owner-occupied residential structure used *exclusively* for residential purposes who has filed a written complaint with the board of assessment review (or other administrative review body of the assessing unit) in regard to that assessment. Condominiums are not eligible for small claims review, EXCEPT (1) owner-occupied condominiums used exclusively for residential purposes that are located in Nassau County and designated as "Class One" property. (See Section 1802(1), Real Property Tax law), and (2) condominiums that have been designated in the "homestead" class in any approved assessing unit, are eligible.

You may complete the Petition yourself, or have a representative do it for you. If you choose to have a representative file for you, you must complete the "Designation of Representative" section of the petition.

WHAT ASSESSMENT CAN BE REVIEWED? The only assessment that can be reviewed is that on the current final assessment roll completed and filed by your assessor. The right to review is based upon the timely filing of a written petition. A separate petition must be filed for each separately assessed parcel. You may not request an assessment lower than that which you requested before the Board of Assessment Review. The assessment of a property having an equalized value of $150,000 or less may be reviewed without further limitation. If the equalized value of the property exceeds $150,000, the total assessment requested reduction may not exceed 25 percent of the assessed value.

WHEN AND WHERE MUST THE PETITION BE FILED? Three copies of the petition must be filed with the Clerk of the county in which your real property is located, within 30 days of the filing of the final assessment roll for your assessing unit. Your petition must be accompanied by a $30 filing fee and should include supporting statements, records, and other relevant information to support your petition. If you cannot file your petition in person you may mail your petition, but it must be mailed no later than 30 days after the final assessment roll is completed and filed. The failure to file your petition on time may result in a dismissal of your claim.

Towns and villages are separate assessing units. Therefore, if your property is located in a village, filing a petition with respect to your town assessment or your village assessment alone will not affect the assessment by the other jurisdiction.

In addition:

a. You must mail by certified mail, return receipt requested, or, deliver in person, one (1) copy of the petition to the clerk of the assessing unit, or if there is no such clerk, to the officer who performs the customary duties of the clerk.

a. You must mail, by regular mail, one (1) copy of the petition to the clerk of any school district where any part of the property, the assessment on which is to be reviewed, is located, except with respect to a school district within a city of 125,000 population or more.* If there is no clerk of the school district, or the clerk's name and address cannot be obtained, the mailing may be made to a trustee of the school district.

b. You must mail, by regular mail, one (1) copy of the petition to the treasurer of the county in which the property is located.

c. The mailings and delivery, referred to above must be done within ten days from the date of filing three copies of the petition with the County Clerk. The County Clerk is also the Clerk of the Supreme Court.

WHEN IS THE FINAL ASSESSMENT ROLL FILED? A final assessment roll is considered completed and filed when the assessor publishes notice of that fact in the official newspaper of the assessing unit.

*Buffalo, Rochester, Syracuse and Yonkers.

In most towns, the final assessment roll is required to be filed by July 1st , except that in towns in the County of Suffolk, it must be filed no later than September 1st; in towns in the County of Westchester no later than September 15th, and in the towns in Erie and Nassau Counties, no later than April 1st.

In cities, the date for filing of final assessment rolls varies based upon provisions of each city's charter. You should contact the office of the assessor or the city clerk for this information.

In most villages, final assessment rolls must be filed by April first; however some village assessment calendars vary and you therefore should contact the village clerk's office for this information.

HOW WILL YOUR CASE BE HEARD?

1. After you have filed your petition, the Assessment Review Clerk in the Supreme Court in the county will assign your case to a hearings officer. The hearing officer will contact you directly to set a date, time and place for a hearing.

2. You may appear personally, with or without an attorney or other representative, to support the statements contained in the petition and attachments.

3. You may authorize an attorney or other representative to appear personally without you to support the petition. This authorization must be in writing and bear a date within the same calendar year during which the petition is filed.

4. There is a presumption under the law that the assessment made by the assessor is correct. The burden of proof is with you, the petitioner, to overcome this presumption.

5. The hearing officer will require you or your representative to appear personally, and may request that you submit addition al evidence. If you willfully refuse or neglect to produce such evidence, or to answer any material question put to you, you may be unable to obtain any reduction in assessment from the hearing officer. Failure to appear shall result in the petition being determined by the hearing officer based upon te available evidence submitted.

6. The hearing officer may determine the final assessment to be the same as or less than the original assessment. However, he cannot reduce your assessment to an amount lower than you claimed on your petition.

7. Amount of reduction on petition is limited by amount claimed. The amount by which you believe your assessment should be reduced cannot later be changed after you enter this amount on the petition and file it. For example, if you claim an excessive assessment and set forth in your petition that you seek a reduction of $2,000, you cannot later seek a larger reduction than the $2,000 originally sought. Further, the hearing officer cannot legally grant a greater reduction than the amount you request, even if circumstances should show that a larger reduction is warranted.

8. Filing of a petition for small claims assessment review constitutes a waiver of a right to commence a proceeding for judicial review of the assessment pursuant to Title 1 of Article 7 of the Real Property Tax Law.

INSTRUCTIONS FOR COMPLETING THE PETITION
[Form RPTL 730]

Part 1 - GENERAL INFORMATION

You or your representative must complete all of Part 1, except for "filling number" and "calendar number", which are the responsibility of the County Clerk and the assessment review clerk. (Of course, you should complete the information regarding a representative only if you choose not to represent yourself.)

1. An "assessing unit" is each city, town and village, except in the counties of Nassau and Tompkins. In Nassau County, the County assesses real property instead of the towns (cities and villages in that county remain independent assessing units). In Tompkins County, the County is the assessing unit for all municipalities (i.e., the city of Ithaca and all towns and villages).

2. The "date of the completion and filing of the assessment roll" is deemed to be the later of: (a) the last date allowed by law for such filing, or (b) the date on which the assessor publishes and posts notice of the filing. This date is important because a petition filed more than 30 days after the filing of the assessment roll may be dismissed as untimely.

Thus, if your property is located in a town in which the final assessment roll should be completed and filed by July 1, but the assessor fails to publish notice of the filing until July 10, you should enter "July 10" on line 2 of part 1A. Conversely, if the assessor in such town filed his assessment roll on June 25, you should enter "July 1," because that is the last date allowed by law for the filing and it is later than the date of the actual filing.

If you have any questions concerning the filing of the final assessment roll, you should contact your assessor.

3. Simply enter the information as shown on the final assessment roll. On line 3(a) enter the total assessed value as shown on the assessment roll. On line 3(b), enter the total of all exempt amounts, such as aged, veterans, etc. If there are more than one exemption, please list each exemption and the amount. Line 3(c) is the amount on 3(a) *minus* the amount on 3(b).

4. Show the date of the filing in person or of mailing this petition to the County Clerk's office. WARNING: IF THE PETITION IS FILED, IN PERSON OR BY MAIL, LATER THAN 30 DAYS OF THE FILING THE FINAL ASSESSMENT ROLL, IT MAY BE DISMISSED.

5-8. These items are self-explanatory. Number 6 should be completed (along with the "Designation of Representative" section) only if you have selected someone else to file or appear on your behalf.

PART II - GROUNDS FOR PETITION

I. ASSESSMENT REQUESTED

The amount of assessment reduction is limited in two ways. First, you may not request an assessment lower than the assessment you requested on the complaint form filed with your assessor or the Board of Assessment Review. For example, if your property was tentatively assessed at $25,000, and you requested an assessment of $20,000, you may *not* request an assessment of less than $20,000 on this petition. Enter the amount you requested in the space provided. Include the total assessment, the amount of exemptions, if any (such as veterans exemptions), and the taxable assessment.

J. MAXIMUM REDUCTION

In certain instances, you may not request an assessment reduction of more that 25 percent of your current assessment. To determine if this limitation applies to your property perform the equalized value calculation. If your property is not in a special assessing unit, the equalized value is calculated by dividing the assessed value of your property by the latest State equalization rate. If your property is in a special assessing unit, the equalized value is calculated by dividing the assessed value of your property by the class one ratio. If you are challenging a village assessment, you must use the State equalization rate for the village. Your assessor or the County Director of Real Property Tax Services can advise you if your property is in a special assessing district, and can provide you with the appropriate equalization rate or class one ratio.

If the EQUALIZED VALUE is greater than $150,000, the total assessment requested reduction may not exceed 25 percent of the assessed value. For example, if your property is assessed at $20,000, and the equalization rate is 10 percent, the EQUALIZED VALUE is calculated by dividing $20,000 by .10 or $200,000. In this instance, you are limited to requesting a *reduction* of no more than 25 percent of your assessment of $20,000, or $5,000.

K. UNEQUAL ASSESSMENT

1. If you believe your property is assessed at a higher percentage of full (market) value than the average of all other properties on the same assessment roll or at a higher percentage of full value than other residential properties on that assessment roll, you may claim an unequal assessment and you should complete this section of the petition.

For example, if you prove the market value of your property is $20,000, a total assessment of $15,000 would show that it is assessed at 75 percent of market value. If you prove that all other property, or other residential property, on the average is assessed at 50 percent (see below) you may claim a reduction of your total assessment to $10,000.

2. You must establish the market value of your property in order to develop the percentage of market value represented by your total assessment. (See "Information To Support Your Full (Market) Value Claims, "below). Then you must prove that this percentage is higher than the average percentage at which all other properties or other residential properties are assessed on the same assessment roll.

This section of the petition requires that you set forth the information to establish the average percentage of full value at which property is assessed on the assessment roll. You may use the following information is useful":

1. The latest state equalization rate for your assessing unit (county, city, town or village).
2. The latest residential assessment ration for your assessing unit, if your claim is that your property is assessed at a higher percentage of full value than other residential properties on the same roll.
3. The assessments and either the market value or recent purchase price of comparable residential properties.
4. Statements of the assessor or other local officials.

d. EXCESSIVE ASSESSMENT

1. Overvaluation. If you believe the total assessed value of your property is greater than the market value of the property, you may claim an excessive assessment by completing this section of the Petition. You must establish the market value of your property. (See, Information to Support Your Full (Market) Value Claims, below.

2. Incorrect Partial Exemption. If your property was denied all or a portion of a partial exemption, you may also claim an excessive assessment, by completing this section of the Petition. If you file an application for the partial exemption with the Assessor, submit a copy of the application with your complaint.

Note: You may claim that the assessment is <u>both</u> unequal and excessive.

INSTRUCTIONS---Form RPTL 730/2

INFORMATION TO SUPPORT THE FULL (MARKET) VALUE CLAIMED

To establish the market value of your property, the following information is useful and should be set forth in that section of the Petition.

1. Purchase price of your property, if recent.
2. Offering price of your property, if recently offered for sale.
3. Professional appraisal of your property.
4. Cost of construction or improvement, if recent.
5. Amount for which your property is insured.
6. Purchase price of comparable properties recently sold.

Part II - LIST OF TAXING DISTRICTS

You must list each tax district which "uses" the assessment. This will include the county, city or town, school district, and any special districts whose charges are levied on the assessed value as determined by the assessor of your assessing unit.

Part IV - DESIGNATION OF REPRESENTATIVE

Complete this section if you have chosen someone else to represent you in this proceeding.

Part V - ELIGIBILITY AND CERTIFICATION

You or your representative must sign this certification.

PENALTY FOR FALSE STATEMENTS

A person making willful false statements on a Petition is guilty of a crime punishable by law.

PETITION
SMALL CLAIMS ASSESSMENT REVIEW
IN COUNTIES OUTSIDE NEW YORK CITY
(one petition per parcel)

PART 1
GENERAL INFORMATION

SUPREME COURT, COUNTY OF _____

1. Filing # _____ Calendar # _____

2. Assessing Unit_____

3. Date of final completion and filing of assessment roll_____

   (a) Total _____

   (b) Exempt amount _____

   (c) Taxable assessed value (3a-3b) _____

4. Date of filing (or mailing) petition _____

5. Name of owner or owners of property:

   Post Office Address:

   Telephone #:

6. If applicable, name and address of representative of owner, if representative is filing application: (Owner must complete Designation of Representative section.)

   Telephone#:

7. Description of property as it appears on the assessment roll.

   Tax Map # _____ Section _____ Block _____ Lot _____

8. Location of property (street, road, highway number, and city, town or village)

PART II
GROUNDS FOR PETITION

A. Assessment requested on the complaint form filed with the Board of Assessment Review

1. Total assessment _____
2. Exempt amount, if any _____
3. Taxable assessment _____

B. CALCULATION OF EQUALIZED VALUE AND MAXIMUM REDUCTION IN ASSESSMENT

1. [ ] Property is NOT in a special assessing unit.

ASSESSED VALUE	÷	EQUALIZATION RATE	=	EQUALIZED VALUE
_____		_____		_____

2. [ ] Property IS in a special assessing unit.

ASSESSED VALUE	÷	CLASS ONE RATIO	=	EQUALIZED VALUE
_____		_____		_____

3. [ ] If the EQUALIZED VALUE exceeds $150,000, enter the ASSESSED VALUE here:_____

Multiply the ASSESSED VALUE by: x .25
Enter the result here:
The result is the maximum total assessment request reduction allowable.

C. [ ] UNEQUAL ASSESSMENT: The total assessment is unequal because the property is assessed at a higher percentage of full (market) value than (check one).
[ ] (a) the average of all other property on the assessment roll, or
[ ] (b) the average of residential property on the assessment roll.

Full (market) value of property: $_____

Based on one or more of the following, petitioner believes this property should be assessed at _____% of full (market) value:

1. [ ] The latest State equalization rate for the assessing unit in which the property is located (enter latest equalization rate: _____%).

2. [ ] The latest residential assessment ratio for the assessing unit in which the property is located (enter residential assessment ratio: _____%).

3. [ ] A sample of market values of recent sales prices and assessments of comparable residential properties on which petitioner relies for objection (list parcels on a separate sheet and attach).

4. [ ] Statements of the assessor or other local official that property has been placed on the roll at _____%.

Petitioner believes the total assessment should be reduced to $_____. This amount may not be less than the total assessment amount indicated in Section A (1), or Section B (3), whichever is greater.

D. [ ] EXCESSIVE ASSESSMENT:

1. [ ] The total assessed value exceeds the full (market) value of the property.
Total assessed value of property: $ _____
Complainant believes the total assessment should be reduced to a full value of $ _____
Attach list of parcels upon which complainant relies for objection, if applicable.
This amount may not be less than the amount indicated in Section A (1), or Section B (3).

2. [ ] The taxable assessed value is excessive because of the denial of all or a portion of a partial exemption. Specify exemption_____ (e.g., aged, clergy, veterans, etc).
Amount of exemption claimed: $_____. Amount granted, if any: $_____.
This amount may not be greater than the amount indicated in A (2).
If application for exemption was filed, attach a copy of application to this petition.

E. INFORMATION TO SUPPORT THE FULL (MARKET) VALUE CLAIMED

1. [ ] Purchase price of property $ _____
Date of purchase _____
Relationship, if any, between seller and purchaser _____

2. [ ] If property has been recently offered for sale:
When and for how long: _____
How offered:
Asking price: $

3. [ ] If property has been recently appraised:
When: _____ By Whom: _____
Purpose of appraisal:
Appraised value: $ _____

4. [ ] If buildings have been recently remodeled, constructed, or additional improvements made, state:
Year remodeled, constructed, or additions made:
Date commenced: _____ Date completed: _____
Cost: $ _____

5. [ ] Amount for which your property is insured: $ _____
Name of insurance company and policy number: _____

6. [ ] Purchase price of comparable property(ies) recently sold: $ _____

PART III
LISTING OF TAXING DISTRICTS

Names of Taxing Districts

1. COUNTY:
2. TOWN:
3. VILLAGE:
4. SCHOOL DISTRICT

PART IV
DESIGNATION OF REPRESENTATIVE OF FILE PETITION

I,_____, as petitioner (or officer thereof) hereby designate _____ to act as my representative in any and all proceedings before the Small Claims Assessment Review of the Supreme Court in_____County for purposes of reviewing the assessment of my real property as it appears on the_____year assessment roll of _____
___ (assessing unit)

_____
Signature of Owner
(Or officer thereof)

_____
Date

PART V
ELIGIBILITY AND CERTIFICATION

I certify that:

(a) The owner has previously filed a complaint required for administrative review of assessments.

(b) The property is improved by a one, two or three family, owner-occupied residential structure used exclusively for residential purposes, and is not a condominium; except a condominium designated as Class 1 in Nassau County or as "homestead" Class in an approved assessing unit.

(c) The requested assessment is not lower than the assessment requested on the complaint filed with the assessor or the Board of Assessment Review.

(d) If the equalized value of the property exceeds $150,000, the requested assessment reduction does not exceed 25 percent of the assessed value.

(e) I have mailed, by certified mail, return receipt requested, or, delivered in person, within ten days after the day of filing this petition with the County Clerk, one (1) copy of this petition to the clerk of the assessing unit, or if there by no such clerk, then to the officer who performs the customary duties of that official.

(f) I have mailed by regular mail within 10 (ten) days after the filing of the Petition with the County Clerk one (1) copy of the Petition to:

  (a) The clerk of the school district(s)* within which the real property is located, or if there be no clerk or the name and address cannot be obtained, then to a trustee, and

  (b) The treasurer of the county in which the property is located.

I certify that all statements made on this application are true and correct to the best of my knowledge and belief, and I understand that the making of any willful false statement of material fact herein will subject me to the provisions of the Penal law relevant to the making and filing of false instruments.

_____
Signature of owner or representative

(*NOTE: Filing with the school district is not required in Buffalo, Rochester, Syracuse or Yonkers.)

APPENDIX V

SCAR DECISION FORM - UCS 901

RPTL 730

DECISION OF HEARING OFFICER

Prepare in triplicate. Complete within 30 days of date of hearing. Send one copy to the petitioner's representative or the petitioner if not represented, one copy to the Individual representing the assessing jurisdiction and one copy to the assessment review clerk.

Date hearing held _____ Date decision submitted to clerk _____

PART I-CASE IDENTIFICATION

Supreme Court, County of:_____ Filing #_____ Calendar #_____

Name of owner or owners: _____

Address:_____

City/State/Zip Code:_____

Assessing Unit:_____

Tax Map#_____ Section_____ Block_____ Lot_____

PART II - DECISION

DISPOSITION - Check 1, 2, 3, 4 or 5

1. ( ) Disqualified (check appropriate box below)
   a. ( ) More then three family
   b. ( ) Not owner~occupied
   c. ( ) Property not used exclusively for residential purposes
   d. ( ) Cooperative
   e. ( ) Condominium, other than a condominium designated as Class I in Nassau County or as a "homestead" in an approved assessing unit
   f. ( ) Other, state reasons _____
   g. ( )Did not file within 30 days of filing of final roll
   h. ( ) Did not file with Board of Assessment Review

NOTICE OF DISQUALIFICATION AND RIGHT TO JUDICIAL REVIEW

[ ] If number 1a through 1f is checked, above, this petition did not qualify for review under the Small Claims Assessment Review Program. Pursuant to section 730 of the Real Property Tax Law, you may seek judicial review within 30 days of receipt of this notice.

			FINAL ASSESSMENT ROLL	CLAIMED ASSESSMENT	DECISION BY HEARING OFFICER
2.	[ ] Unequal Assessment	Total Assessment	$ _____	$ _____	$ _____
3.	[ ] Excessive Assessment	Exempt Amount	$ _____	$ _____	$_____
4.	[ ] No change In assessment	Taxable Assessment	$ _____	$_____	$ _____
5.	[ ] Settled pursuant to an agreement of both parties.		$ _____	$_____	$_____

COSTS

AWARD OF COSTS (Check if applicable)

[ ] Costs of $ _____ are awarded to the petitioner, to be paid by the assessing unit.

Note to Hearing Officer: If the decision reduces the assessment by 50 per cent or more of the claimed reduction in assessment, you **MUST** award costs of $30.00. If the decision reduces the assessment by less than 50 per cent of the claimed reduction in assessment, you **MAY** award costs of up to $30.00.

NOTICE OF REQUIRED ACTION BY ASSESSING AND TAXING JURISDICTIONS

[ ] This decision grants your petition in whole or in part. The assessment will be changed, If possible, before the levy of taxes. or a refund of taxes will be made within 90 days of the date of this decision. Attached is a list of the name(s) of the person(s) or department(s) in this county responsible for taking this action. Compare the names of the taxing jurisdictions listed in PART III of your petition with the name(s) listed in the attachment to determine the appropriate person(s) or department (s) to be contacted, if the need arises.

State on the reverse side the findings of fact concerning the assessment, and the basis for your decision.

Name and Address of Hearing Officer

_____

_____

_____

Signature_____