

Suffolk County Ethics Commn. v Neppell

2002 NY Slip Op 30152(U)

July 24, 2002

Supreme Court, Suffolk County

Docket Number: 01-27783

Judge: Robert W. Doyle

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**SUPREME COURT - STATE OF NEW YORK
DCM PART - SUFFOLK COUNTY**

P R E S E N T :

COPY

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

Motion (001)
R/D: April 18, 2001
A/D: April 25, 2002; May 24, 2002
MG
Motion (002)
FUD: April 18, 2001
A/D: April 25, 2002; May 24, 2002
MD

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
Suffolk County Ethics Commission,
Plaintiff(s),

Decision and Order

- against -

Thomas M. Neppell, Jr. and Joseph Read, Sr.,
Defendant(s).
-----X

Attorney for Plaintiff Barry L. Warren, Esq. 80 Maple Avenue Smithtown, New York 11787	Attorneys for Defendant Neppell. Certilman, Balin, Adler & Hyman, LLP 1393 Veterans Memorial Highway Hauppauge, New York 11554
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Upon the following papers on these motions: Notice of Motion/Order to Show Cause (001) and supporting papers pages 1-6 and Exhibits 1-5 and Memorandum of Law; Notice of Motion/Order to Show Cause and supporting papers per s Notice of Cross Motion (002) and supporting papers 1-7 and Exhibit A and Memorandum of Law ; Answering Affidavits and supporting papers Pltf. 1-6 ; Replying Affidavits and supporting papers Def't. 1-4 ; Notice of Cross Motion and supporting papers — ; Other ;

It is

ORDERED that application (001) by plaintiff Suffolk County Ethics Commission pursuant to CPLR §3212 for an Order granting Summary Judgment on the First Cause of Action as against defendant Thomas M. Neppell, Jr. as Chairman of the Brookhaven Town Republican Committee and as a political party officer (as defined in §A30-8 of the Suffolk County Charter) is required to file a financial disclosure form with the Suffolk County Ethics Commission pursuant to §A30-10 of the Charter; Judgment on the Second Cause of Action declaring that no inconsistency exists between Sections A30-8 and A30-10 of the Suffolk County Administrative Code and Section 810(6)(c) of the General Municipal Law; and for an Order directing defendant Neppell to file a financial disclosure statement with plaintiff, opposed by defendant; and

application (002) by way of cross motion by defendant Thomas M. Neppell, Jr. pursuant to CPLR

§3212 for an Order granting Summary Judgment against plaintiff Suffolk County Ethics Commission and dismissing the complaint, opposed by plaintiff,

are considered together and decided as follows:

This action was commenced by the filing of a summons and verified complaint on November 26, 2001. Issue was joined on behalf of defendant Neppell by service of an amended verified answer dated January 24, 2002.

The First Cause of Action set forth in the complaint asserts:

that the Suffolk County Ethics Commission was established pursuant to Suffolk County Charter Article XXX, that defendant Thomas M. Neppell, Jr. is Chairman of the Brookhaven Town Republican Committee and as such is a political party officer (as defined in §A30-8 of the Suffolk County Charter) and is required to file a financial disclosure form with the Commission pursuant to §A30-10 of the Charter, and that defendant Neppell has failed and refused to make the financial disclosure.

The Second Cause of Action seeks:

a declaration from this Court that there is no inconsistency between §A30-10 of the Suffolk County Charter and §810-6(c) of the General Municipal Law, and that Suffolk County Charter §A30-10 requires defendant Neppell to file a financial disclosure statement with plaintiff.

The Third Cause of Action asserts:

that County of Suffolk is and continues to be irreparably harmed by defendant Neppell's failure and refusal to provide financial disclosure.

The Fourth and Fifth Causes of Action are not relevant to this particular application.

Defendant Neppell asserts that he has been Chairman of the Brookhaven Town Republican Committee since April 9, 2001, and continues to do so, but he has never been an officer or employee of Suffolk County, he is not a "local political party official" as defined in GML §810(6), and, therefore, is not required to make financial disclosure to the County of Suffolk. He further argues he is immune from financial disclosure because:

he does not receive compensation in excess of \$30,000.00 annually in compensation and/or expenses from the Brookhaven Town Republican Committee;
plaintiff has no power either in the State Constitution, Suffolk County Law or

Municipal Home Rule Law to require financial disclosure from town party officials, or if Suffolk County does, plaintiffs power is limited by the definitions contained in GML §810(6);

plaintiff erroneously relies on the definition of “political party officer” contained in Suffolk County Code §A30-8;

that by passage of the Ethics in Government Act in 1987, the State pre-empted the field of financial disclosure in government, thus pre-empting Suffolk County’s definition of party leaders;

while not questioning the ability of the County to exercise the Municipal Home Rule Law Section 10.1(ii)(a)(1) over county officers and employees, challenges the power of the County to legislate over town political party leaders asserting that power is not enumerated in the fourteen instances set forth in Section 10 of the Municipal Home Rule Law (Thus, argues Neppell, the question presented here is, “Where is the delegation of power, in the New York Constitution or the State laws, which give counties power to legislate over town political party leaders?”);

that GML §806(1)(a) authorizes municipalities to adopt a code of ethics, but only over its officers and employees;

that GML §806.1 authorizes municipalities to adopt local laws “pursuant to subdivision one of §811” and that the “Ethics in government Act” [Laws 1987, ch. 813) added a new §811 to General Municipal Law giving municipalities limited power over local political party officials as relates to financial disclosure that the municipalities did not previously have before, and the new section empowers the County to require completion and filing of annual financial disclosure from local party officials as if such officials were officers or employees of such county, city, town or village, but only from a county party official, not from local party officials, the power being limited to the corresponding municipality; and

because he is not a county official within the meaning of GML §810.6(c), he need not provide financial disclosure to the County, but if the Court should find that the County does have the power to require the financial disclosure from a local political leader, he still does not have to comply with such demand because he receives less than thirty thousand dollars or more in compensation during the reporting period.

Although Neppell has argued that he does not earn more than the thirty thousand dollars in compensation during the reporting period, this claim is unsupported by any admissible evidence in support of his argument, in support of his application for summary judgment, or in opposition to plaintiffs application.

Plaintiff argues, inter alia, that:

the County is not pre-empted from requiring the local political leader to provide financial disclosure as the requirements set forth in the Suffolk County Administrative Code are not inconsistent with those set forth by GML §810(6)(c) and §811, and are not inconsistent with the provisions of the constitution or any general law relating to its property, affairs of government pursuant to the New York State Constitution, Article IX, Section 2 and Municipal Home Rule Law Section 10;

that it is oft-stated that local laws which do not prohibit what the State law permits nor allow what the State law forbids, are not inconsistent; and that conversely, where the extension of State law by means of a local law results in a situation where what would be permissible under the State law becomes a violation of the local law, the latter law is unauthorized (citing **Wholesale Laundry Board of Trade Inc. v. City of New York**, 17 A.D.2d 327, 234 N.Y.S.2d 862);

that in endorsing a localized approach, the Legislature adopted the recommendations of the law's proponents who rejected a pervasive statewide scheme in favor of municipal diversity by "Sufficient flexibility ... provided so that each municipality can adapt its code to its particular needs or circumstances...[and] ... deal with other matters as the municipality may find appropriate";

that the County mandated financial disclosure by political leaders regardless of how much or how little is received by way of compensation or expenses and formulated a Code of Ethics based upon local needs and circumstances;

that GML §811 (b) does not in terms and effect apply to all counties and does not impose a mandatory requirement that counties require financial disclosures by political leaders, is not a general law and does not prohibit the adoption of an inconsistent local law;

Municipal Home Rule Law Chapter 36-A of the Consolidated Laws of Article 2-General Powers of Local Governments to Adopt and Amend Local Laws; Restrictions, §10.1 provides that

(i) "every local government shall have the power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government, and

(ii) every local government ... shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law...."

The Municipal Home Rule Law Chapter 36-A of the Consolidated Laws of Article 2-General Powers of Local Governments to Adopt and Amend Local Laws; Restrictions, §10.1 affirmatively grants authority to [counties]..to adopt local laws as relating to their “property, affairs or government, provided that such legislation is not inconsistent with the Constitution or any general law”. Therefore, the power of the local government to adopt or amend local laws not inconsistent with the provisions of the constitution or a general law has been established. The County of Suffolk is accordingly empowered to adopt or amend local laws not inconsistent with the provisions of the constitution or a general law.

Opinion 97-11, view of the Office of the State Comptroller, Article 18 of the General Municipal Law (§800 et seq), as emended by chapter 813 of the Laws of 1987, provides for a system of annual financial disclosure by localities.

GML §800. Definitions, provides in pertinent part at subdivision 4:

“Municipality means a county, city town, village school district..”

Accordingly, Suffolk County is deemed a “municipality” within the meaning of GML 5800.

GML §806 Code of Ethics (1)(a), provides in pertinent part that the:

“governing body of each county, city, town, village and school district shall and the governing body of any other municipality may by local law, ordinance or resolution adopt a code of ethics setting forth for the guidance of its officers and employees the standards of conduct reasonably expected of them.... “Such codes may regulate or prescribe conduct which is not expressly prohibited by this article but may not authorize conduct otherwise prohibited.”

therefore granting authority to the County of Suffolk to establish the Suffolk County Ethics Commission and adopt a code of ethics setting forth the standards of conduct expected of officers and employees of and within the County.

Section 1(b) of GML 5806 Code of Ethics provides in pertinent part that;

... “the governing body of any such political subdivision or other municipality may at any time...adopt a local law, ordinance or resolution pursuant to subdivision one of section eight hundred eleven of this article and any such political subdivision or municipality, acting by its governing body, may take such other action as is authorized in such subdivision. Any political subdivision or other municipality to which all of the provisions of section eight hundred twelve of this article apply may elect to remove itself from the ambit of all (but not some) provisions of such section in the manner authorized in subdivision three of such section eight hundred twelve...”

Consequently, Section 1(b) of GML §806 is permissive rather than prohibitive and enables the governing body of any such political subdivision or other municipality to adopt a local law, ordinance or resolution pursuant to subdivision one of section eight hundred eleven of the article and permits it to make such codes to regulate or prescribe conduct which is not expressly prohibited by the article or authorize conduct otherwise prohibited. General Municipal Law §806(6)(c) is the enabling legislation for the Suffolk County Administrative Code relating to the Report of the Governor's Special Commission on Ethical Standards in Public service.

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General Municipal Law §808(1) provides in pertinent part:

“that the governing body of any county may establish a county board of ethics

While municipalities are mandated by law to adopt codes of ethics, the establishment of a board of ethics is permissive”, 30 Op. State Compt. 30, 1979 (McKinneys Ann. GML §808). Thus, the County of Suffolk has been empowered to establish its county board of ethics, as it has so chosen to do, but must adopt codes of ethics pursuant to Section 1(b) of GML §806.

General Municipal Law §810(6)(c) provides that the term “local political party official” shall mean:

“city, town or village chairman or leader of a city, town or village committee of a party as the term party is defined in section 1-104 of the election law, but only with respect to a city, town or village having a population of fifty thousand or more, and only if such chairman or leader received compensation or expenses, or both, from constituted committee or political committee funds, or both, during the reporting period aggregating thirty thousand dollars or more.”

Election Law §1-104(1)(5) defines the term “party officer” as:

one who holds any party position or any party office whether by election, appointment, or otherwise.”

General Municipal Law §811(1)(a) provides in pertinent part that:

“the governing body of each political subdivision...and the governing body of any other municipality may...adopt a local law, ordinance, or resolution:

(i) wherein it promulgates a form of annual statement of financial disclosure which is designed to assure disclosure by municipal officers and employees... which is designed to assure disclosure by local elected officials and/or by local political party officials of such financial information as is determined necessary by the governing body or

(ii) wherein it resolves to continue the use of an authorized form of annual statement of financial disclosure in use on the date such local law, ordinance or resolution is adopted. In either event, such local law, ordinance or resolution if and when adopted shall specify by name of office or by title or classification those municipal officers and employees and (in the case of a political subdivision or any other county, city, town or village) those local elected officials and/or those local political party officials which shall be required to complete and file such annual statement.”

General Municipal Law §811(1)(a) further provides that

“In a city with a population of one million or more, such local law, ordinance or resolution shall be at least as stringent in scope and substance as the provisions of section eight hundred twelve of this article.”

General Municipal Law §812(1)(a) provides in pertinent part that any

“political subdivision or other county, city town or village to which all of the provisions of this section are made applicable, whether as a result of the provisions contained in subdivision two of section eight hundred eleven of this article or as a result of an election to be subject to the provisions of this section as permitted by subdivision two of this section, shall require..(i) each of its local elected officials and local officers and employees, (ii) each local political party official and (iii) each candidate for local elected official with respect to such political subdivision, to file an annual statement of financial disclosure containing the information and in the form set forth in subdivision five hereof. “

General Municipal Law §812(1)(e) provides in pertinent part that

“Local political party officials and any person required to file such statement who commences employment after May fifteenth of any year shall file such statement within thirty days after commencing employment or of taking the position of local political party official...”

GML §812(2) provides in pertinent part that a

“governing body of a county, city, town or village having a population of less than fifty thousand may by local law or ordinance elect to be subject to the

provisions of this section. In such event, any such city, county, town or village shall be deemed to be a political subdivision under this section.”

GML §812(3)(d) further provides that the

“local law, ordinance or resolution referred to in paragraph (a) of this subdivision or any other such local law, ordinance or resolution so adopted may make provision for any other right, power or privilege granted by subdivision one of such section eight hundred eleven.”

GML §812(4) provides in pertinent part that:

“Nothing contained in this section shall be construed as precluding the governing body of a political subdivision from requiring additional and/or more detailed items of financial disclosure than are set forth in subdivision five”

Local Political Party Official

Defendant Neppell asserts that he has been Chairman of the Brookhaven Town Republican Committee since April 9, 2001, and continues to do so, but is not required to make financial disclosure to the County of Suffolk because he has never been an officer or employee of Suffolk County, and because he is not a “local political party official” as defined in GML §810(6).

In reading General Municipal Law §810(6)(c) and General Municipal Law §811(1)(a) in combination with Election Law §1-104(1)(5) which defines the term “party officer,” it is apparent that local political party officials, as specified by such local law, ordinance or resolution, who have been named as being required to complete and file such annual statement, shall include the party officer whether the party officer is an employee of that municipality or not. The term chairman or leader (as defined in section 1-104 of the Election Law) is intended to refer to the person who performs the functions and duties of the chief official of a party in the city, town or village by whatever title designated.” Pursuant to General Municipal Law §810(6)(c), the term “local political party official” is found to encompass the “city, town or village chairman or leader of a city, town or village committee or party.” This definition is found to be inclusive of the Chairman of the Brookhaven Town Republican Committee, which Town is situated in the County of Suffolk. Election Law §1-104(1)(5) defines the term “party officer” as one who holds any party position or any party office whether by election, appointment, or otherwise.” Defendant Neppell holds the position of Chairman

of the Brookhaven Town Republican Committee, and is likewise included in the definition set forth in section 1-104 of the Election Law as well.

Suffolk County Administrative Code §A30-1 Prohibits Conflicts of Interest: Definitions and Exceptions, sets forth at Section (B) that “Other Public Official” includes “Officers of any unit of village, town, county, city, state or federal government..” Suffolk County Legislature Resolution No. 908-1988, Adopting Local Law No. 33-1988, A Local Law Strengthening County Code of Ethics, provides in Section 2. Definitions at paragraph (E) that “ the term “political party officer” shall mean any Chairman of a Town or county political committee of any political party.” Paragraph (F) provides “The term “public official” shall mean any County-wide elected official, member of the Legislature, and any employee and any other individual, in whom is vested the authority by law, rule or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement, in connection with employment in any agency.” Suffolk County Code §A30-8 (c) Prohibited Activities, provides that a Political Party Officer “shall mean any chairman of a town or county political committee of any political party.”

As Chairman of the Brookhaven Town Republican Committee, defendant Neppell is an “individual” who is not an employee of the County of Suffolk and falls within the definition of public official as set forth in the foregoing Suffolk County Code. It is also clear that as Chairman of the Brookhaven Town Republican Committee, defendant Neppell is also a party officer as well as a local political party official. General Municipal Law §811(1) provides that “such local law, ordinance or resolution, if and when adopted shall specify by name of office or by title or classification those municipal officers and employees and (in the case of a political subdivision or any other county, city, town or village) those local political party officials which shall be required to complete and file such annual statement. Suffolk County Administrative Code specifically sets forth by name of office and by title or classification those “local political party officials” or “public officials” required to make financial disclosure. It is therefore determined that plaintiff does not erroneously rely upon the definition of “political party officer” contained in Suffolk County Code §A30-8. It is further determined that defendant Neppell, as chairman or chief official of the Brookhaven Town Republican Committee and the local political party official, is deemed to be a “local political party official” within the meaning and intent of in GML §810(6), subjecting defendant Neppell to the requirements of financial disclosure. It is also abundantly clear that General Municipal Law §810(6)(c) encompasses, and is meant to include, the Chairman of the Brookhaven Town Republican Committee as does Suffolk County Code §A30-8(c).

Suffolk County Code §A30-10 A (1) Financial Disclosure provides in part “ Every candidate for county-wide elected office or for member of the County Legislature and every political party officer shall file with the Suffolk County Ethics Commission an annual statement of financial disclosure containing the information and in the form set forth in Chapter 61 of the Suffolk County Code.” Although defendant Neppell argues he is not an employee of the County of Suffolk and therefore is not required to file a financial disclosure form, his argument must fail. General Municipal Law §81 1(1)(b) clearly authorizes municipalities to require financial disclosure from “local political party officials” as if such officials were officers or employees of such county, city, town or village....” Suffolk County Code §A30-8(c) and Suffolk County Code §A30-10 A (1) appropriately dovetail with and mirror General Municipal Law §810(6)(c), General Municipal Law §811(1)(a) and Election Law §1-104(1)(5) in providing that local political party officials be required to file an annual financial disclosure form. Defendant Neppell, as Chairman of the Brookhaven Town Republican Committee is determined to be a local political party official within the provisions, meanings and definitions set forth in Suffolk County Code §A30-8(c), Suffolk County Code §A30-10 A (1) , General Municipal Law §810(6)(c), General Municipal Law §81 1(1)(a) and Election Law §1-104(1)(5). The County of Suffolk has appropriately chosen to exercise the power to require the completion and filing of the annual statement of financial disclosure from defendant Neppell as a local political party official as if he were an officer or employee of the County of Suffolk.

Preemption and Inconsistency

Defendant Neppell argues that General Municipal Law §800 et seq. is a general law which evidences that the state has acted in particular field with the intention to occupy entirely such field to exclusion of local law thus preempting the County of Suffolk from adopting local laws in this area.

Suffolk County Code §A30-10 A (1) Financial Disclosure provides in part

“ Every candidate for county-wide elected office or for member of the County Legislature and every political party officer shall file with the Suffolk County Ethics Commission an annual statement of financial disclosure containing the information and in the form set forth in Chapter 61 of the Suffolk County Code. Such statement shall be filed on or before the 15th day of May with respect to the preceding calendar year...” Section (B) provides in part that “Any political party officer who is required to file a financial disclosure form or statement under any other law or statute, shall satisfy the requirements of this section by filing a copy of such form or statement with the Suffolk County Ethics Commission on or before the 15th day of May with respect to the preceding year subject to any exception contained in Subsection A of this section as would be applicable to the particular

circumstances. [Amended 3-19-1991 by L.L.No. 11-1991].

Article IX, §2 of the Constitution of the State of New York restricts the power granted to local governments by providing that only laws which are “not inconsistent with the provisions of this constitution or any general law” may be enacted.

Article IX, §3 of the Constitution of the State of New York provides that

“Rights, powers, privileges and immunities granted to local governments by this article shall be liberally construed.”

Municipal Home Rule Law, Article 2, §10(1)(i) provides that

“every local government shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government...”

An act is deemed general if it applies uniformly to class, entry into which is governed by conformity or compliance with specified conditions related to the subject of the statute, while “special law” is one which specifies conditions that serve only to designate and identify place to be affected and which creates purported class in name only (*Zumbo v. Town of Farmington*, 401 N.Y.S.2d 121 (N.Y.Const., art. IX, s 3, subd. D, par. (1); *N.Y. Const. Article IX, Section 3(d)(1); Municipal Home Rule Law Section 2(5), §10 subd. 1(ii)a(1)*). A local law is preempted when the state has acted in particular field and in so acting has evidenced intention to occupy entirely such field to exclusion of local law (*Hoetzer v. Erie County*, 497 F. Supp. 1207). In reviewing General Municipal Law §800 et seq., four sections have been found with indicate that the State did not intend to occupy the entire field to the exclusion of local law.

General Municipal Law §811(1)(a) provides that “In a city with a population of one million or more, such local law, ordinance or resolution shall be at least as stringent in scope and substance as the provisions of section eight hundred twelve of this article.”

GML §811(2) provides that a “governing body of a county, city, town or village having a population of less than fifty thousand may by local law or ordinance elect to be subject to the provisions of this section.

GML §812(4) provides, “Nothing in this section shall be construed as precluding the governing body

of a political subdivision from requiring additional and/or more detailed items of financial disclosure than are set forth in subdivision five....”

General Municipal Law 3806.1(b) Code of Ethics, in permitting a governing body to adopt a local law, ordinance or resolution pursuant to GML §811, specifically authorizes the municipality to “take such other action as is authorized in the subdivision and “to regulate or prescribe conduct which is not expressly prohibited..but .. not authorize conduct otherwise prohibited.”

These four foregoing provisions⁶ evince the intent of the Legislature that General Municipal Law §800 et. seq. was not meant to be preemptive or to occupy the entire field of financial disclosure, but was meant to be adopted according to local needs or dictates of the community, provided the local law is not less stringent than the requirements set forth in General Municipal Law 3800 et seq. Defendants have not demonstrated, nor is it found that the State has evidenced a desire that state law should preempt the possibility of a varying local law except with regard to stringency.

A municipality which adopts the state law can change the law to be “at least as stringent in scope and substance,” **General Municipal Law §811(1)(a)**. In adopting General Municipal Law as it relates to financial disclosure in Suffolk County, the County has not relaxed the requirements of General Municipal Law. Instead, the County has more uniformly applied the law by expanding the class of persons required to make financial disclosure by eliminating the thirty thousand dollar threshold requirement and uniformly applying the requirement for financial disclosure to all persons subject to the law,, regardless of the amount of income and/or compensation those persons earn. No intent by the state to occupy the entire field of financial disclosure to the exclusion of local law has been found, with the exception that less stringent requirements are prohibited. Accordingly, it is determined that Suffolk County Code §A30-10 A (1), a local law, is not preempted by General Municipal Law §800 et seq.

Defendant Neppell further argues that General Municipal Law §810 (6)(c) established the thirty thousand dollar classification only with respect to a city, town or village having a population of fifty thousand or more, and that those thresholds were eliminated with Suffolk County Code §A30-10 A(I) making Suffolk County Code §A30-10 A(I) inconsistent with General Municipal Law §810(6)(c).

A local law is void as matter of state law only if it is inconsistent with state law or if state legislature has evidenced intent to occupy field, fully, leaving no room for inconsistent legislation (**Municipal**

Home Rule Law N.Y. §27). Generally, local laws which do not prohibit what state law permits and which do not allow what state law forbids are not inconsistent with state law (**Wholesale Laundry Board of Trade, Inc. v. City of New York**, 252 N.Y.S.2d 502). A local law may cover the same subject matter embraced in state legislation by supplementing the general law with additional reasonable requirements; where a local law imposes greater restrictions or conditions in connection with regional comprehensive plans, such law neither conflicts with, nor is it preempted by state law; although the Constitution prohibits local laws which are inconsistent with it or any general law, fact that provisions of the local law or ordinance are different from, or not identical with, state statute encompassing the same general area does not necessarily render the local law invalid if the area has not been preempted (**Marcus v. Baron**, 445 N.Y.S.2d 587, 84 A.D.2d 118; **United Car & Limousine Foundation, Inc. v. New York City Limousine Com'n.**, 680 N.Y.S.2d 815; **State v. Trustees of Freeholders and Commonalty of Town of Southampton**, 472 N.Y.S.2d 394). As word of art relative to prohibition of local legislation which is “inconsistent” with state law, the term “inconsistent” refers both to cases of express conflict between local and state law such as local prohibition of what state law permits, and to situations where statutory law evidences state’s intent to preempt local regulation (**Ames v. Smoot**, 98 A.D.2d 216, 471 N.Y.S.2d 128). The word “inconsistent” as used in statute providing, inter alia, that in addition to powers granted under the Constitution, every local government shall have power to adopt and amend local laws not “inconsistent” with the provisions of the Constitution, should not be defined so narrowly that it would mean the same as “different”, since to do so would vitiate the flexibility of home rule as enunciated by the legislature and the executive branch in enacting the Municipal Home Rule Law (**Town of Clifton Park v. C.P. Enterprises et. al**, 356 N.Y.S.2d 122, **Municipal Home Rule Law §10, subd. 1(i)**). Though local provision may be different, it is not necessarily inconsistent if it is neither contradictory, incompatible nor inharmonious with state law, and local provision should be sustained if it bears a substantial relation to matters within the field where legislative power is vested in the local legislative body by the Constitution and state statutes and is reasonably calculated to achieve a legitimate public purpose (**Bell v. Town Board of the Town of Onondaga**, 402 N.Y.S.2d 677). General law must prevail over inconsistent local laws... (**Radich v. Council of the City of Lackawana**, 462 N.Y.S.2d 928). In reviewing the various statutes at issue, it is determined that the elimination of the thirty thousand dollar threshold requirement in Suffolk County makes Suffolk County Code §A30-1OA(1) different from, but not inconsistent, inharmonious, contradictory, or incompatible with General Municipal Law §800 et seq.

In **Eisenbud v. Suffolk County**, 841 F.2d 42, the United States Court of Appeals, Second Circuit, in determining an equal protection issue relating to financial disclosure, the Court cited to **Barry v. City of New York**, 712 F.2d 1554, wherein a \$30,000 classification for City employees was found

to be "...both somewhat overinclusive and somewhat underinclusive, and that the law "would be better if it specified the 'particular job categories' that should be subject to disclosure.'" Suffolk County Code §A30-10 A (1) eliminated that "overinclusive-underinclusive" thirty thousand dollar threshold and specified particular job categories (including Local Political Party Officers) that should be subject to disclosure, regardless of the amount of income and/or compensation. Although more stringent and specific than General Municipal Law §810 (6)(c), this more stringent and specific threshold set forth in Suffolk County Code §A30-10 A (1) still renders the Code consistent, harmonious, and compatible 'with General Municipal Law §810 (6)(c). The fact that more restrictive, not less restrictive thresholds were imposed is *de minimus* and justifiable in light of the objectives of the state and local statutes in fostering honest government in the community, and is certainly not inconsistent with the goals and objectives of General Municipal Law §800 et seq. Suffolk County Code §A30-10 A (1) has captured the spirit and intent of General Municipal Law §800 et. seq. by imposing requirements more restrictive in scope and substance by eliminating the classifications of the thirty thousand dollar threshold and has achieved a more uniform application of financial disclosure for all local political party leaders locally in the County of Suffolk, irrespective of the amount of income and/or compensation. Suffolk County Code §A30-10 A (1) does not prohibit what the state law permits and does not allow what the state law forbids. It is reasonably calculated to achieve a legitimate public purpose, and is not found to be inconsistent with the state law

Based upon the foregoing, it is determined that the state did not intend to occupy the entire field of financial disclosure in promulgating and implementing General Municipal Law §800 et seq. The differences set forth above are not found to be inconsistent with General Municipal Law §800 et seq. Accordingly, it is found that Suffolk County Code §A30-8(c) and Suffolk County Code §A30-10 A (1) are not preempted by and are not inconsistent with General Municipal Law §810(6)(c), §811(1)(a)(b) or §812(1)(a).

Power over local political party officials

Defendant Neppell's argument that the County's power to require financial disclosure is limited to the local political party official of the County only, and not from a party official of the Town is both unsupported and unpersuasive given that the Town of Brookhaven physically lies within the borders of the County of Suffolk. General Municipal Law §811 (1)(b) empowers the County to require financial disclosure by local political party officials as if such officials were officers and employees of such county, city, town or village. GML §811(1)(b) makes no reference to local political party

officials corresponding to the municipality, and to do so would so narrowly construe the statute, vitiating its scope and purpose and thwarting local government's attempt to foster honest government in the community.

In *Igneri v. Moore*, 898 F.2d 870, the United States Court of Appeals for the Second Circuit, found that "party chairmen play a substantial and discernible role in state government beyond their statutorily enumerated duties. Several of our recent decisions demonstrate in detail the extent to which party chairmen can adversely influence governmental processes." The U.S. Court of Appeals further expressed "concern for the exercise of improper influence by party leaders underlay our recent decision in uphold New York's Serrano Law...." The Court also commented on the benefits of financial disclosure in deterring conflicts of interest: "When, for example, political party leaders make profitable contracts with government, who is going to believe that everything is on the up and up?" Concerns about the pervasive influence of party chairmen underlay the legislature's outright restrictions on chairmen's activities contained in Public Officers Law. The Court further opined that "appellees' argument that chairmen are not public officials and have no express role in state government—as compared, for example, to legislators or civil servants—is quite besides the point...while the relationships between the chairmen and elected officials and civil servants surely are not, in all cases, "symbiotic," as appellants characterize them, they are sufficiently close enough in cases, or are at least potentially so, to warrant the legislature's concern with improper peddling of their influence." The Court further stated (citing from *Barry v. City of New York*, 712 F.2d 1554) "The objectives sought by financial disclosure laws are in principle unassailable and theoretically justify a broad scope of inquiry. Honest government is so patently a worthy objective, and the capacity for venality in human behavior is so profound and ingenious, that virtually any disclosure law however intrusive might be rationally justifiable."

Although the primary issue in *Igneri v. Moore*, supra. may be different from the primary issue in the instant action, the unassailable underlying principal of honesty in government is pervasive throughout both. The Suffolk County Ethics Commission has captured the spirit and intent and the worthy objective of General Municipal Law §800 et seq., that is, honesty in government, in formulating its local laws with regard to financial disclosure, in a format harmonious and consistent with state law.

Based upon the foregoing, it is

ORDERED that plaintiff's application (001) pursuant to CPLR §3212 for an Order granting Summary Judgment

on the First Cause of Action as against defendant Thomas **M.** Neppell, Jr. declaring that defendant Thomas **M.** Neppell, Jr., as Chairman of the Brookhaven Town Republican Committee is a political party officer (as defined in §A30-8 of the Suffolk County Charter) and is required to file a financial disclosure form with the Commission pursuant to §A30-10 of the Suffolk County Charter, is granted;

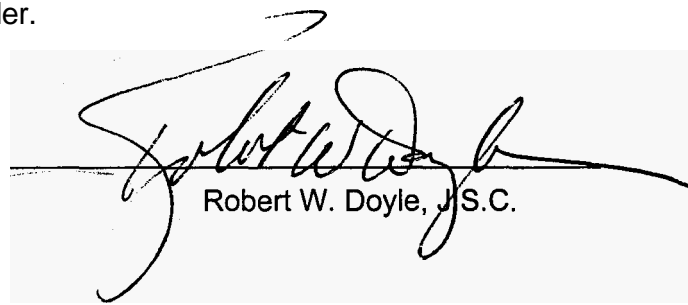
on the Second Cause of Action declaring that no inconsistency exists between Sections A30-8 and A30-10 of the Suffolk County Administrative Code and Section 810(6)(c) of the General Municipal Law is granted; and

for an Order directing defendant Neppell to file a financial disclosure statement with plaintiff is granted, and defendant Neppell is directed to file such financial disclosure statement as required pursuant to Suffolk County Code §A30-10 within thirty days of the date of this Order. It is further

ORDERED, that application (002) by defendant Thomas M. Neppell, Jr. pursuant to CPLR 53212 for an Order granting Summary Judgment against plaintiff Suffolk County Ethics Commission and dismissing the complaint, is denied. It is further

ORDERED that attorney for plaintiff shall serve a copy of this Order with notice of entry on all parties within twenty days from the date of this Order.

Dated: July 24, 2002



Robert W. Doyle, J.S.C.