



*New York State Assembly, Sheldon Silver, Speaker
Legislative Commission on State-Local Relations
Assemblymember Tim Gordon, Chair*

Creation of Local Governments

Constitutional & Statutory Authority

Counties, Cities, Towns, Villages and Special Districts – Prohibits the creation of any municipal corporation (other than a county, city, town, village, school district, fire district or a river improvement district) with the power to contract indebtedness and to levy taxes or benefits assessments. Improvement districts in counties and towns may be created provided the county or town pledges its faith and credit for the payment of all indebtedness. [Constitution article VIII, § 3]

Towns, Villages, Fire Districts, Special Improvement Districts or other Improvement Districts, Library Districts and other districts created by law except School Districts, City Districts and County Districts - Two or more local government entities may be consolidated into a single local government entity if each is contiguous to at least one of the other consolidating local government entities and if together the local government entities would form a consolidated local government entity of a kind or class that is authorized under the laws of the State of New York. The requirement that local government entities be contiguous to consolidate does not apply to entities other than towns and villages. [General Municipal Law § 751]

Counties – New county may be created by Legislature (only) if the population in the area entitles it to a member in the assembly. [Constitution article III, § 5 and article IX, § 2(a)]

Cities – Created by act of Legislature; no constitutional or statutory criteria. [Constitution article IX, § 2(a)]

Towns – Created by Legislature or by division of one or more existing towns by the county legislative body. [County Law § 229; Constitution article IX, § 2(a)]

Villages – Only residents can create a village. Legislature prohibited from passing special law incorporating village. [Constitution article III, § 17] Criteria for creation enumerated. [Village Law article 2 and article 16]

Special Districts

School Districts - Creation of a school district is a legislative function; school districts are creatures of statute and can only be created in accordance with the provisions of Education Law. [Constitution article XI, §1].

The Commissioner of Education is the chief executive officer of the state system of education and of the board of regents, and must enforce laws relating to the educational system and execute educational policies determined upon by the board of regents. [Education Law § 305.1].

Five different types of school districts exist in New York State: Common School Districts, Union Free School Districts, Central School Districts, Central High School Districts, and City School Districts, [Education Law articles 33, 35, 37, 39, 51 and 52].

The Commissioner of Education is authorized to lay out central school districts and to define the boundaries.[Education Law § 1801.1]

District superintendent may organize a new school district out of territory of one or more school districts wholly within the geographic area served by BOCES, if the educational interests of community require it. [Education Law § 1504.1].

District superintendents of two or more adjoining supervisory districts, when public interests require it, may form a joint school district out of the adjoining portions of their respective districts. [Education Law § 1504.2].

A city, town or village situated wholly within one central or union free school district but whose boundaries are not coterminous with the boundaries of the school district may organize a new union free school district that will consist of entire territory of the municipality if the educational interests of the community require it. Enrollment levels and approval process, including voting by residents, are provided in statute. [Education Law § 1504.3].

District superintendent by order may dissolve one or more districts to form from the territory a new district, and by order may also unite all or a part of the territory to any adjoining school district including a union free school district with a population of forty-five thousand or more and employing a superintendent of schools, except a city school district. [Education Law § 1505].

Boards of Cooperative Educational Services (B.O.C.E.S.) are established by school boards and trustees of supervisory districts (those not part of an intermediate/junior high school district) by a majority vote of members present and filed with the Commissioner of Education. The Education Commissioner then, by order, may establish a board with not less than five or more than fifteen members. [Education Law § 1950]

Charter Schools - Charter school applicants submit applications to charter entities: New York City Education Commissioner, Board of Trustees of State University of New York and the Board of Regents. The Board of Regents is authorized to issue charters to applicants for a five-year period and re-authorizations for additional five-year periods. Original statute limited the number to 100 schools and the cap was raised to 200 in the 2007 budget. [Education Law article 56, §§ 2851, 2853]

Fire, Fire Alarm and Fire Protection Districts – Created by the town board upon petition of property owners or upon motion of the town board in the case of fire and fire protection districts, and only upon petition of property owners in the case of a fire alarm district. [Town Law article 11]

County Districts – Created by a county legislative body upon petition or upon motion of a county legislative body. [County Law articles 5-A, 5-B, 5-D]

Town Improvement Districts – Created by the town board upon petition of property owners [Town Law article 12] or resolution of the town board [Town Law article 12-A]. Certain older districts were established pursuant to article 13, Town Law and are governed by an elected board of commissioners as well as the town board.

Business Improvement Districts – Created by a local law subject to permissive referendum by a city, town or village. [General Municipal Law article 19-A] The establishment of a business improvement district is based on a district plan prepared in accordance with General Municipal Law §980-d.

Special District Public Libraries – Created by Special Act of the State Legislature.

Selected Court Cases

Shields v. Dinga (3 Dept. 1995) 222 A.D.2d 816, 634 N.Y.S.2d 790. Improvement districts, such as sewer districts or ambulance districts, are not district corporations separate from counties or towns, but are merely administrative units of counties or towns.

Board of Education of Kiryas Joel Village School District, v. Louis Grumet et al.

Board of Education of Monroe-Woodbury Central School District, v. Louis Grumet et al.

Attorney General of New York, v. Louis Grumet et al.

Nos. 93-517, 93-527 and 93-539, 1994 512 U.S. 687, 114 S.Ct. 2481, 129 L.Ed.2d 546, 62 USLW 4665, 91 Ed. Law. Taxpayers and association of state school boards brought action challenging constitutionality of statute creating special school district for religious enclave of Satmar Hasidim, practitioners of strict form of Judaism. After granting certiorari, the Supreme Court held that statute creating special school district following village lines for religious enclave incorporated as village to exclude all but its practitioners violated establishment clause of First Amendment.

Marcus v. Baron, 84 A.D.2d 118, 135, 445 N.Y.S. A town local law was held to be invalid on the ground that there was “nothing either in the Constitution or in (the Municipal Home Rule Law) which expressly (gave) the power to a town to adopt a local law which adds to the conditions enacted by the Legislature for the creation of a village.”

Opinions of the Comptroller and Attorney General

Attorney General Opinion [2006 - 1](#): Election Law §§ 8-400(1), 15-120; Education Law §§ 1803, 2018-a, b, 2609, 2613; Town Law §§ 83, 84-a(1), 175-b(1), 213-b(1); Village Law §§ 2-200, 2-202(1)(a), 2-200(1)(f)(1), 2-204, 2-206, 2-208, 2-210, 2-212, 2-212(1)(c), 2-214, 2-216, 2-220, 2-220(3), (4), (5), 2-222, 2-222(1), 2-224. Article 2 of the Village law does not authorize absentee voting in an election to determine the question of incorporation.

Attorney General Opinion [2004-6](#): Town Law Art. 11-A, §§ 174(4), 185, 189-a, 189-b, 189-e, 189-f, 189-i; Village Law Art. 22-A, §§ 3-300(4), 3-301, 3-308, 3-310, 4-400(1)(a), 11-1124, 22-2210, 22-2212; L. 1938, CH. 595. Because the statutory scheme governing joint fire districts gives the town and village boards substantial power to affect the existence and structure of a joint fire district, the positions of village mayor and fire commissioner of a joint fire district established by that village are incompatible. Therefore, the village mayor may not be a commissioner of a joint fire district established by the village

Comptroller Opinion [2003-2](#): Village Law §§17-1704, 22-2210; Town Law §§189-a, 189-e: A coterminous town/village that operates principally as a village may not establish, pursuant to Article 11-A of the Town Law, a joint fire district that would encompass only the area of the coterminous town/village.

Comptroller Opinion [2000-3](#): Town Law, §§194, 195, 209-f, 209-g. A town clerk must cause to be filed with the State Comptroller a certified copy of each determination or order establishing or extending a district pursuant to articles 12 or 12-A of the Town Law, irrespective of whether the establishment or extension is subject to prior approval of the State Comptroller.

Comptroller Opinion [2000-21](#): Town Law §189-a; Village Law §22-2210. In the case of the proposed formation of a joint fire district containing a village located within two towns, both towns must participate in the formation process.

Comptroller Opinion [92-39](#): Town Law, §209-e. Persons who do not own taxable real property situate in a proposed water or sewer district are not entitled to vote in a special district election on a proposition to establish the water or sewer district. At such election each tenant by the entirety, tenant in common and joint tenant owning taxable real property within the proposed district is entitled to vote. However, partnerships and corporations owning such property are only entitled to a single vote. Any such person or entity owning more than one parcel within the proposed district is entitled only to a single vote.

Comptroller Opinion [96-18](#): Village Law, §§ 1-102, 4-412, 9-912. Absent an act of the State Legislature, a village may not conduct an advisory referendum on the question of whether the village should become a city.

Comptroller Opinion [94-28](#): County Law, §250 et seq.; General Municipal Law, §99-d. Expenses incurred by a county for advance planning pursuant to General Municipal Law, §99-d may be paid, in the first instance, from the county's general fund. However, to the extent that the advance planning is undertaken for purposes of an existing improvement district or extension, or a proposed district or extension which is ultimately established, the district or extension must reimburse the general fund.

Comptroller Opinion [89-28](#): General Municipal Law, §99-d. A town board may authorize the expenditure of available general town funds to pay for the advance planning of capital improvements. If the planning is undertaken on behalf of an existing or proposed town improvement district, the existing district, or the proposed district, when established, must reimburse the town for the cost of the plans.

Comptroller Opinion [89-58](#): Town Law, §§81, 198, 202, 202-a, 220. A town may not, pursuant to Article 12 or 12-A of the Town Law, establish overlapping town districts authorized to provide the same improvements or services

Comptroller Opinion [88-72](#): County Law, §250; Town Law, §§190, 209. The establishment of a county sewer district would not necessarily preclude the subsequent establishment of a town sewer district within the county district.

Attorney General Opinion 75-195. Town Law, Article 5. Where it is wished to have a new town created, to be coterminous with boundaries of an existing village, the procedure set forth in this article still survives partial repealer contained in General Municipal Law, § 700 et seq. as the partial repealer applied only to change of boundaries of existing towns, not to creation of new ones.

Comptroller Opinion 67-549. Two new fire districts may be created within the boundaries of an existing district only by first dissolving the latter fire district. The assets of the dissolved district must be sold at public sale and the proceeds used as prescribed by law.