This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

CONFLICTS OF INTEREST -- Architectural Services (provided to public library by firm employing daughter of library board member) -- Codes of Ethics (adoption of by public library) -- Family Relationships (contract between public library and firm employing library board member's daughter) -- Interest In Contract (library board member in contract with firm employing daughter)

GENERAL MUNICIPAL LAW, §§800(3), 801, 806: A member of a public library board of trustees does not have an interest in a contract between the library and an architectural firm which employs the board member's daughter but the board member should recuse himself or herself from any discussions and votes on matters relating to the contract. A public library may adopt a code of ethics which should provide standards of conduct in relation to, among other things, contracts between the library and firms which employ relatives of library officers and employees.

This is in reply to your letter concerning a contract between a public library and an architectural firm. After conducting interviews with six architectural firms, the public library engaged a firm in 1988 to prepare plans and designs for the construction of a new library building. You have informed us that both the library and candidates understood that the firm retained to prepare the plans and designs might also be engaged to perform services in connection with the construction phase of the project once voter approval of the project was obtained. Financing for the construction recently received voter approval and the library board is now negotiating with the previously selected firm for its services in connection with the construction phase of the project. Since being originally selected, however, the firm has recently hired the daughter of the president of the library board as a junior architect. You state that neither the board president nor his daughter has any ownership interest in the firm, that the board president's daughter is not a partner in the firm, and that the board president has publicly disclosed that his daughter was hired by the firm. You ask whether under these circumstances the president of the board would have a prohibited conflict of interest if this architectural firm is re-hired by the library board.

Article 18 of the General Municipal Law (§800 et seq.) contains provisions of law which relate to conflicts of interest of municipal officers and employees. A municipality for purposes of article 18 is defined to include a public library (General Municipal Law, §800[4]). Pursuant to General Municipal Law, §801, an officer or employee is prohibited from having an interest in any contract of his or her municipality if the officer or employee, individually or as a member of a board, has the power or duty to: (a) negotiate, prepare, authorize or approve the contract or approve payments thereunder; (b) audit bills or claims under the contract; or (c) appoint an officer or employee who has any such powers or duties, and none of the exceptions contained in Article 18 are applicable (General Municipal Law, §§801, 802).
A member of a library board of trustees has the power, among other things, to authorize contracts with independent contractors and audit claims under such contracts (Education Law, §§226, 259[1], 260; 1981 Opns St Comp No. 81-33, p 33). Therefore, if a board member has an interest in a contract of the library, that interest would be prohibited unless an exception in section 802 is applicable.

Under General Municipal Law, §800(3), a municipal officer or employee has an interest in any contract with his municipality if he or she receives a direct or indirect pecuniary or material benefit as a result of that contract. In addition, an officer or employee is deemed to have an interest in any contract between the municipality and a firm, partnership or association of which the municipal officer or employee is a member or employee, or in any municipal contract, other than a contract of employment, with the spouse, minor children or dependents of the officer or employee (General Municipal Law, §800[3][a], [b]). However, nothing in article 18 provides that a municipal officer or employee is deemed to have an interest in a contract between the municipality and a firm of which the officer's or employee's daughter is a member or employee. Accordingly, assuming the president of the library board does not directly or indirectly receive any pecuniary or material benefit as a result of the contract, the board president would not have an interest in a contract between the library and the architectural firm which employs his daughter.

Although under article 18 the board president would have no interest in a contract with the architectural firm by reason of his daughter's employment with the firm, we note that public libraries are authorized to adopt codes of ethics setting forth standards of conduct for their officers and employees (General Municipal Law, §806). Such codes may regulate or prescribe conduct which is not expressly prohibited by article 18 (id.). We believe that contracts which may benefit relatives of municipal officers or employees, or firms which employ those relatives, is a subject which should be addressed by a code of ethics (see 1991 Opns St Comp No. 91-18, p ____). Therefore, we suggest that, if the library has adopted a code of ethics, it should be consulted to determine whether it contains any pertinent provisions and, if the library has not adopted a code, it should consider doing so in order to provide standards of conduct for its officers and employees.

Further, the courts of this State have held public officials to a high standard of conduct and, on occasion, have negated certain actions which, although not violating the literal provisions of Article 18 of the General Municipal Law, violating the spirit and intent of the statute, are inconsistent with public policy, or suggest self-interest, partiality or economic impropriety (see e.g. Zagoreos v Conklin, 109 AD2d 281, 491 NYS2d 358; Matter of Tuxedo Conservation and Taxpayers Association v Town Board of the Town of Tuxedo, 69 AD2d 320, 418 NYS2d 638; Conrad v Hinman, 122 Misc 2d 531, 471 NYS2d 521). Thus, even if not required by the library's code of ethics, we believe the board president should recuse himself from any discussions and votes of the library board on matters relating to the contract between the library and this architectural firm to avoid even the appearance of impropriety.

July 10, 1991
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Farmingdale Public Library