



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

Economic Development

Statutory Authority

Counties, Cities, Towns and Villages –

Empire Zones – May adopt a local law authorizing the municipality to submit an application to the commissioner of economic development for designation of an area therein as an Empire Zone. [General Municipal Law, Article 18-B] Established zones are provided particular benefits including real property tax exemptions, certain tax credits and reduction in utility costs at the option of the utility. [General Municipal Law § 966]

Foreign Trade Zones - A municipality which contains an Empire Zone may apply to the Foreign Trade Zones Board established by an act of Congress to establish a Foreign Trade Zone within the area. [General Municipal Law § 965]

Local Development Corporation - May cause a Local Development Corporation to be incorporated by public officers or private individuals to provide for job opportunities. The local legislative body may sell or lease up to 99 years real property not required for use by the municipality to the Corporation without appraisal or public bidding, after a public hearing. [Not-for-Profit-Corporation Law § 1411]

Tax Increment Financing - The legislative body may, by resolution after a feasibility study and public hearing, adopt a redevelopment plan for blighted areas and may issue Tax Increment Bonds to carry out the redevelopment plan. [General Municipal Law Article 18-C]

Business Investment Exemption – Real property improved for commercial, business or industrial activity is provided certain exemptions from taxation and special ad valorem levies. [Real Property Tax Law § 485-b]

Counties –

- **Foreign Trade Zones** - Erie, Cattaraugus, Suffolk, Niagara, Nassau, Genesee, Clinton, Montgomery, Oneida, Onondaga, Cortland, Jefferson and Chautauqua counties may apply to become Foreign Trade Zones and may appropriate the monies necessary toward the promotion and establishment of the Zone. [County Law § 224]

Cities, Towns, and Villages –

- **Urban Renewal** - Authorized to plan and undertake one or more Urban Renewal programs. [General Municipal Law Article 15]

Cities, Town –

- **Urban Development Action Area** - Cities having a population of 100,000 or more and the Town of Huntington are authorized to designate an Urban Development Action Area for urban development. [General Municipal Law Article 16]

Special Districts

Counties – Authorized to establish various districts impacting economic development including water and sewer districts. [County Law Article 5-A]

Cities, Towns and Villages – Authorized to establish business improvement districts (BIDs), which are managed by a not-for-profit district management association comprised of municipal officials, property owners, and tenants of the district. [General Municipal Law Article 19-A] May enter into agreements to operate and manage BIDs on a cooperative basis under certain circumstances. [General Municipal Law § 980-n]

Towns – Authorized to establish various districts impacting economic development including water, sewer, lighting, parking and sidewalk districts. [Town Law Article 12 and Article 12-A]

Public Authorities

Counties, Cities, Towns and Villages – In those municipalities in which the Legislature has created an industrial development agency the municipality governing body is authorized to establish such an agency to promote the general prosperity and economic welfare of the people of New York. [General Municipal Law Article 18-A]

Selected Court Cases

Hunts Point Terminal Produce Co-op. Ass'n, Inc. v. New York City Economic Development Corp. (1st Dept. 2006) 824 N.Y.S.2d 59, 36 A.D.3d 234, leave to appeal denied 828 N.Y.S.2d 287, 8 N.Y.3d 827, 861 N.E.2d 103. Under New York city charter provision vesting exclusive authority to lease public markets in the city's commissioner of department of small business services, neither city nor local economic development corporation, a not-for-profit corporation acting on behalf of city pursuant to contract and not a governmental agency, was required to conduct any competitive bidding for lease of city land in public market.

Inn at Hunter, Inc. v. Village of Hunter (3rd Dept. 2006) 827 N.Y.S.2d 714, 35 A.D.3d 1072. In Article 78 proceeding, village's determination to deny developer's application for water and sewer tap permit was not arbitrary when engineering reports provided undisputed evidence that development would exceed capacity of village's water and sewer systems. A municipality has discretion to reject such applications when, because of excess demands on the system or otherwise, the applications present problems to the sewer system or the public health.

Mohawk Group, L.P. v. Town of Amherst Industrial Development Agency (4th Dept. 2003) 309 A.D.2d 1184, 765 N.Y.S.2d 717. Town Industrial Development Agency violated anti-pirating provisions of General Municipal Law by providing financial assistance for construction of office building, which resulted in business removing its facility from one area of the state to another area of the state.

Kaufmann's Carousel, Inc. v. City of Syracuse Industrial Development Agency (4th Dept. 2002) 301 A.D.2d 292, 750 N.Y.S.2d 212, leave to appeal denied 99 N.Y.2d 508, 757 N.Y.S.2d 819, 787 N.E.2d 1165. Under General Municipal Law Article 18-A, city industrial development corporation acquired by eminent domain a portion of leasehold rights of shopping mall tenants to serve legitimate and dominant public purpose behind integration and expansion of shopping malls, even though the developer would benefit privately from the project; the corporation sought to advance job opportunities, general prosperity, public welfare, economic development, and tourism.

City of Hornell v. Board of Assessors (4th Dept. 1998) 256 A.D.2d 1173, 684 N.Y.S.2d 725, leave to appeal dismissed 93 N.Y.2d 886, 689 N.Y.S.2d 427, 711 N.E.2d 641. City's sale-leaseback transaction with its industrial development agency, under which it transferred municipal airport to agency, which then leased airport back to city, was a "project" to which General Municipal Law's prohibition of projects which are entirely outside sponsoring municipality applied.

Kessler v. Grand Cent. Dist. Management Ass'n, Inc., (S.D.N.Y. 1997) 960 F.Supp. 760, affirmed (2d Cir. 1998) 158 F.3d 92. Management association for business improvement district (BID) created under New York law served special limited purpose and its functions disproportionately affected property owners, so that it was not subject to one-person, one-vote requirement, and statutory voting scheme requiring that majority of board members represent property owners had reasonable relationship to purpose of the BID, and thus did not violate equal protection, though association provided sanitation and security services, these merely supplement city services, authority was supervised and controlled by city council, association did not have regulatory power or power to levy and collect taxes, and district was predominately commercial and was financed by mandatory assessments on property owners, to improve and promote business activity in the district.

New York City Coalition for the Preservation of Gardens v. Giuliani (Sup. Ct., New York Co. 1997) 175 Misc.2d 644, 670 N.Y.S.2d 654; affirmed (1st Dept. 1998) 246 A.D.2d 399, 666 N.Y.S.2d 918. Determination as to whether proposed development of city property calls for rehabilitation or conservation of existing dwellings, or construction of one- to four-unit dwellings, and thus qualifies for waiver of land use review procedure under Urban Development Area Action Act, must rest on many factors contributing to character of project, as well as upon assessing agency's need to improve community and to carry out purposes of statute.

Schulz v. State (3d Dept. 1993) 198 A.D.2d 554, 603 N.Y.S.2d 207, leave to appeal denied 83 N.Y.2d 756, 614 N.Y.S.2d 386, 637 N.E.2d 277. Counties use of taxpayer funds to pay monthly waste disposal fee to owner of resource recovery facility under a contractual obligation did not violate state constitutional provision prohibiting county from giving or loaning money to aid private undertaking, provision prohibiting use of county's money to aid public corporation, provision prohibiting county from incurring debt without first pledging its full faith and credit, or section of General Municipal Law prohibiting municipality from incurring debts of public authority.

Jo & Wo Realty Corp. v. City of New York (1st Dept. 1990) 157 A.D.2d 205, 555 N.Y.S.2d 271, affirmed (1990) 76 N.Y.2d 962. Realty company's challenge to City's decision to sell a property site to a third party pursuant to an urban renewal plan by use of a request for proposal process was without merit, given the City's authority under the Urban Renewal Law (General Municipal Law Art. 15) to dispense with competitive bidding.

Village Green Realty Corp. v. Glen Cove Community Development Agency (2d Dept. 1983) 95 A.D.2d 259, 466 N.Y.S.2d 26. General Municipal Law §§503-a and 507 authorizing a municipality to convey title to real property in furtherance of urban renewal program supersedes and controls General City Law § 20 that city's title to waterfront and park property is inalienable without special legislative act, and thus municipality could convey valid and legal title to waterfront and park property to urban renewal agency pursuant to urban renewal plan without necessity of obtaining special legislative approval.

Matter of First Amended South Jamaica I, Urban Renewal Area, in Borough of Queens, City of New York v. Europa Foreign Auto Parts, Inc. (2d Dept. 1979) 72 A.D.2d 582, 421 N.Y.S.2d 20. Land which is not itself substandard or insanitary may be included in an urban renewal program where it is deemed necessary for effective undertaking of the program.

Opinions of the Comptroller and Attorney General

Comptroller Opinion 2000-9: General Municipal Law §858(7). An industrial development agency may not determine at the end of a year to provide additional compensation as an "after-the-fact" bonus to the executive director of the agency for services already rendered and for which a fixed salary was already paid. The governing board of the industrial development agency, in fixing the executive director's total compensation, however, may establish a performance evaluation program under which specific performance criteria are set forth and disclosed to the executive director prior to the performance of services, with corresponding dollar amounts of additional compensation established for meeting the criteria. The board then may determine at the end of each year that the executive director has met the specified criteria and is eligible for the specified additional compensation.

Comptroller Opinion 99-4: General Municipal Law, §858. An IDA is not authorized to make a gift of its moneys to a town. IDA moneys may be expended to make improvements to municipal facilities, at no cost to the municipality, when the improvements are incidental to a proper IDA project and are intended primarily for the benefit of that project. Also, an IDA may utilize the services of agents, employees and facilities of a town, in furtherance of the IDA's corporate purposes, and pay the town an agreed proportion of the compensation or costs.

Attorney General Opinion 98-16: General Municipal Law §§ 858-a, 854; L. 1993, Ch. 356. The provision of the Niagara County IDA's contract with its executive director, which states that the director is to receive an additional salary equal to 1.5% of the agency fees collected on IDA projects, violates General Municipal Law § 858-a(1). The second provision which grants an additional "minimum" payment if the first provision is found to violate State law, also appears to violate section 858-a(1).

Attorney General Opinion 98-21: N.Y. Constitution, Article IX; General Municipal Law, Article 15-A, §§ 553, 605, 608; Municipal Home Rule Law, § 10. The Ithaca Common Council is without authority to change the terms of members of the Ithaca Urban Renewal Agency as established by special act of the State Legislature.

Attorney General Opinion 96-9: General Municipal Law Art. 19-A, §§ 980, 980-a, 980-b, 980-c, 980-d, 980-e, 980-f, 980-i, 980-l; Town Law §190 et seq.; L. 1989 Ch. 282. In the absence of a legislative modification of its district plan, a business improvement district may not use funds for any purpose other than those set forth in the district plan.

Attorney General Opinion 96-19: General Municipal Law, Art. 18-A, §§ 856(2), 895-b. Members of the Montgomery County IDA serve at the pleasure of the appointing authority. An act of the State Legislature would be required to provide a term for these positions.

Comptroller Opinion 95-1: General Municipal Law, §§ 503-a, 554. A city is not responsible for paying the cost of health care benefits to retirees of a city urban renewal agency. The city, however, may determine to provide city funds to the agency to cover costs of such benefits.

Attorney General Opinion 95-15: Executive Law § 381; 19 NYCRR §§ 441.2, 441.3. The county may not “opt out” of code enforcement with respect to IDA property. The county may “opt out” of enforcement with respect to all county property or may make agreements with local governments allocating enforcement responsibility.

Comptroller Opinion 94-14: General Municipal Law § 854(4). General Municipal Law, §854(4), as amended by the Laws of 1993, chapter 356, prohibits industrial development agencies (IDAs) from providing financial assistance in respect of any project located wholly outside the municipality for whose benefit the IDA was created. This prohibition does not apply, however, to projects for which an agency has authorized any assistance prior to October 19, 1993, the date on which chapter 356 became effective, even if such projects are thereafter modified. Whether continued development “related to” an earlier project developed outside the municipality for whose benefit the IDA was created constitutes a mere modification of the earlier project and, therefore, is not prohibited by the amended General Municipal Law, §854(4), is a question of fact.

Comptroller Opinion 94-22: General Municipal Law, §§980-j, 980-l. Charges imposed on behalf of a town business improvement district are under custody and control of, and are directly expended by, the town, not the district management association. The district management association, however, may be the recipient of district funds paid as fair and adequate consideration pursuant to a contract for services with the district, subject to audit of claims and competitive bidding requirements.

Comptroller Opinion 94-26: General Municipal Law, §§ 980-b, 980-k. A town may establish a business improvement district, the boundaries of which include area within one or more villages within the town.

Comptroller Opinion 81-398. An industrial development agency is not exempt from paying the statutory fees to either the county clerk or the Secretary of State.

Attorney General Opinion, 1980, p. 140: General Municipal Law, Article 18-A, §§ 854(4), 858(4), 910-b. An industrial development agency whose special act has a proviso limiting its acquisition of land to land within the applicable municipal boundaries may not acquire land outside those boundaries

Comptroller Opinion 78-745. Industrial development is not a proper town purpose and town moneys may not be appropriated therefor.