A Message from the Chair

Ten years ago, Section Chair Gerry Jacobowitz’s goal was to invigorate the Section Committee structure. He envisioned committees headed up by current sitting members of the Section’s Executive Committee that met, at a minimum, during our fall conference. He selected me to head up a “special projects” committee; essentially, if it was interesting to the membership but didn’t fall under any of the four basic substantive groups, it went to me. Communication amongst my committee members was sporadic—we were geographically dispersed, not all members had access to e-mail and my conference-calling abilities were primitive to say the least.

Today, we have the ability to work around geography with technology. Most of us are e-mail efficient. NYSBA is capable of setting up listserves for instant communication amongst our colleagues and I don’t know about your phone, but I can conference in more than two people these days. We have more committees today than we did in 1993. Not all of them are chaired by Executive Committee members. I am hoping to entice you to sign on to at least one committee by telling you about each of them and their chairs in this message and the next one. Once again, feel free to e-mail me at rminarik@courts.state.ny.us if you’re interested, or I invite you to contact the chair directly.

Ethics and Professionalism

The committee’s three main goals are: 1) Post Article 18-related articles, links and sample ethics laws on our Section’s Web site; 2) Present CLE classes on government ethics and attorney ethics for government lawyers; and 3) Write a column for the Municipal Lawyer on government ethics and attorney ethics for government lawyers. Committee Chair Mark Davies is Executive Director and Counsel of the New York City Conflicts of Interest Board. He previously served as Executive Director of the New York State Temporary State Commission on Local Government Ethics, where he drafted the Commission’s bill to completely revamp New York State’s ethics law for local government officials, and as a Deputy Counsel to the New York State Commission on Government Integrity. During 15 years in private practice (first with a major New York City law firm and then with a Westchester firm), he specialized in litigation and municipal law, serving as counsel at numerous ZBA, planning board, and trustees meet-

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ings and representing a number of towns and villages in Article 78 proceedings. He has lectured extensively on civil practice and on ethics and has authored some two dozen publications, including a number of articles on governmental ethics laws, the municipal ethics chapter for *Ethical Standards in the Public Sector* (ABA 1999), the governmental ethics chapter for an international work on *Ethics and Law Enforcement: Toward Global Guidelines* (Praeger 2000), and a chapter on adopting local government ethics laws for a recent New York State Bar Association book, *Ethics in Government*. He is the directing editor and revision author of West’s McKinney’s Forms for the CPLR and the directing editor and lead author of *New York Civil Appellate Practice* (West 1996). You can reach Mark at mldavies@mldavies@aol.com.

**Government Operations**

Kathleen Gill, Deputy Corporation Counsel for the city of New Rochelle, graciously responded to my call for volunteers in my last column. She views the exploration of the following two issues as her committee’s most pressing charge. One, the implications of e-mail on public officials, including document retention requirements, open meetings laws, and freedom of information laws; and two, the siting of telecommunications towers on state land and the circumvention of local regulations. If either of these issues is of particular interest to you, or perhaps you have a suggestion regarding other issues for the committee, you can contact me at rminarik@courts.state.ny.us. Or contact Kathleen directly at kgill@ci.new-rochelle.ny.us. Kathleen is an experienced litigator who presently counsels the Mayor and the city of New Rochelle council. She also advises the city’s zoning and planning boards. A former Editor for *Pace Environmental Law Review*, she is a welcome addition to our committee leadership.

**Municipal Finance and Economic Development**

Kenneth W. Bond and his committee have been busy. Ken conducted the program on deficit financing at the Municipal Law Section Fall Meeting in Albany on October 24th. Under Ken’s stewardship, an article on pension bonds is in this issue of the *Municipal Lawyer*. This prolific committee is planning on submitting another article for publication at the end of the year. Besides authoring articles, I count on Ken and his committee to review legislation in their area of expertise; their review assists in determining whether or not the Section would like to comment on any bills pending before our state legislature.

Ken is a partner of Squire, Sanders & Dempsey L.L.P., a major United States-based international law firm. He concentrates in the firm’s Public Securities Practice and is resident in the New York office. He has nearly 30 years of experience as bond counsel for local and state government issuers in financing infrastructure and environmental facilities. His experience includes serving as transaction counsel and underwriters counsel for financial institutions. He is a nationally recognized expert in the law of investing and managing deposits of public sector moneys. He has extensive experience as bond counsel with tax-supported general obligation, economic development, and special revenue obligation financing. He also has substantial experience on behalf of public sector clients in such areas as deficit financing, urban renewal, community development and renewal, industrial development, and pooled environmental financing. Ken serves as the Eastern Region Offices Coordinator for the firm’s Financial Services Practice. His financial services practice includes assisting in regulatory and transactional matters for Chinese-based commercial banks with branches in or doing business in the New York area. Ken also represents regional and community banks in acquisition and merger activities. He has written several articles and lectures frequently on topics relating to the law of municipal finance and financial services, including applicable federal tax and securities law. In 2002 his publications included the following: *Predatory Lending—Trap for the Unwary*, ABA Bank Compliance, July/August, 2002, Vol. 23, No. 7; and *Local Government Finance After the WTC Attack*, Empire State Report, February 2002, Vol. 28, No. 2. If you have any interest in this subject area, Ken can be reached at kbond@ssd.com.

**Legislation**

Connie Cahill is a graduate of Siena College (B.B.A.) *magna cum laude*; Albany Law School of Union University (J.D.) *cum laude*; and New York University School of Law (L.L.M., Tax Law). In addition to her membership in the New York State Bar Association, she is also a member of the National Association of Bond Lawyers and the Capital District Executive Women’s Forum.

She is a shareholder at Girvin & Ferlazzo, P.C., a firm of twenty-two lawyers located in Albany, and practices in the firm’s municipal finance group. Girvin & Ferlazzo, P.C. represents school districts, municipalities, 501(c)(3) organizations, developers, industrial development agencies, underwriters and trustees in connection with the issuance of tax-exempt bonds.
Because we are starting with a virtual blank slate with our Legislation Committee, Connie will be counting on the assistance of Ron Kennedy, NYSBA’s Associate Director of the Governmental Relations Department. She anticipates that the Legislative Committee will become very active this year and will rely on the committee members who hale from diverse practice areas and therefore have the backgrounds to review legislation in a variety of areas. Connie welcomes new committee members and any comments or suggestions about pending or possible legislation. She can be reached at mcc@girvinlaw.com.

Bylaws

Owen B. Walsh has been very active with the New York State Bar Association, is a Fellow of the Bar and a former Chair of the Municipal Law Section. He is a member of the House of Delegates for the New York Bar as well as the Nassau County Delegate to the House of Delegates of the American Bar Association. He has agreed to serve as chair of an ad hoc committee I established to review the Section’s bylaws, in particular, the role of ex-officio members of the Section’s Executive Committee.

Presently, Owen practices in the labor and employment area as a mediator, fact-finder and arbitrator for New York State and the American Bar Association. Prior to entering private practice, the Nassau County Executive appointed him to the position of County Attorney where he practiced Municipal Law from 1994 to 1999. During this time, he was an active member of the Nassau County Bar Association, and in fact, was President of the Nassau County Bar Association in 2001, Chair and Member of its Professional Ethics Committee (where he received the Nassau Bar Association Directors’ Award) and was a member of the Municipal Law, Grievance, Labor and Employment Law, Alternate Dispute Resolution and other committees. Owen is also Past Dean of the Nassau Academy of Law as well as Past Chair of the WE CARE Advisory Board (the charitable arm of the Nassau Bar). Owen also was the Nassau County Bar designee to the 10th Judicial District Grievance Committee between 1992 and 2000. Prior to 1994, Owen was in private practice with numerous clients in the municipal field.

Owen is a “committee of one” at present. He has reviewed other Sections’ bylaws and is focused on the treatment of Past Chairs on the various Executive Committees regarding quorum and the right to vote. Anyone interested in assisting with the bylaws’ review can contact me or Owen at obwdvw@aol.com.

As always, I am grateful to our chairs and committee members for the time and effort expended on behalf of our Section. I will have more in my next column about the Land Use and Environmental, Employment Relations, Website, and Membership Committees.

If you missed our Fall Meeting in Albany, your next opportunity to take advantage of our programming and meet our members will be in New York City on January 26, 2004. We are meeting on a Monday this year to go “back to back” with our colleagues in the Committee on Attorneys in Public Service. Look for the details on the programs soon.

Renee Forgensi Minarik
From the Editor

This is the third quarterly issue of the Municipal Lawyer. Our new format has attracted in-depth articles on a broad range of municipal practice issues written by leading practitioners in the fields of labor law, telecommunications law, land use, municipal finance and government ethics. Broadening our coverage, articles in the pipeline for future issues will address, among other topics, agricultural districts and public employee safety and health issues. Your submission of articles for publication and your feedback on the new direction of our publication will further enhance and enrich the Municipal Lawyer.

In this issue, NYSBA President A. Thomas Levin shares his thoughts on the significant home rule implications of the recent ruling by the Court of Appeals in Cohen v. Board of Appeals of the Village of Saddle Rock. Laying to rest “practical difficulty” as a standard for area variances in New York, the Court ruled that 1992 state legislation replacing practical difficulty with a five-factor test for area variances impliedly preempted inconsistent local legislation which sought to reinstate that standard. As discussed by Mr. Levin, the decision calls into question the validity of any local law which deviates from the statewide standards established when the legislature recodified the planning and zoning enabling legislation for cities, towns and villages during the 1990s.

Douglas Rohrer assesses the impact of the legislature’s recent efforts to reform the ailing New York State and Local Retirement System, the second largest pension plan in the nation. Focusing on the component of that legislation that allows local governments a one-time window to finance 2004-2005 pension costs, Mr. Rohrer questions whether such legislation, or future extensions of that legislation, represents an impermissible mechanism to finance ordinary, recurring operating expenses in violation of article VIII, section 2 of the New York State Constitution.

Debuting a regular feature on local government ethics, Bonnie Beth Greenball, Special Counsel to the New York City Conflicts of Interest Board, provides an overview of that Board’s operation and a template for constructing a model ethics law.

Endnote