

Legal Memorandum LG01: The Ward System of Town Government

THE WARD SYSTEM OF TOWN GOVERNMENT

New York's towns, all 932 of them, are the backbone of local government in our State. The town, for example, is the primary organizing element for elections and, in turn, political parties, which are built around the election district (towns in all counties except Monroe, Nassau and Suffolk establish and operate all election districts outside cities). Representative democracy is achieved in almost all of them through the system of electing town councilmen as at-large representatives. Towns of the first class (generally, towns with a population of 10,000 or more, or those towns with a smaller population that have chosen to become towns of the first class pursuant to sections 12 & 81 of the Town Law) usually elect a Town Supervisor and four town councilmen as the town legislative body, separate from other elective or appointive town offices such as clerk, justice and assessor.

Unlike cities in New York, which show a mix of both at-large and ward-elected councilmen, only a handful of towns elect councilmen by ward. At last count, fifteen towns in New York use the ward system.

The ward system of electing town councilmen is authorized by sections 81 and 85 of the Town Law. A town of the first class may, upon the vote of the town board or upon a duly qualified petition, submit a proposition to the voters for establishing the ward system. If the voters approve the proposition, the county board of elections must divide the town into four wards and fix their boundaries. "So far as possible the division shall be so made that the number of voters in each ward shall be approximately equal" (Town Law §85 [1]). The ward system is deemed established only upon the date the county board of

elections duly files a map “showing in detail the location of each ward and the boundaries thereof” (Town Law §85 [1]). Note that the voters may also decide on a proposition at the same election, whether to increase the number of councilmen from four to six, which if approved, would require drawing six wards.

Any past failures of ward propositions to be approved by the voters may be because boundaries of the wards are not known at the time of the ballot, but instead are fixed by the board of elections if the proposition is successful. Apart from the constitutional requirement of “one person one vote” (see, *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1362) codified in the statute by its demand that wards contain “approximately” the same number of voters, the voter has few assurances how wards will be drawn.

If the ward system is established, the terms of the sitting councilmen end on December 31 after the first biennial town election held at least 120 days after the ward system is established. And of course the terms of the councilmen elected by ward commence January 1 following such election.

Only a town of the first class is authorized to both establish the ward system and increase the number of councilmen from four to six, and such a town may submit both propositions at the same election (Op. Atty. Gen. [Inf.] 90-63; 1968 Op. Atty. Gen. [Inf.] 52; 13 Op. St. Compt. 223, 1957). May a town of the second class, which is not authorized to either increase the number of councilmen or establish the ward system, submit a proposition to the electorate to change its classification to first class at the same election it submits the other propositions? Under the authorizing sections of sections 81 and 85 the Town Law, the answer is that the electorate must first approve a change in classification to first class, with subsequent elections necessary to increase the number of councilmen and establish the ward system. The Attorney General has opined, however, that a town of the second class may, by enactment of a local law, increase its number of councilmen and establish

the ward system (Op. Atty. Gen. [Inf.] 90-63). Under the Municipal Home Rule Law (MHRL) towns, cities, counties and villages are authorized to adopt local laws not inconsistent with the Constitution or any general law, in relation to, inter alia, “the powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees” (MHRL, §10 [1] [ii] [a] [1], emphasis supplied). Such a local law would be itself subject to a mandatory referendum (MHRL, §23 [2] [b], [e], [g]).

The conclusion reached in the above-cited Attorney General’s Opinion is based upon the reasoning that such a local law is not inconsistent with any provision of the Town Law, but it has not been tested by litigation, nor is it likely to be. It’s fair to say that legal impediment isn’t the reason why more towns don’t have the ward system. If the voters want representation by ward they have the means to establish it. To date, they seem content with the prevailing mode of representation, the at-large system.

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