

Local Law Filing

New York State Department of State

41 State Street, Albany, NY, 12231

Town of Fine

Local Law No. 2 of the year 2007

A local Law to supersede the Whitehall Doctrine

Be it enacted by the Town Board of the Town of Fine as follows:

Section I.

Title. A local law to supersede the common law Whitehall Doctrine and Doctrine of Incompatibility.

Section II.

Background.

Whitehall Doctrine: Pursuant to the common law doctrine established in *Wood vs. Town of Whitehall*, it is the general rule that a body having the power of appointment may not appoint one of its own members in the absence of precise statutory authority so to do (*Mac rum vs. Hawkins*, 141 Misc. 358, affd. 235 App. Div. 370, rev. on other grounds, 261 N.Y. 193, rearg. den. 261 N.Y. 691; *Wood vs. Town of Whitehall*, 120 Misc. 124, affd. 206 App. Div. 786).

Doctrine of Incompatibility: The common law doctrine of incompatibility declares to be incompatible any two public offices in which there exists an inconsistency of function or where the basic duties of each office would necessarily interfere with the other, or where the holder of one would be required to account or to be subordinate in some way to the other (*People ex rel Ryan vs. Green*, 58 NY 295; *Corsall vs. Gover*, 10 Misc. 2d. 664, 174 NYS 2d 62; 1979 N.Y. Op. Atty. Gen. (Inf.) 231).

The Attorney General's Office has, however, opined that upon a finding that the public interest would be served, a local legislative body may enact a local law overcoming incompatibility of office and the Whitehall doctrine. Incompatibility and the Whitehall doctrine are court-made rules of law based upon public policy concerns. We [Attorney General's Office] have expressed the opinion that these doctrines can be overcome by local law (1983 Op Atty Gen [Inf] 157; 1960 Op Atty Gen [Inf] 198). A local government is authorized to adopt and amend local laws, consistent with the Constitution

and general State law, relating to the powers, duties and qualifications of its officers and employees (Municipal Home Rule Law, §10[1] [ii] [a] [1]). Provided there is a finding by the local legislative body that such a local law would be in the overall public interest, it could enact a local law overcoming the Whitehall doctrine and incompatibility (1983 Op Atty Gen [Inf] 157). We [Attorney's General's Office] must emphasize, however, that the local legislative body, based upon local conditions, must first find that the overall public interest would be served by the local law. (1987 N.Y. Op. Atty. Gen. (Int.) 109).

Section III.

Authority. This local law is adopted pursuant to Municipal Home Rule Law, §10 [1] [ii] [a] [1], which grants to local governments the authority to enact local laws regarding the qualifications of local officers.

Section IV.

Finding of Public Interest. The Town Board of the Town of Fine hereby finds that the public interest would be served in that:

- The Town of Fine is in a rural area where no other qualified residents are known to exist.
- The Town Board believes the Town Supervisor is a good choice to fill the position of Water Treatment Plant Operator.
- The Town Supervisor has completed and passed the grade IIA Course for Water Treatment Plant Operator as required by the State of New York Department of Health.
- The Town Supervisor has become familiar with the Water Plant Operations and Distribution System operations. The Town Supervisor is an experienced equipment operator.
- The Town Supervisor has a construction background which will be valuable in upcoming projects.
- The Town Supervisor will answer to the Town Board on all issues with the Water District.
- The Town Supervisor, Town Board and Water Plant Operator all have the same goals of delivering water in quantities that are safe, sanitary and useful to the consumer at minimal cost.
- The Town Board does not want the Town Supervisor to resign from his elected position. The Town Supervisor is running unopposed in the 2007 election.
- The public interest would be served by superseding the Whitehall Doctrine and the Doctrine of Incompatibility with respect to the Town Supervisor acting as Water Treatment Plant Operator due to the fact that the Town of Fine is in a rural area and there are no suitable candidates for such position and the Town of Fine finds itself in need of a Water Treatment Plant Operator.

Section V.

Supersession. This local law shall supersede the common law Doctrine of Incompatibility and the common law Whitehall Doctrine with respect to the offices of TOWN SUPERVISOR and WATER PLANT SUPERINTENDENT.

Section VI.

Inconsistency. All other local laws and ordinances of the Town of Fine that are inconsistent with the provisions of this local law are hereby repealed; provided however, that such repeal shall only be to the extent of such inconsistency and in all other respects this local law shall be in addition to such other local laws or ordinances regulating and governing the subject matter covered by this local law.

Section VII.

Savings Clause. If any clause, sentence, paragraph, word, section or part of this local law shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation of the clause, sentence, paragraph, worked section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section VIII.

Effective Date. This law shall become effective on November 1, 2007.