

1990 N.Y. AG LEXIS 57

Office of the Attorney General of the State of New York

1990 N.Y. Op. (Inf.) Att'y Gen. 47

NY Attorney General Opinions

Reporter

1990 N.Y. AG LEXIS 57 *; 1990 N.Y. Op. (Inf.) Att'y Gen. 47

Informal Opinion No. 90-47

June 4, 1990

Core Terms

town board, local law, appoint, home rule, mandatory referendum, town official, **advisory**, section

Syllabus

[*1]

[MUNICIPAL HOME RULE LAW, §§ 10\(1\)\(ii\)\(a\)\(1\)](#) and (d)(3), 23(2); [TOWN LAW, § 63](#).

A local law authorizing the **town board** to establish, structure and appoint members of committees is subject to a mandatory referendum.

Request By: JAMES D. COLE, Assistant Attorney General in Charge of Opinions

Opinion

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You have asked whether a **town board** may establish **advisory** committees consisting of **town board** members and other town officials and, if so, whether the supervisor or the **town board** would have authority to make appointments to the committees.

Under [section 63 of the Town Law](#), "the supervisor may, from time to time appoint one or more committees, consisting of members of the board, to aid and assist the board in the performance of its duties". Thus, the supervisor is given the discretion to establish committees composed of members of the **town board** to act in an **advisory** capacity.

The **town board** is authorized by local law to amend or supersede any provision of the Town Law, to the extent of its home rule powers ([Municipal Home Rule Law, § 10\[1\]\[ii\]\[d\]\[3\]](#)). * In our view, the establishment of committees [*2] is within the home rule powers of a town ([id.](#), § 10[1][ii][a][1]). A local law, amending or superseding section 63, and authorizing the town board to establish, structure and to appoint members of committees to assist the board would constitute a transfer of a power of the town supervisor. A local law transferring a power of an elected official is subject to a mandatory referendum ([id.](#), § 23[2][f]).

We note that the solicitation by the town board of advice from other town officials and employees clearly is a prerogative of the board as the legislative and administrative branch of town government. This function, however, is distinguishable from the formal establishment of committees to assist the town board.

We conclude that a local law authorizing the town board to establish, structure and appoint members of committees is subject to a mandatory referendum.

The Attorney General renders formal opinions only to officers and departments of the State government. This performe is an informal and unofficial expression of views of this office.

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* See [Turnpike Woods v Town of Stony Point, 70 NY2d 735 \(1987\)](#).