

County Law §§ 2(b), 215, 215(5), 215(6); Municipal Home Rule Law §§ 4(3)(g), 20, 20(1)

A local law that contains the complete terms of a sale of specified surplus county-owned property can be adopted by the county legislature of a charter county upon a vote of a simple majority pursuant to Municipal Home Rule Law § 20(1).

September 13, 2012

Dennis M. Cohen
County Attorney
County of Suffolk
PO Box 6100
Hauppauge, NY 11788-0099

Informal Opinion
No. 2012-10

Dear Mr. Cohen:

You have requested an opinion relating to the number of votes required for the County Legislature to pass a local law authorizing the sale of county-owned property. County Law § 215 establishes a procedure for selling surplus county property which would require sale to the highest bidder after public advertisement, § 215(6), and approval by two-thirds of the members of the County Legislature, § 215(5). But the County wishes to use a different procedure for the sale of a county-owned and -operated skilled nursing facility. You have explained that this alternative procedure will allow the County to sell the property for fair and adequate consideration. Under the County's procedure, after the terms of the transaction are negotiated, a local law will be enacted approving the entire transaction, including any declaration of surplus, the price, contract terms, and use requirements and restrictions. Your question is whether such a local law may be passed by a simple majority, as required for adoption of a local law by Municipal Home Rule Law § 20, or whether it must be passed by the supermajority required by County Law § 215(5). As explained below, we are of the opinion that adoption of the local law requires only a simple majority.

First, the County may by local law adopt a procedure for selling surplus county property that differs from that established by County Law § 215. The County has a charter, and its local laws supersede the provisions of the County Law to the extent of any conflict unless a contrary intent is expressly stated in the County Law. County Law § 2(b); *Henry v. Noto*, 74 A.D.2d 604, 605 (2d Dep't), *modified and aff'd*, 50 N.Y.2d 816 (1980). County Law § 215 does not contain an express contrary intent, and courts have upheld local laws adopted by a charter county that superseded the requirements of County Law § 215(5) and (6). *Martin v.*

Eagle Hill Found., 111 A.D.2d 372 (2d Dep't 1985); *Devitt v. Heimbach*, 109 Misc. 2d 463 (Sup. Ct. Orange Co. 1981).

Second, Municipal Home Rule Law § 20 governs the procedure for adopting a local law by a legislative body. It provides that "[n]o local law shall be passed except by at least the majority affirmative vote of the total voting power of the legislative body." Municipal Home Rule Law § 20(1). This statutory requirement of a simple majority may not be changed by a local government. Op. Att'y Gen. (Inf.) No. 98-37; *see also* Op. Att'y Gen. (Inf.) No. 2007-5; *cf.* Municipal Home Rule Law § 4(3)(g) (a county charter cannot supersede the Municipal Home Rule Law).

In summary, the County may supersede the provisions of County Law § 15(5) and (6) but cannot supersede the provisions of Municipal Home Rule Law § 20(1). We therefore are of the opinion that a local law that contains the complete terms of a sale of specified surplus county-owned property can be adopted by the County Legislature upon a vote of a simple majority pursuant to Municipal Home Rule Law § 20(1). With the County's 18-member Legislature, the local law must receive at least 10 affirmative votes to pass, whereas 12 affirmative votes would be needed to pass a resolution adopted pursuant to County Law § 215(5).

The Attorney General issues formal opinions only to officers and departments of state government. Thus, this is an informal opinion rendered to assist you in advising the municipality you represent.

Very truly yours,

KATHRYN SHEINGOLD
Assistant Solicitor General
in Charge of Opinions