

TOWN LAW § 60-a; VILLAGE LAW § 3-301(4).

A recently elected town supervisor may continue to serve as mayor of a village in the town until the commencement of the town's budgetary process.

May 21, 1998

Kevin M. McArdle, Esq.
Town Attorney
Town of Diana
P. O. Box 128
Lowville, New York 13367

Informal Opinion
No. 98-24

Dear Mr. McArdle:

You have asked whether a recently elected town supervisor may continue to serve as the mayor of a village in that town for a period of time not extending beyond the commencement of the town's budgetary process.

The town supervisor is a member of the town board, the legislative body of the town. Town Law § 60-a. The mayor is a member of the village board of trustees, the legislative body of the village. Village Law § 3-301(4). You have referred to Op Atty Gen (Inf) No. 90-36, in which we referenced prior opinions of this office finding that the positions of town board member and member of a village board of trustees are incompatible.

We based this finding on the fact that under section 277 of the Highway Law, in the preparation of the town budget the town board must annually determine whether real property in the village may be exempted from taxes for certain highway purposes (see, Highway Law, § 141[3], [4]). While this balancing of interests of the village and the town will occur only once a year, it is inevitable and substantial. The town budgetary process consumes considerable time and the impact of the town board's decision upon the taxes of the village and the town can be substantial. See also, 1980 Op Atty Gen (Inf) 119, 158.

In that opinion, however, we decided that the recently elected town board member could complete his term as village trustee

because it ended prior to the commencement of the town budgetary process. Similarly, we believe that your town supervisor may continue to serve as mayor until the commencement of the town budgetary process. At that time, he or she would have to resign.

We conclude that a recently elected town supervisor may continue to serve as mayor of a village in the town until the commencement of the town's budgetary process.

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

Very truly yours,

JAMES D. COLE
Assistant Attorney General
in Charge of Opinions