

MUNICIPAL HOME RULE LAW § 23(2)(f); TOWN LAW §§ 20(1)(b), 35(2).

A local law authorizing the Town Board to appoint a Deputy Collector of Taxes upon the failure of the Collector of Taxes to make the appointment is subject to mandatory referendum.

July 10, 1998

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Town of Petersburgh
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Informal Opinion
No. 98-32

Dear Mr. Engel:

You have asked whether a local law authorizing the Town Board to appoint a Deputy Tax Collector if the Tax Collector fails to appoint a Deputy by January 5 of any year or within five days after a vacancy occurs is subject to a mandatory referendum.

The position of Tax Collector is an elective office. Town Law § 20(1)(b). Under section 35(2) of the Town Law, "the collector of taxes may appoint, and at his pleasure remove, a deputy" tax collector. The appointment is made in writing and becomes effective when it is filed in the office of town clerk. Town Law § 35(2). The deputy tax collector performs the powers and duties of the collector of taxes when the collector of taxes is absent or unable to act or during a vacancy in the office of collector of taxes. Id. Under this provision, the collector of taxes is responsible for the performance of his deputy except when the deputy is acting as a result of a vacancy in the position of collector of taxes. Id.

Under the proposed local law, which you have provided, upon the failure of the Collector of taxes to appoint a Deputy within a designated time period, the Town Board would be authorized to appoint a Deputy. In our view, this local law would be subject to a mandatory referendum in that it transfers a power of an elective officer. Municipal Home Rule § 23(2)(f). Under section 35(2) of the Town Law, the Collector of taxes has complete discretion whether to appoint a Deputy Collector of Taxes. Under the proposed local law, upon the failure of the Collector of Taxes to appoint a Deputy by a certain time, the Town Board would have authority to make the appointment. The power of the Town Tax Collector, under section 35(2) of the Town Law to refrain from appointing a Deputy or to appoint a Deputy at a time of his

choosing, would thus be transferred by the local law. Therefore, the local law is subject to a mandatory referendum under Municipal Home Rule Law § 23(2)(f).

We conclude that a local law authorizing the Town Board to appoint a Deputy Collector of Taxes upon the failure of the Collector of Taxes to make the appointment is subject to mandatory referendum.

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