

GENERAL MUNICIPAL LAW § 805-A(1)(c).

A member of a town planning board may not be compensated or enter into an agreement to be compensated for the preparation of test borings, data from which would be incorporated into subdivision maps and site plans to be presented to the planning board for review. The statutory prohibition does not allow recusal as an appropriate remedy.

March 1, 1995

Laury L. Dowd, Esq.  
Town Attorney  
Town of Southold  
P. O. Box 1179  
Southold, NY 11971

Informal Opinion  
No. 95-14

Dear Ms. Dowd:

You have asked whether a member of the town planning board who also is a geologist in the private sector has conflicts of interests under specified circumstances.

You have indicated that the member performs soil borings throughout the area, primarily in response to requests from engineers, architects and surveyors. On occasion, this geologist is hired directly by the developer. The average fee for a boring is \$100. The boring provides data concerning the depth of water and the nature of soil and materials encountered. This data is placed on subdivision maps and site plans, many of which are ultimately reviewed by the town planning board in the course of evaluating the SEQRA aspects of the project or in siting project facilities.

You inquire whether it is a conflict of interests for this individual to sit on the planning board in review of a subdivision map or site plan containing data derived from borings he prepared in his private capacity as a geologist. Is it necessary for this planning board member to recuse himself concerning these applications? You indicate that the town's ethics code is silent regarding this subject.

State law prohibits a municipal officer or employee from receiving or entering into any agreement for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member of employee. General Municipal Law § 805-a(1)(c). In rendering compensated

services to do test borings, the results of which are incorporated into subdivision maps and site plans presented to the planning board for review and approval, we believe the subject planning board member would be in violation of the above provision. The obvious purpose of section 805-a(1)(c) is to prevent the conflict of interests that would result if a municipal officer was placed in the position of reviewing an application presented by him, or which he prepared in whole or in part.

We conclude that a member of a town planning board may not be compensated or enter into an agreement to be compensated for the preparation of test borings, data from which would be incorporated into subdivision maps and site plans to be presented to the planning board for review. The statutory prohibition does not allow recusal as an appropriate remedy.

The Attorney General renders formal opinions only to officers and departments of State government. This performance 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