

GENERAL MUNICIPAL LAW, ART 18-A, §§ 856(2), 890-a; DUNKIRK CITY CHARTER § 3.03.

The enactment of a resolution appointing members of an IDA, subject to approval of the chief executive officer, is consistent with provisions of State law.

July 23, 1997

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City of Dunkirk
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City Hall
Dunkirk, NY 14048

Informal Opinion
No. 97-31

Dear Ms. Hyde:

You have asked whether the mayor of the City of Dunkirk has veto power over appointments made by the common council to the City of Dunkirk Industrial Development Agency (IDA).

The City of Dunkirk IDA was established by special act of the State Legislature. General Municipal Law § 890-a. Its members "shall be appointed by the governing body of the city of Dunkirk". Id. The IDA is subject to the provisions of Title 1 of Article 18-A of the General Municipal Law which also provides that the members of the IDA are to be appointed by the "governing body of each municipality" and serve at the pleasure of the appointing authority. Id., § 856(2). As you have pointed out, section 854(5) of the General Municipal Law defines "governing body" as the board or body vested with the legislative powers of the municipality.

Under the Dunkirk City Charter, the mayor has the authority to approve or veto any ordinance or resolution passed by the common council except resolutions regulating the internal procedures of the council. Dunkirk City Charter § 3.03. You have inquired whether appointments to the IDA may be made by less formal action than enactment of a resolution, and if a resolution is necessary, whether it is subject to the mayor's approval power.

Use of a resolution is the appropriate means to make appointments and take other actions of a temporary nature. In contrast, local legislation is enacted by ordinance or local law. Collins v Schenectady, 256 App Div 389, 392 (3d Dept 1939).

We see no inconsistency between the Dunkirk City Charter provision making resolutions subject to approval by the mayor, and the provisions of the General Municipal Law which require appointment of IDA members by the governing body of the city. Where an appointment is made by the legislative body, subject to approval of the chief executive, the appointment is considered to be made by the legislative body. See, 1979 Op Atty Gen (Inf) 177; Op Atty Gen (Inf) No. 90-70.

We conclude that the enactment of a resolution appointing members of an IDA, subject to approval of the chief executive officer, is consistent with provisions of State law.

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