

VILLAGE LAW §§ 8-800, 9-902, 9-908.

A referendum on whether to abolish a village police department is permissive, and can be called for or authorized only after enactment of a local law by the board of trustees to abolish the police department. If a referendum is held and the voters approve the proposition to abolish the police department, the abolition will become effective under the terms of the local law. If the proposition is defeated, the police department will be retained. If the permissive referendum is not called for or authorized, the local law will take effect without voter approval and the police department will be abolished.

September 3, 1998

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205 South Salina Street
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Informal Opinion
No. 98-36

Dear Mr. Gilligan:

You have asked whether a proposal to abolish a village police department may be placed before the voters for approval and, if so, you have inquired as to the mechanism for authorizing such a referendum.

It has long been established in this State that a referendum can only be conducted by a municipality when specifically authorized by the State Legislature. 1985 Op Atty Gen (Inf) 57; 1978 Op Atty Gen (Inf) 287; copies enclosed. "Government by representation is still the rule. Direct action by the people is the exception." Mills v Sweeney, 219 NY 213 (1916); Browne v City of New York, 241 NY 96 (1925); Matter of McCabe v Voorhis, 243 NY 401 (1926).

The State Legislature has chosen to make abolition of a village police department subject to permissive referendum. Section 8-800 of the Village Law establishes the procedure for the abolishment of a village police department. Under section 8-800, the village board of trustees must first enact a local law, subject to permissive referendum, to abolish the department. Thereafter, the local law may be, but does not have to be, made subject to voter approval. Under the procedures specified in Article 9 of the Village Law on permissive referenda, a

referendum will be required (a) upon the filing of a petition requesting a vote on the local law by a requisite number of village electors, or (b) upon authorization of a referendum by the board of trustees. Village Law §§ 8-800, 9-902, 9-908. In either event, a proposition to approve the local law must be submitted at the referendum. Id. If neither the requisite number of village electors nor the board of trustees calls for a referendum, the local law will take effect 30 days after its adoption, without voter approval. Id., § 9-902(1).

Therefore, the board of trustees first must enact a local law providing for abolition of the police department. A proposition to approve the local law will be submitted to the voters if a petition requesting a referendum is filed or if the trustees call for a referendum. If a referendum is held and the voters approve the proposition to abolish the police department, the abolition will become effective under the terms of the local law. Defeat of the proposition will serve to retain the police department. If a referendum is not called for or authorized, the local law will take effect and the police department will be abolished. Id., § 9-902(1).

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