

Opn. 98-42

TOWN LAW § 42.

While the Town Board, in appointing a Deputy Supervisor in 1992, in part did not follow the provisions of section 42 of the Town Law which calls for the establishment of the office by the Town Board and the appointment of a Deputy by the Supervisor, it seems clear that the intent of the Board was to establish the office.

November 2, 1998

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Informal Opinion
No. 98-42

Dear Mr. Klein:

You have asked whether your Town has established the position of Deputy Supervisor in accordance with provisions of law.

Under section 42 of the Town Law, a town may at any time establish the office of Deputy Supervisor. The Deputy Supervisor is appointed by the Supervisor and serves at his or her pleasure. If the Supervisor fails to appoint a Deputy within five days after establishment of the office or within five days after a vacancy occurs in such office, the Town Board may appoint the Deputy Supervisor. Section 42 also specifies the duties of the Deputy Supervisor.

You have inquired whether the position of Deputy Supervisor was established properly in your Town. In a telephone conversation, you have explained that in 1992 the Town Board enacted a resolution appointing a particular individual to the position of Deputy Supervisor. The question is whether this action effectively established the position. Since 1992, the Supervisor has appointed a Deputy as required under State law.

In our view, the position of Deputy Supervisor has been created. While the Town Board, in appointing a Deputy Supervisor in 1992, in part did not follow the provisions of section 42 of the Town Law which calls for the establishment of the office by the Town Board and the appointment of a Deputy by the Supervisor, it seems clear that the intent of the Board was to establish the office. Even though the Board did not follow section 42 in making the initial appointment, we believe that the Board created the office. Further, since 1992 the Supervisor has appointed the Deputy every year, indicating the Town Board's continued approval of this position.

We conclude that the Town Board effectively established the position of Deputy Supervisor.

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



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