

**Opn. No. 99-38**

The Schuyler County Legislature may not appoint one of its members to the County Planning Commission.

December 24, 1999

James P. Coleman, Esq.  
County Attorney  
Schuyler County  
105 Ninth Street, Unit 5  
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Informal Opinion  
No. 99-38

Dear Mr. Coleman:

You have asked whether a member of the Schuyler County Legislature may also serve on the County Planning Commission. You note that members of the commission are appointed by the County Legislature and suggest that the legislator seeking appointment would recuse himself from voting on his own appointment.

It is against public policy for a governing body or public board to appoint one of its own members to a public office or position of employment. Wood v Town of Whitehall, 120 Misc 124 (Sup Ct Washington Co.), *affd*, 206 App Div 786 (3d Dept 1923). See also, Macrum v Hawkins, 261 NY 193 (1933); Matter of Brenner v Vines, 35 AD2d 536 (2d Dept 1970). In Wood, the court stated:

When public officers, such as the members of a town board, are vested by the Legislature with power of appointment to office, a genuine responsibility is imposed. It must be exercised impartially, with freedom from a suspicion of taint or bias which may be against the public interest. An appointing board cannot absolve itself from the charge of ulterior motives when it appoints one of its own members to an office. It cannot make any difference whether or not his [the appointee's] own vote was necessary to the appointment. The opportunity improperly to influence the other members of the board is there. No one can say in a given case that the opportunity is or is not exercised . . . This is the possibility, which the law should remove by determining such appointments to be illegal. 120 Misc at 125.

This analysis applies to the situation you describe. See, Op Atty Gen (Inf) No. 95-34. Recusal would not alter this analysis.

We conclude that the Schuyler County Legislature may not appoint one of its members to the County Planning Commission.

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 Solicitor General  
In Charge of Opinions

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