

General Municipal Law §§ 551, 553(2), 553(3), 584, Article 15-A; Session Laws 1968 Ch 719, 1981 Ch 421

Under state law that provides for appointment from both the majority and the minority of city council if the city council has no members who belong to the minority party, then no additional members from the majority party are to be selected to the CDA board.

July 13, 2012

Damian J. Brady
Corporation Counsel
City of Port Jervis
17 E. Main Street
P.O. Box 1114
Port Jervis, NY 12771

Informal Opinion
No. 2012-5

Dear Mr. Brady:

You have requested an opinion relating to the appointment of members of the Port Jervis Community Development Agency. The Port Jervis Community Development Agency ("CDA") is a municipal urban renewal agency established by General Municipal Law § 584. Pursuant to section 584, the CDA is governed by the provisions of General Municipal Law article 15-A, which relate to the organization and powers of urban renewal agencies. It is a public benefit corporation, the function of which is to undertake, finance, and complete urban renewal projects. General Municipal Law §§ 551, 553(2).

Pursuant to section 584, "not less than three and not more than seven members" comprise the CDA's governing body. Three members, residents of the city of Port Jervis, are appointed by the mayor. General Municipal Law § 584. Of the remaining members, "two shall be selected from the majority of the city council to serve at its pleasure, and two shall be selected from the minority of the city council to serve at its pleasure." *Id.* You have explained that this language was enacted at the City's request as a result of a political stalemate in the early 1980s. Prior to 1981, section 584 provided that the CDA was to have at least three and not more than five members, who were appointed by the mayor, subject to the approval of the city council. Act of June 16, 1968, ch. 719, 1968 McKinney's N.Y. Laws 1497. You have explained that, at that time, the nine-member city council had five members, all in the same political party, who repeatedly declined to approve the candidates for the CDA board selected by the mayor, a member of the opposing political party. The City, wanting to break the stalemate, requested that the Legislature adopt special legislation amending section

584 to its current form. The Legislature enacted the requested amendment. Act of July 7, 1981, ch. 421, 1981 N.Y. Laws 1629.

You have explained that the nine-member city council is currently composed of eight members of the same political party and one member who is not affiliated with a party but was endorsed by the political party in which the other council members are registered. As a result, the city council does not have a minority party. You have therefore asked about the composition of the CDA board.

Clearly, three members of the board must be residents of the city of Port Jervis appointed by the mayor. General Municipal Law § 584. Also free from doubt is that two members of the CDA board are to be selected from the eight city council members who are of the same political party.

Based on the plain language of section 584, we conclude that, in the event the city council has no members who belong to a political party that holds the minority of the council, then no additional members of the city council are to be selected to the CDA board. We reach this result because the only variable element in the language of section 584 is the total number of members that the CDA may have. It must have at least three, which can be satisfied by the mayor's appointments. It cannot have more than seven, which can be satisfied by making all of the appointments as provided in section 584: three by the mayor, two "from the majority," and two "from the minority." Though the minority at some time may have fewer than two members, section 584 does not provide for additional appointments "from the majority"; instead, it authorizes a CDA board of fewer than seven members.

Indeed, this result is consistent with what you have described as the purpose of the amendment, providing the CDA board with some political balance in its membership. To conclude otherwise would subvert this purpose. For example, with the current political makeup of the city council, interpreting section 584 to allow the appointment of four members "from the majority" to the CDA would give those four members control of a quorum of the CDA board. General Municipal Law § 553(3) (majority of members constitute quorum).

You have advised that the city council in the past has appointed additional majority members to seats on the CDA board when the city council had either no members or only one member "from the minority." With respect to the actions of CDA boards that had extra members appointed from the majority, we note that under the de facto officer doctrine, the acts of one who carries out the functions of public office under color of authority are generally valid as to third parties and the public, and thus are immune from collateral attack, notwithstanding irregularities in the manner of

appointment. Ontario v. Western Finger Lakes Solid Waste Mgmt. Authority, 167 A.D.2d 848, 849 (4th Dep't 1990).

The Attorney General issues formal opinions only to officers and departments of state government. Thus, this is an informal opinion rendered to assist you in advising the municipality you represent.

Very truly yours,

KATHRYN SHEINGOLD
Assistant Solicitor General
in Charge of Opinions