General Obligations Law §§ 7-103, 7-103(2), 7-103(2-a); Municipal Home Rule Law §§ 2(5), 10(1)(ii), 10(1)(ii)(a)(12); Session Laws 1970 Ch 1009

A county is not authorized to adopt a local law requiring that certain residential landlords deposit security payments into an interest bearing account.

September 3, 2014

Gregory J. Amoroso   Informal Opinion
County Attorney   No. 2014-2
Oneida County
Oneida County Office Building
800 Park Avenue
Utica, New York 13501-2975

Dear Mr. Amoroso:

        You have requested an opinion relating to the County's authority to adopt a local law governing rental security deposits. State law requires that money paid as security to rent an apartment in a building that contains six or more family dwelling units be deposited in an interest-bearing account in New York. General Obligations Law § 7-103(2-a). The person making the deposit (*i.e.*, the landlord) may keep 1% of the annual interest earned on the deposit to cover administrative expenses, and the remainder of the interest earned belongs to the person who paid the security deposit (*i.e.*, the tenant). *Id.* § 7-103(2). You have asked whether the County is authorized to adopt a local law requiring that a security payment made to rent an apartment in a building that contains fewer than six family dwelling units also be deposited in an interest-bearing account. As explained below, we are of the opinion that the County is not so authorized.

        As an initial matter, the proposed local law appears to fall within the County's home rule authority. Pursuant to Municipal Home Rule Law § 10(1)(ii)(a)(12), the County may adopt a local law relating to the protection, safety, health and welfare of persons or property within the County and to the regulation of occupations or businesses (its "police power"). A local law requiring that a landlord place a security deposit in an interest-bearing account, with most of the interest to accrue to the tenant, appears to come within this grant of authority.

        This grant of authority is not unlimited. One limitation is that the County cannot adopt a local law that is inconsistent with a general law. Municipal Home Rule Law § 10(1)(ii). A general law, for home rule purposes and as relevant here, is a state statute that in terms and in effect applies alike to all counties or all counties other than those in New York City. Municipal Home Rule Law § 2(5). General Obligations

Law § 7-103(2-a) applies alike to all counties in New York and is a general law. Thus the County cannot adopt its proposed local law if it would be inconsistent with section 7-103(2-a). With respect to residential security deposits and interest-bearing accounts, we believe that the proposed local law would be inconsistent with the State's general law.

General Obligations Law § 7-103(2-a) mandates that a landlord of six or more residential units place security deposits on those units in an interest-bearing account. As compensation for the administrative costs incurred by doing so, the landlord is entitled to keep up to 1% of the annual interest earned on the deposit. No other landlord, residential or commercial, is required to place a deposit in an interest-bearing account, although if one does, he or she also is entitled to up to 1% of the annual interest earned on the deposit to cover administrative expenses. General Obligations Law § 7-103(2).

The legislative history to this portion of section 7-103 makes clear that the Legislature intended to exempt landlords of fewer than six residential units ("small residential landlords") from the requirement that security deposits be placed in an interest-bearing account. For several years, legislative bills that would have required all landlords, commercial and residential of all sizes, to place a security deposit in an interest-bearing account, were introduced at the request of the Attorney General. *See*, *e.g.*, 1964 N.Y. Senate Bill S.1221; 1966 N.Y. Senate Bill S.354; 1967 Senate Bill S.402-A; 1969 Senate Bill S.757. Ultimately, however, the Legislature enacted an amended version that limited the mandate to residential landlords of six or more units ("large residential landlords"). Act of May 20, 1970, ch. 1009, 1970 N.Y. Laws 3443, 3444; *see also* Governor's Approval Memo, *reprinted* in 1970 <u>N.Y.S. State Legislative Annual</u> 538. By requiring only large residential landlords to place a security deposit in an interest-bearing account, the Legislature apparently recognized both the clerical burden the requirement would place on small residential landlords and the negotiating power that commercial tenants wield to include a similar favorable provision in a property contract. *See* N.Y County Lawyers Ass'n, 1969 Report No. 119 (1969 S. 757) (clerical burden imposed on landlords in cases of small security deposits would exceed interest accruing on deposit); N. Y. County Lawyers Ass'n, 1964 Report No. 134 (1964 S.2397 et al.) (parties contract for deposit in interest-bearing account or deposit of interest-bearing securities when substantial deposits are involved); N.Y. County Lawyers Ass'n, 1965 Report No. 255 (1965 S.2504 et al.) (payment of interest on security deposits is matter of contract between landlord and tenant).

With respect to residential landlords, the enactment of subdivision 2-a of section 7-103 reflects a legislative decision as to the proper balance between a residential tenant's interest in maximizing the earning power of his or her security deposit and a landlord's interest in minimizing administrative expenses. The local law proposed by the County would impose administrative costs on small residential landlords who the Legislature determined should not have to bear such costs and thus would be

inconsistent with the general state law in this area. We therefore are of the opinion that the County cannot adopt the proposed local law.

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