

# Village of Mamaroneck



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OFFICE OF  
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December 10, 2021

Hon. Letitia James  
Attorney General of the State of New York  
28 Liberty Street, 16<sup>th</sup> Floor  
New York, NY 10005  
Attn: Appeals and Opinions Division

Re: Request for Informal Opinion

Dear Attorney General James:

The Board of Trustees of the Village of Mamaroneck has requested that I draft a local law which, if adopted, would transfer the power to fill vacancies on the Board of Trustees, caused by other than expiration of a term, from the Mayor to the Board of Trustees. This local law would supersede Village Law §3-312(3).

In preparing a draft, I reviewed 1973 Op.Atty.Gen (Inf.) 200, which I have attached. The opinion concluded that the Village of Seneca Falls was not authorized to adopt a local law authorizing the filling of vacancies in office, caused by other than the expiration of a term, to be filled by the board of trustees, because the Municipal Home Rule Law did not authorize it to supersede the provision of the Village Law which gave that power to the Mayor. Its reasoning was that:

Village Law, § 4-400(1)(c) and, likewise, § 3-312(3) are general laws which in term and in effect apply to all villages. Accordingly, provisions of Municipal Home Rule Law, § 10(1)(e)(3) must yield to the provisions of New York State Constitution, Article IX and Article XIII.

While the cited provisions of the Village law are general laws, Municipal Home Rule Law § 10(1)(e)(3), which the opinion cites, also specifically authorizes villages to adopt local laws “relating to the property, affairs or government of the village . . . **notwithstanding that such provision is a general law**, unless the legislature expressly shall have prohibited the adoption of such a local law.”

The opinion further states that the proposed local law transferring the power to fill vacancies “must yield to the provisions of New York State Constitution, Article IX and Article XIII.” Of

course, the Village cannot pass a local law that is inconsistent with the New York State Constitution. But there is no provision of the Constitution that requires the power to fill such vacancies to reside in the Mayor. Article XIII, § 3, of the Constitution, which is the only constitutional provision dealing with filling vacancies, provides only that “[t]he legislature shall provide for filling vacancies in office.” The Legislature has provided for filling vacancies in Village Law § 3-312(3), which states that the Mayor will fill vacancies. But it also provided, in Municipal Home Rule Law § 10(1)(e)(3), that the Board of Trustees can supersede that. The opinion does not address the fact that nothing in Article XIII, § 3 prohibits the Legislature from delegating the authority to determine who fills vacancies to local governments.

Because of this discrepancy, I am writing to request an opinion from the Attorney General about whether the New York State Constitution, in conjunction with the Village Law and Municipal Home Rule Law, authorize a Village to adopt a local law that would transfer the power to fill vacancies on its Board of Trustees, caused other than by expiration of a term, from the Mayor to the Board of Trustees.

If any other information would be of assistance, please do not hesitate to contact me. Thank you.

Very truly yours,

A handwritten signature in blue ink, appearing to read "R. Spolzino", is written over a light gray rectangular background.

Robert A. Spolzino  
Village Attorney