

BOND, SCHOENECK & KING, PLLC

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October 5, 2009

Ms. Constance Sowards
Village Administrator
Village of Seneca Falls
60 State Street
Seneca Falls, NY 13148-1434

Re: Legal Issues Relating to Village Dissolution

Dear Connie:

We reviewed the Dissolution Study Committee's report presented at the September 16, 2009 public hearing and have identified several legal issues that the Village of Seneca Falls Board of Trustees should take into account when it evaluates whether the Village of Seneca Falls ("Village") should be dissolved. These issues, described in more detail below, relate to limitations on the enforceability of agreements between the Village and Town of Seneca Falls ("Town") that will be necessary to implement the dissolution plan and personnel-related matters concerning the transfer of work from the Village to the Town.

Also, to assist the Village Board in its evaluation of alternatives to dissolution, this letter describes the extent to which the Town may, at no cost to Village residents, either (a) provide services within the Village, or (b) provide funding to the Village to offset the cost of services performed by Village departments. As explained below, we agree with CGR's conclusions regarding landfill revenue sharing alternatives described in CGR's November, 2008 Report on Strategic Alternatives, but we believe there may be other opportunities not explored in the CGR Report.

A. Board's Duty to Act in Best Interests of Village Residents.

Before discussing legal issues relating to dissolution and alternatives to dissolution, we should remind the Village Board that it has a legal duty to determine whether, in the Board's own judgment, dissolution is in the best interests of Village residents. The Board cannot simply accept the Study Committee's report and let the voters decide the dissolution question, even though this may seem to be the more "democratic" approach. The Board must consider all relevant information available to it, including (but not limited to) the Study Committee's Report, and must make its own decision on the dissolution question. Only if the Board determines that dissolution is in the best interests of Village residents can the question then be put to the voters.

B. Legal Issues Relating to Dissolution.

The proposed Village dissolution, as described in the Study Committee's report, raises a number of legal issues that the Village Board should consider when evaluating whether the Village should be dissolved. The following are some of the most significant of these issues.

1. Enforceability of Intermunicipal Agreements Necessary to Implement Dissolution Plan

The Study Committee's report requires the Town to take many actions in order to implement the dissolution plan including, among others:

- adopt Village codes and ordinances;
- hire many Village employees, including the Village Police Department and members of the Department of Public Works;
- maintain Village retiree benefits;
- establish a Town-wide police department;
- contract with a volunteer fire department to provide fire protection in the Village;
- establish special improvement districts to operate sewer and water facilities; and
- sell surplus Village assets and use the proceeds to repay Village debt.

Obviously, the Town's participation is essential for implementation of the dissolution plan. We understand the Study Committee will be meeting with the Town Board on October 8 to discuss the Town's willingness to undertake the responsibilities described in the Study Committee's report.

Assuming the Town Board is willing to take on these responsibilities, we strongly recommend that the Village and Town enter into a comprehensive written agreement describing, in detail, the Town's obligations to implement the dissolution plan. It is important to have the Town's written agreement regarding dissolution matters because there will be a significant change in the composition of the Town Board after this year's election. We understand two out of the five current Town Board members will not be running for re-election. Another Town Board member is abstaining from deliberating and voting on dissolution-related matters because of potential conflicts of interest. As a result, the two Town Board members to be elected this November will represent 50% of the voting strength of the Town Board on dissolution-related matters. These

new Town Board members could significantly impact the Town Board's willingness, and its ability, to implement all aspects of the dissolution plan. Therefore, it is important to execute a binding contract with the Town before the turnover in the Town Board occurs.

The Village Law specifically contemplates that there may be contracts between the Village and Town regarding the dissolution plan. Section 19-1904 provides, in relevant part, "all or any part of such plan [for dissolution] may be made the subject of a contract between the Village and the Town prior to submission of such proposition [for dissolution]." Also, Village Law Section 19-1903, which contains the requirements for the dissolution plan, expressly requires that the plan describe any agreements entered into with the Town in order to carry out the plan for dissolution. Therefore, at a minimum, the dissolution plan must *describe* the agreements with the Town. We strongly recommend, however, that the agreements actually be executed, and this should be done **before** the Village Board votes on the dissolution plan. The nature and extent of the Town's legal commitments will be an important consideration for the Board as it deliberates the dissolution question.

Even if the Village and Town enter into a comprehensive contract to implement the dissolution plan, keep in mind there are limitations on the extent to which the Town may be legally bound on these matters. For example, Village Law Section 19-1910 is clear that the Town Board has the power at any time after the dissolution to amend or repeal Village laws, ordinances, rules or regulations. Thus, the Town cannot be contractually obligated to enact and/or continue Village ordinances, etc. Any contract will be unenforceable to the extent it purports to require this.

Also, there is a general rule in New York that, unless specifically authorized by statute, a municipal board cannot enter into a contract relating to the governmental or legislative functions of the board if the contract term extends beyond the tenure of the municipal board members that approved the contract. This reflects the public policy that each municipal board must be free to exercise its own judgment and discretion regarding governmental and legislative matters and therefore cannot be bound by actions of prior boards. Note, however, that this limitation only applies to legislative and governmental matters; a municipal board can bind future boards on business or proprietary matters (e.g., leases, vendor contracts, etc.).

Many of the actions that the Town must undertake in order to implement the dissolution plan are in the nature of governmental or legislative matters including, for example, maintaining a town-wide police force. Absent some specific statute authorizing the Town to enter into a long term agreement to perform these functions, the Town's obligations could not extend beyond the term of the Town Board that approves the contract. General Municipal Law Article 5-G authorizes contracts between municipalities (i.e., intermunicipal agreements or "IMA's") under which one municipality may provide services or facilities for another, or municipalities may provide joint services. This statute permits IMA's to continue for a maximum term of five years. Therefore, it appears that a contract regarding dissolution-related matters would be binding on the Town for no more than five years.

If the Village and Town enter into a contract to implement the dissolution plan in December, 2009 (before the Village Board votes on the dissolution plan, as we recommend), then that contract must end no later than December, 2014. Since the dissolution would not be effective until December 31, 2011 (assuming voters approve the dissolution in March, 2010), the contract will remain in effect for only three years after the dissolution. Perhaps the contract could be extended for an additional five years immediately before the dissolution takes effect in December 2011, but the terms of any extension would require the approval of the Village and Town Boards at that time. In any event, the contract will be binding on the Town for no more than five years after the Village dissolves, more likely three years. The Village Board must understand that the Town's contractual commitment to implement the dissolution plan will be short-term.

The Village Board should also be aware that it will be impossible to create an IMA that guarantees Village residents the same quality of services that they currently receive. For example, the IMA can certainly require the Town to maintain a police force of a certain size and/or with a specific operating budget but there are many aspects of police operations, and other municipal services, that are subject to the judgment and discretion of the municipal agency. These discretionary or qualitative aspects of municipal services cannot be dictated by contract.

Finally, it is not clear who would be able to enforce the agreement, on the Village's behalf, in the unlikely event the Town were to breach the contract after the Village dissolves. We informally discussed this question with the New York Attorney General's Office in Syracuse and they do not believe it would be the Attorney General's role to enforce such an agreement. Perhaps a resident of the former Village could bring a lawsuit to enforce the agreement, but this is not certain because there are many limitations on taxpayer standing to challenge governmental actions. From a practical perspective, it is questionable whether an individual would be willing to invest the time and money necessary to undertake such a lawsuit.¹

¹ We understand CGR recently stated at a Fire Department meeting that, under Village Law Section 19-1914, the Town is bound by the dissolution plan. Village Law Section 19-1914 provides, in relevant part, "unless such action shall contrary to the plan or inconsistent with law, the town shall assume the duties and functions of the dissolved village and continue to provide the services theretofore provided by the village." This statute does not legally obligate the Town to comply with the dissolution plan. The statute merely requires the Town to continue Village services, but not in any specific manner. Thus, for example, the Town could fulfill its obligation under Section 19-1914 to provide police services by contracting with the Sheriff's Department.

2. Personnel-Related Matters

a. Duty to Bargain

Pursuant to the Taylor Law, public employers in New York have a duty to bargain with the recognized representative of employees concerning the terms and conditions of employment. Presently, there are two unions that represent groups of Village employees: (1) the Seneca Falls Police Benevolent Association, Council 82, Local 195F ("Council 82"), which represents full-time police officers; and (2) Council 66, Local 932 ("Council 66"), which represents full-time employees in the Village's Department of Public Works ("DPW"). Presently, no unions represent any Town employees.

On July 20, 2009, a Dissolution Study Committee meeting was held along with representatives from each of the unions, Louis P. DiLorenzo, Esq. of this office and Frank Sinicropi, the Personnel Director for Seneca County. During the meeting, the unions agreed and stated publicly that the decision by the Village to dissolve is a non-mandatory subject of bargaining. In other words, the unions have no right to bargain over the decision by the Village to no longer exist. However, the unions stated at this meeting – and we agree – that the Village would have to bargain over the impact that any decision to dissolve would have on the terms and conditions of employment for the present Village employees.

b. Town as Successor to the Village

Where work is transferred from one public employer to another, a question arises as to whether the new employer, often referred to as the "successor," has a duty to bargain with the union that represented employees of the predecessor employer. Generally, where work previously performed by one public employer is assumed by another public employer, PERB applies an appropriate bargaining unit analysis to determine whether the successor has a duty to bargain with the union that represented the employees of the previous public employer. In other words, PERB will assess whether a unit of employees to be employed by the Town – and previously employed by the Village and represented by a particular union – remains an appropriate unit. If it is, then the union in place continues as the employees' representative and the new employer must recognize and bargain with that union. In such a circumstance, there is no vote by the employees – the "old" union automatically becomes the union for the employees of the successor. While a successor employer generally has a duty to recognize and bargain with the union that represented employees of the predecessor employer, the successor employer generally may set the initial terms and conditions of employment for its new employees. It would be illegal for the new employer to refuse to hire qualified personnel because they were in the "old union" in an attempt to avoid successorship.

In the circumstance of a dissolution of the Village, it is likely that the Town would have a duty to bargain with Council 82. As we understand the current restructuring plan, a town-wide police

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force would be developed and would be staffed by the officers of the current Village police department. The officers' duties would be the same, although their jurisdictional area would be expanded to include the Town outside the Village. In applying an appropriate bargaining unit analysis – which considers issues such as the community of interest among the employees to be included in the unit, the authority of the government agency to determine terms and conditions of employment and the joint responsibilities of the employer and employees to serve the public—PERB would likely conclude that the Town is a successor employer to the Village and must recognize and bargain with Council 82.

The same conclusion is likely true with respect to Council 66, since the plan for restructuring calls for employment by the Town of some or all of the water, sewer and street department employees who work in the DPW. However, we understand that the Town currently employs its own employees as members of its Highway Department, and although such Town employees are not unionized, they would be outnumbered by the Village employees hired by the Town. Under this scenario, the bargaining unit analysis would assess whether a combined unit of formerly Village and Town employees is appropriate. We believe that PERB would likely conclude that it is an appropriate unit and that the Town must, therefore, recognize and bargain with Council 66.

Irrespective of whether the Town is determined to be a successor employer and be required to recognize and bargain with the unions, we consider it a virtual certainty that the new Town employees would eventually seek representation by a union. No bar exists, or can exist, to prevent the former Village employees from seeking to become affiliated with a union – either the unions currently in place or new ones. Additionally, a public employer's efforts to prevent employees from becoming unionized can, depending upon the circumstances, amount to a violation of the Taylor Law.

Finally, as stated at the Dissolution Study Committee meeting in July by Mr. Sinicropi, who administers the Civil Service rules for the County, for individuals who will lose employment as a result of dissolution, the Civil Service Law provides for certain preferential hiring standards regarding re-employment by the Town in new positions.

c. Collective Bargaining Agreement Issues

The agreement between the Village and Council 82 is in place through May 31, 2011. The Village and Council 66 are continuing negotiations for a successor agreement to the one which expired on May 31, 2009. In private sector labor relations, a union has the right to strike and the public employer has the right to implement new terms and conditions of employment following impasse. In the public sector in New York, the Taylor Law eliminates both of these rights. Public employees and their unions may not strike and public employers may not implement new terms and conditions.

Instead, a public employer is required to maintain all of the terms of an expired collective bargaining agreement until a new one is agreed to by the parties or one is implemented pursuant to the Taylor Law impasse resolution procedures. What this means is that following expiration of the agreements (May 31, 2011 for Council 82 and May 31, 2009 for Council 66), the Village must maintain the terms of the agreements, unless and until the parties agree upon new terms. If no new agreements are reached before the projected dissolution date of December 31, 2011, then the Village must maintain the current terms until this date.

C. Alternative to Dissolution.

1. Objectives for Dissolving

Based on our involvement in the dissolution process, we understand the objectives of Village residents are to control or reduce taxes while at the same time maintaining services. Dissolving the Village is very unlikely to accomplish both of these objectives because the Town will only have a limited obligation to maintain services for a short period of time and the proposed plans for the police coverage involve greater duties with less people or coverage by the Sheriff's Department which does not provide the same services. Also, we understand that some of the savings identified in the Study Committee's report will be impossible to accomplish without reducing services (including, for example, the elimination of two MEO's for street maintenance, which will either result in more overtime for the remaining staff or a reduction in street maintenance and snow plowing).

In light of the expected impact on services if the Village dissolves, the Village Board should seriously consider alternatives to dissolution. In fact, the law requires the Village Board to consider alternatives.

2. Proposed Alternative and Relevant Law.

One alternative to dissolution, discussed in detail in CGR's November, 2008 Final Report on Strategic Alternatives for the Village and Town of Seneca Falls (the "CGR Report"), is for the Town to use its landfill revenues to fund services in the Village. Appendix 5 to the CGR Report contains a good discussion of the ways in which the Town can legally share landfill revenues with the Village. According to the CGR Report, these include:

- *The Town may exempt the Village from Town-wide taxes for Town highway expenses and Town-wise highway snow removal and miscellaneous expenses.*
- *The Town may agree to perform Village street maintenance and repair without charge by contractual arrangement.*

- *The Town may give a gift of real property to the Village.*
- *The Town may use surplus Town revenue to lower the County tax obligation for all Town residents.*
- *The Town may give a monetary gift to the School District to build a playground or recreation facilities that are open to all Town residents.*

We agree with CGR's analysis of these options but we believe CGR may be overly conservative in its interpretation of the rules in this area. As noted in the CGR Report, a Town, by local law, may authorize a transfer of funds to another municipality if the transfer furthers a public purpose of the Town. In New York State Comptroller's Opinion No. 90-1, regarding proposed transfers of funds by the Town of Lewiston to its local school district to fund development of a school playground, the State Comptroller determined that the Town of Lewiston did have the authority to make the proposed transfers because towns are authorized by statute to develop playgrounds for the use of town residents. The State Comptroller cautioned that the Town Board, in determining whether the transfer furthers a town purpose, should be assured by the school district that all town residents will have access to the playground.

Based upon the State Comptroller's Town of Lewiston opinion, and other authorities that we have reviewed, the Town of Seneca Falls may provide funding for Village facilities and services if (a) the Town Board determines it will further a public purpose of the Town to provide that funding, (b) the facilities or services will be available for use by residents of the Town outside the Village, and (c) Town general funds could, by law, be used for these purposes if the facilities or services were located in the Town outside the Village.

The CGR Report suggests that the Town of Seneca Falls may give money to the School District to build a playground or recreation facilities that are open to Town residents. This is a very narrow interpretation of the Town of Lewiston opinion described above. We believe that this concept could be expanded to include Town funding of other Village services and facilities if the requirements described in the preceding paragraph are met. For example, Town Law Article 17 allows a town to maintain cemeteries. Therefore, if the Seneca Falls Town Board were to determine that the Village cemetery furthers a public purpose of the Town and that the cemetery benefits Town residents, the Town could provide funding for cemetery operations. Similarly, under Town Law Section 220, towns can establish and maintain public parks and playgrounds. Assuming the Village parks and playgrounds benefit Town residents, the Town Board could authorize the use of Town funds for the operation and maintenance of those facilities.

This same theory also applies in the context of funding street and sidewalk maintenance. The CGR Report discusses how the Town may perform this work without charge to the Village. However, we believe the Town may also use its landfill revenue to subsidize costs incurred by the Village to maintain streets and sidewalks, as an alternative to the Village transferring these

operations to the Town. It is not certain, however, whether these payments to the Village could be funded by taxes levied on Town residents. This question would require further research.

3. Evaluating the Alternative.

For purposes of evaluating the shared services approach described above, as an alternative to dissolving, we note the following:

- Approximately 73% of the Town population resides in the Village.
- Property taxes on a \$100,000 home in the Village are approximately \$1,693.
- Property taxes on a \$100,000 home in the Town outside the Village are approximately \$163 (\$300 to \$900 in certain areas if sewer, water and other special district taxes are included).
- The total Village tax levy is approximately \$3.5 million.
- The Town general tax levy is approximately \$185,000, plus special district charges. The Town also receives more than \$2.5 million per year in host community fees from Seneca Meadows Landfill, all of which result in a significant budget surplus for the Town.
- The Town had an unreserved fund balance of approximately \$3.2 million as of January 1, 2009.
- The Town has a limited ability to reduce its general tax levy so its budget surplus and fund balance are being used for non-essential items such as a new \$4 million Town Hall.

This information is based on our review of the Study Committee's report, the Town and Village "budget crosswalk" prepared in connection with the dissolution study, and our attendance at Study Committee and other meetings regarding the dissolution. These facts highlight the disparity in the tax burden on Village residents even though they represent the vast majority of the Town population and the Town actually has a budget surplus and a multi-million dollar fund balance.

The shared services approach described above would result in substantial tax savings for Village residents without impacting services. For example, the Village's 2009 – 2010 budget includes approximately \$1 million for road and sidewalk maintenance, including snow removal, plus approximately \$100,000 for operation and maintenance of parks and the cemetery. This represents 25% of the total Village budget. If the Town were to assume responsibility for

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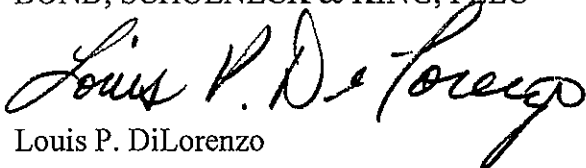
funding or providing these services, the property taxes on a \$100,000 home in the Village would be reduced by 25%, or approximately \$420. In comparison, the Study Committee estimates that dissolving the Village would reduce taxes by 47% or \$790, only marginally greater than the shared services approach. The problem with dissolving, however, is the unavoidable impact on services currently enjoyed by Village residents. The shared services alternative accomplishes both identified objectives of the Village residents -- reducing taxes and maintaining services.

The shared services alternative would also be preferable from a Town (outside-of-Village) taxpayer's perspective. According to the Study Committee's report, dissolution will decrease Village taxes by 47% but taxes on Town-outside-Village residents will increase between 57% to 165%, depending on where the property is located. Shared services would undoubtedly have a much smaller impact on Town-outside-Village taxes. The tax impact on Town residents would be even less (or perhaps none at all) if the Town were to devote its landfill revenue and fund balance for these purposes rather than other, less essential projects such as the planned \$4 million Town Hall. This would truly result in lower taxes on all community residents.

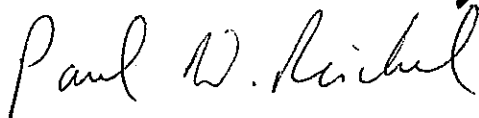
We would be happy to meet with the Village Board to discuss the information contained in this letter or any other questions that the Board may have regarding Village dissolution and alternatives to dissolution.

Very truly yours,

BOND, SCHOENECK & KING, PLLC



Louis P. DiLorenzo



Paul W. Reichel

PWR/cma

cc: Colin M. Leonard, Esq.