



OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK

Informal Opinion No. 90-33

1990 N.Y. Op. (Inf.) Att'y Gen. 33; 1990 N.Y. AG LEXIS 44

May 17, 1990

SYLLABUS:

[*1]

VILLAGE LAW, §§ 4-400(1)(c), 8-800.

The board of trustees, not the mayor, is authorized to appoint a person to the position of sergeant in the village police department.

REQUESTBY:

JAMES D. COLE, Assistant Attorney General in Charge of Opinions

OPINION:

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You have inquired as to whether the mayor or the village board of trustees has responsibility for appointment of a sergeant in the village police department.

Under *section 4-400(1)(c) of the Village Law*, the mayor has responsibility "to appoint all department heads and non-elected officers and employees subject to the approval of the board of trustees". The mayor may delegate the power to appoint certain employees to other village officers or employees (*Village Law, § 4-400[1][c]*). You have indicated that the mayor has never delegated his appointment power.

Article 8 of the Village Law provides for the establishment and organization of a village police department. The board of trustees is given the authority to "establish a police department in such village and appoint a chief of police and such personnel as may be needed, and fix

[*2] their compensation" (id., § 8-800).

Construing these two provisions, it has been found that the board of trustees, not the mayor, is authorized to appoint a village chief of police (*Milhim v Clarke*, 140 Misc 2d 1092 [Sup Ct, Nassau Co, 1988]). The court reasoned that under rules of statutory construction, specific provisions of a statute prevail over general provisions and meaning must be given to the plain language of a statute (milhim, supra, pp 1093-1094). This reasoning applies with equal force to the appointment of other officers and personnel of the police department who are also appointed by the board of trustees under the specific provisions of *section 8-800 of the Village Law*.

We conclude that the board of trustees, not the mayor, is authorized to appoint a person to the position of sergeant in the village police department.

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