

STEVEN C. NOVEMBER

Attorney at Law

P.O. Box 217

Merrick, New York 11566

(917) 327-7706 *novemberlaw@gmail.com*

January 27, 2010

VIA FACSIMILE (516) 489-5150

Charles Kovit, Esq.
Senior Deputy Town of Hempstead Attorney
Hempstead Town Hall
One Washington Street
Hempstead, NY 11550

cc: VIA HAND DELIVERY

1. Hon. Kate Murray, Supervisor
2. Anthony J. Santino, Council Member
3. Dorothy L. Goosby, Council Member
4. James Darcy, Council Member
5. Angie M. Cullen, Council Member
6. Gary Hudes, Council Member
7. Edward M. Ambrosino, Council Member
8. Mark A. Bonilla, Town Clerk
9. John Mastromarino, Town Comptroller
10. Joseph Ra, Esq., Town Attorney

Dear Mr. Kovit and Officials of the Town of Hempstead,

I write to each of you, in your official capacities, on behalf of the following clients, each of whom is a registered New York State voter who resides within the Town of Hempstead:

- A. Robert S. Young, 29 Central Parkway, Merrick NY 11566, Voter # 03608413
- B. Derek Donnelly, 164 Lincoln Blvd, Merrick NY 11566, Voter # 03501028
- C. Steve Anchin, 1614 Moffitt Ave, Hewlett NY 11557, Voter # 02403829
- D. Ali Mirza, 337 Randal Ave, Elmont NY 11003, Voter # 99088043

On December 15, 2009, the Town Board adopted Local Laws 104 and 105. Each of those local laws was devoted exclusively to the "repeal and re-enact[ment]" of certain provisions of the Town of Hempstead Code “. . . in relation to the compensation” for one or more of the following elected officers of the Town: Supervisor, Council Members and Town Clerk.

Pursuant to New York State Home Rule Law § 24(2)(h) and related statutory provisions, when a Town increases the salary of an elected officer or of an officer appointed for a fixed term, under the circumstances here applicable:

1. The local law does not take effect until at least 45 days after its adoption, **and**
2. The local law is subject to a permissive referendum if a petition requesting same is filed in accordance with Section 24 of the Home Rule Law.

The procedure to be followed upon adoption of such a local law is set forth in New York State Town Law § 90:

Acts or resolutions of the town board that are subject to a referendum on petition. Whenever this chapter shall expressly provide that an act or resolution of the town board is subject to a permissive referendum, such act or resolution shall be subject to a referendum on petition as set forth in the next section, unless a proposition therefor shall have been adopted at a town election. Within ten days after the adoption by the town board of any resolution which is subject to a permissive referendum as above defined, the town clerk, in the same manner as provided for notice of a special election, shall post and publish a notice which shall set forth the date of the adoption of the resolution and contain an abstract of such act or resolution concisely stating the purpose and effect thereof. The notice shall specify that such resolution was adopted subject to a permissive referendum.

On December 23, 2009, the Town Clerk published two Notices in Newsday that respectively related to Local Laws 104 and 105. The Notice regarding Local Law 105 is defective. I attach, as Exhibit A, a copy of the two published notices. An examination of the Notice regarding Local Law 105 reveals as follows:

1. The Notice stated that Local Law 105 relates to compensation for the office of Councilmember and is "subject to a 45-day referendum" period and that if no petitions are filed in opposition within the time required by the Home Rule Law, the referendum period will **not** expire. The word "**not**" must be erroneous, because it provides residents with the opposite message from that which the law

requires; based on the notice wording, there is no expiration of the referendum period.

2. Pursuant to Town Law § 90, the Notice failed to provide an abstract "concisely stating the purpose and effect" of the Local Law. While the stated purpose of Local Law 105 was **to increase** the compensation of one or more council members and the **effect** was to increase that compensation **by \$4,500, approximately 7%**, no such information is provided in the Town's published Notice.

Furthermore, the Notice regarding Local Law 104, relating to the compensation for the offices of Supervisor, Councilmember and Town Clerk, is defective pursuant to Town Law § 90, because:

1 It makes **no** reference to the fact that Local Law 104 is subject to the required 45-day referendum or to the right of the public to petition for a referendum, and

2. Pursuant to Town Law § 90, the Notice fails to provide an abstract "concisely stating the purpose and effect" of the Local Law. While the stated purpose of Local Law 104 was **to increase** the compensation of the Supervisor, Council Members and Town Clerk, and that the **effect** was to increase the compensation of the **Supervisor by \$10,000, approximately 7%, of Council Members by \$4,500, approximately 7%, and of the Town Clerk by \$10,000, approximately 10.3%**.

Because the notice provisions of Town Law § 90 and the mandate of Home Rule Law §23 have not been complied with, the notice period has expired and thus, these laws are a nullity. Unless the Town Council publicly determines that the laws are of no force and effect due to improper notice, or responds to this letter in a way that demonstrates the foregoing analysis is erroneous, we intend to move in Nassau County Supreme Court for an Order declaring the laws to be of no force and effect and directing that any funds paid under said laws are to be returned to the Town treasury, and that no further funds are to be paid under said laws.

On January 21, 2010, I called and left a voice mail message for Assistant Town Attorney, Brad Regenbogen, requesting that he call me to discuss this matter. I did not receive a call back, so I called Brad again and spoke with him on January 27. He referred me to the Town Attorney, Joseph Ra. When I attempted to speak with Mr. Ra, I was told he was unavailable, and was routed to one of the District Court Attorneys. When I told that attorney why I was calling, I was told that the person responsible for and with knowledge of the Notices for the subject laws was Senior Deputy Town Attorney Charles Kovit. I spoke to Mr. Kovit at length. However, he was

unaware of the existence of the Notices or of the omission of the permissive referendum language, or of any other issues set forth above. Mr. Kovit told me to fax a letter to him detailing the issues and he would look into them. I now comply with this request.

The purpose here is not to put the Town through any unnecessary expense or embarrassment, but to correct the defect and give residents proper notice of the new laws. The Town Attorney should contact me to discuss this matter, so we can avoid motion practice.

Very truly yours,

Steven C. November, Esq.

SCN