

Town of Enfield

Draft Policy Regarding Authorization for Contact with the Attorney for the Town

Draft Revised September 2020

Purpose and Guiding Philosophy:

1. The purpose of this Policy is to establish firm guidelines, consistent with New York State Law, under which elected or appointed Enfield Town Officials, or those within the Town's employ, may contact and thereby seek legal advice from counsel that the Enfield Town Board has designated as the Attorney for the Town (the "Attorney").

2. The Enfield Town Board bases this Policy on the principle that the Attorney for the Town serves the Town of Enfield as a single and entire unit of Government; and that the Attorney does not serve the interests of any one Town Officer, whether elected or serving in any other capacity. It is the Town Board's directive, consistent with New York State Law, that the Attorney for the Town provides publicly-funded legal advice to the Town, not personal or politically-advantageous legal advice to any person or group, including, but not limited to, the Town Supervisor, the Town Clerk, the Town Highway Superintendent, or individual members of the Enfield Town Board.

3. Moreover, this Policy recognizes the principle that all elected and appointed personnel within Enfield Town Government serve as a governing team, working together for the entire Town's benefit, and therefore stand entitled to access qualified legal advice from time to time as is necessary to perform their varied, publicly-assigned responsibilities in conformance with controlling law. Nonetheless, this Policy also recognizes the Town's limited financial resources and the resulting need to restrict official access to publicly-funded legal counsel so as to preserve those financial resources in the best interests of the Town and its residents.

Oversight and Authority:

4. The final authority in the authorization of access to and the obtaining of legal advice from the Attorney for the Town shall rest at all times with the Enfield Town Board. Additionally, in accordance with the relevant provisions of New York State Law, the Town Board shall hold the power to retain, replace, or discharge the Attorney for the Town at its discretion or to supplement that Attorney's service with additional qualified legal counsel.

5. Aside from the limited authority accorded through Paragraph 7 of this Policy Statement, no elected, appointed, or otherwise employed Enfield Town Officer or employee shall retain Town governmentally-compensated legal counsel without the Town Board's explicit authorization. Town Officers or employees may, however, retain independent legal advice at their own personal expense. Said Town Officers or personnel are additionally permitted, indeed encouraged, to secure legal advice through the New York State Association of Towns ("AOT"), so long as the Town of Enfield remains a member in good standing with the AOT.

Permissible Contact:

6. The Enfield Town Board may, by a majority vote of its seated members, retain legal services from the designated Attorney for the Town at any time to any extent and for any public purpose whatsoever, said purposes defined and recognized under New York State Law.

7. The Town Supervisor may contact the Attorney for the Town at any time to seek the answer to legal questions pertaining and restricted to his or her individual elected supervisory, administrative, or operational responsibilities, those defined by State Law. Neither the Town Supervisor nor any other elected or appointed Town Officer may contact the Attorney for the Town so as to secure personal legal advice or to seek advice clearly of a political or interdepartmental adversarial nature.

8. The Town Supervisor may designate his or her individually-appointed deputy to seek the advice of legal counsel on the Supervisor's behalf. Similarly, the Town Supervisor may designate one or more members of the Town Board to contact the Attorney for the Town to seek legal advice on the Supervisor's behalf.

9. Individual Town Board members, apart from the Town Supervisor, as well as other Town Officers, whether elected or appointed, are generally NOT authorized to contact the Attorney for the Town unless so authorized by the Town Supervisor or by a majority vote of the Town Board. Individual Town Board members or other Town Officers may, however, contact the Attorney for the Town so as to clarify or gain improved knowledge of prior opinions and statements of the Attorney. Notwithstanding this limitation, the Town Board may authorize one or more of its members to contact the Attorney, said authorization expressed either informally, through clear Board majority consensus; or formally, by Board majority vote.

10. Upon request, the Town Board may, by majority vote, authorize any Town elected or appointed official or any Town employee to seek legal advice from the Attorney for the Town on requested matters of official business which may otherwise fall outside the authorization limits heretofore established. Lacking said authorization, Town Board members or Town Officers may access legal advice through staff at the New York State Association of Towns or through their personal, privately-paid counsel.

11. Nothing in this Policy shall restrict or limit the Enfield Town Justice(s) from seeking legal advice through the New York State Office of Court Administration or through other offices under the jurisdiction of the New York State Judiciary on matters unique to the Town Justice's responsibilities within the New York State Unified Court System.

12. Neither the Town Supervisor nor the Town Board shall arbitrarily or unreasonably prohibit, restrict or impede any Town Officer, whether elected or appointed, from securing the competent legal advice that the Town Officer deems necessary to perform his or her authorized public responsibilities. Any such prohibition or restriction shall be considered grounds for appeal.

Complaints and Appeals:

13. Any person, including, but not limited to, Town Officers, Town Board members, or the General Public, may bring to the Town Board's attention, with sufficient specificity, complaints alleging violation of this Policy by any person, elected, appointed, or employed by the Town.

14. Upon receiving any such complaint, the Town Board shall promptly review the complaint, determine its validity, and undertake appropriate corrective or disciplinary action. The affected Town Officer or employee may address the Board to defend his or her action. The Town Board's decision shall be final, with no further provision for appeal.

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