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Gift or Loan of Property or Credit of Local Subdivisions Prohibited

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GIFT OR LOAN OF PROPERTY OR CREDIT OF LOCAL SUBDIVISIONS PROHIBITED

N.Y. CONST. art. VIII, § 1:

No county, city, town village or school district shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking, or become directly or indirectly the owner of stock in, or bonds, of, any private corporation or association; nor shall any county, city, town, village or school district give or loan its credit to or in aid of any individual, or public or private corporation or association, or private undertaking

SUPREME COURT, APPELLATE DIVISION

FOURTH DEPARTMENT

Conrad v. Regan⁵⁶²
(decided July 12, 1991)

The State Comptroller, acting in his capacity as Administrator of the New York State Policemen's and Firemen's Retirement System, appealed from a judgment holding that it was illegal for him to conclude that overtime hours performed on a voluntary basis by retired members of the Police and Fire Departments were improperly included as regular compensation for purposes of computing their retirement benefits.⁵⁶³ Because the New York Constitution⁵⁶⁴ does not permit the "expenditure of public funds absent express statutory authority,"⁵⁶⁵ the appellate division unanimously reversed the supreme court's decision and excluded

562. 572 N.Y.S.2d 563 (4th Dep't), *appeal denied*, 78 N.Y.2d 860, 582 N.E.2d 602, 576 N.Y.S.2d 219 (1991).

563. *Id.* at 564.

564. N.Y. CONST. art. VIII, § 1.

565. *Conrad*, 572 N.Y.S.2d at 564.

the compensation from the calculation of the retirees' pension benefits.⁵⁶⁶

Section 90 of the General Municipal Law authorizes municipalities to compensate public employees who "are *required* to work in excess of their regularly established hours of employment"⁵⁶⁷ The amount paid as overtime compensation is later included "as salary or compensation for any of the purposes of any pension or retirement system of which the . . . employee . . . is a member."⁵⁶⁸ The overtime hours at issue were made a part of the policemen's and firemen's existing collective bargaining agreement, which already contained specific provisions for overtime compensation to employees who desired additional hours.⁵⁶⁹ Employees who volunteered to work on their vacation and personal days were to be compensated pursuant to a "preferred overtime program."⁵⁷⁰

In reviewing the details of the "preferred overtime program," the court found that the policemen and firemen were not required to accept a call for work, nor were they penalized if they refused to work.⁵⁷¹ Thus, the court, in light of the constitutional mandate, strictly construed the statute⁵⁷² and held that the "required to work" provision of General Municipal Law section 90 was not satisfied.⁵⁷³

566. *Id.*

567. N.Y. GEN. MUN. LAW § 90 (McKinney 1986) (emphasis added).

568. *Id.*

569. *Conrad*, 572 N.Y.S.2d at 564-65.

570. *Id.* at 565.

571. *Id.*

572. N.Y. GEN. MUN. LAW § 90 (McKinney 1986).

573. *Conrad*, 572 N.Y.S.2d at 565.