

**1987 N.Y. Op. Atty. Gen. (Inf.) 119**  
**Office of the Attorney General State of New York**  
**Informal Opinion No. 87-52**

July 1, 1987

MUNICIPAL HOME RULE LAW, §§ 2(5) and (12), 10(1)(ii)(a)(1); PUBLIC OFFICERS LAW, § 3(1) and (16); TOWN LAW, § 23(1).

A town may enact a local law authorizing its town superintendent of highways to reside outside of the town.

Stanley E. Anderson, Jr., Esq.  
Town Attorney  
Town of Lewisboro  
P.O. Box 240  
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Dear Mr. Anderson:

You have asked whether your town by local law may permit the superintendent of highways to reside outside the town.

Section 3 of the Public Officers Law provides that no person may hold a public office who is not at the time he is chosen at least 18 years of age, a citizen of the United States, a resident of the State and in the case of a local official, a resident of the political subdivision for which he is to be chosen or within which the electors choosing him reside (Public Officers Law, §3[1]). Additionally, the Town Law requires that every elective officer of a town, at the time of his election and throughout his term of office, must be an elector of the town (Town Law, §23[1]).

Section 3 of the Public Officers Law includes an exception permitting the superintendent of highways in the Town of New Castle, Westchester County to reside in the county in which the town is located or in an adjoining county within the State (Public Officers Law, §3[16]). Additionally, the Town of New Castle may provide by resolution that the superintendent of highways may reside anywhere in the State. Also, section 23 of the Town Law has been amended to provide that the superintendent of highways in the Town of New Castle need not be an elector of the town.

Local governments, including towns, are authorized to adopt and amend local laws, consistent with the Constitution and general State laws in relation to the powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees (Municipal Home Rule Law, §10[1][ii][a][1] ). This provision authorizes a local law establishing residency requirements for town officers.

Further, the amendments for the Town of New Castle have made section 3 of the Public Officers Law and section 23 of the Town Law special rather than general laws with respect to the residency requirements of town superintendents of highways. A general law is a State statute which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages (id., §2[5]). As a result of the exceptions for the Town of New Castle, sections 3 and 23 are no longer in terms and in effect applicable alike to all towns with respect to the residency requirements for town superintendent of highways. To this extent, these State statutes have been rendered special laws (id., §2 [12]). Thus, your town may enact a local law establishing a residency requirement for the superintendent of highways which is as broad as that authorized for the Town of New Castle. In other words, your town may enact a local law providing that the superintendent of highways may reside in the county in which the town is located, in an adjoining county, or anywhere in the State.

We conclude that a town may enact a local law authorizing its town superintendent of highways to reside outside of the town.

The Attorney General renders formal opinions only to officers and departments of the State government.  
This perforce is an informal and unofficial expression of views of this office.

Very truly yours,  
James D. Cole  
Assistant Attorney General in Charge of Opinions

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