1988

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THE NEW YORK CITY CAMPAIGN
FINANCE ACT

Jeffrey D. Friedlander,* Stephen E. Louis,** and Laurence D.
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INTRODUCTION

On February 29, 1988, Mayor Edward I. Koch signed into law the New York City Campaign Finance Act.¹ The Mayor characterized the new law as "the most fundamental reform of the political process ever enacted by the city... [The] legislation... will achieve a more equitable and open system of financing candidates who seek elective office in New York City."² In enacting this law, the city of New York has become the fourth, and largest, major local government to have instituted a mechanism for providing public funds to candidates seeking election to local office in return for the candidates' agreement to abide by restrictions on contributions and expenditures.³ This Article first describes the history of campaign financing laws in New York, the problems created by the large campaign contributions permitted under New York state law and the

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¹ Local Law No. 8 of 1988 (to be codified at NEW YORK CITY, N.Y., ADMIN. CODE §§ 3-701 to -714).
³ Public financing schemes were previously adopted in Sacramento County, California, Seattle, Washington, and Tucson, Arizona. See Sacramento County, Cal., Ordinance No. 683, SACRAMENTO COUNTY, CAL., CODE §§ 2.115.100-.830 (1988); Seattle, Wash., Ordinance No. 112005, SEATTLE. WASH., MUN. CODE §§ 2.04.400-.470, .600 (1988); Tucson, Ariz., Ordinance No. 6300, TUCSON, ARIZ., CITY CHARTER ch. 16 (1988); see also infra notes 32-35 and accompanying text (discussing the results of the Seattle public financing experiment).

The predecessor to the Seattle statute, Ordinance No. 107772, which expired in November, 1982, was upheld against constitutional challenge in City of Seattle v. State, 100 Wash. 2d 232, 668 P.2d 1266 (1983) (en banc).
process by which this reform legislation was developed and brought to enactment by New York City. Second, the law's fundamental provisions are outlined and explained. The final section describes the city's legal authority under state law to enact its own campaign finance law.

I. CAMPAIGN FINANCING LAWS

Campaign contributions to candidates for state legislature and local offices in New York State are currently regulated by article 14 of the Election Law. Although the current state scheme grew out of the increased interest in election reform in the early 1970's, state law has regulated campaign financing in state and local elections to some extent since the early 1900's. Prior to 1974, state law relating to campaign financing consisted of candidate and political committee expenditure limitations and a prohibition against political contributions by corporations. The first expenditure limitation law limited expenditures by candidates for state office to specified amounts and set forth a formula, based on the number of votes cast at the last preceding gubernatorial election, for computing the limitations applicable to candidates for local offices.

In 1974, the legislature added article 16-A to the State Election Law. As originally enacted, article 16-A provided for reporting of contributions and expenditures, limited campaign expenditures, and for the first time imposed contribution limitations. In the aftermath of Buckley v. Valeo, article 16-A was amended to repeal the limits on campaign expenditures which had been declared unconstitutional. The amended law, which remains

4. See infra notes 7-50 and accompanying text.
5. See infra notes 51-80 and accompanying text.
6. See infra notes 81-114 and accompanying text.
10. See N.Y. ELEC. LAW § 460 (McKinney 1974).
11. 1907 N.Y. Laws 584.
14. 424 U.S. 1 (1976). The Court in Buckley held that mandatory limits on campaign expenditures are inconsistent with the first amendment. Id. at 57-58 & n.65. The Court found, however, that there was no first amendment problem where acceptance of expenditure limitations is part of an agreement to obtain public funds. Id. at 58.
substantially unchanged, requires candidates and political committees to keep and file records regarding receipts, contributions, transfers, and expenditures.\textsuperscript{16} Political committees are required to have a treasurer and a depository, and must comply with specified accounting procedures.\textsuperscript{17} Section 14-120 of the Election Law requires contributions to be under the true name of the contributor,\textsuperscript{18} section 14-128 regulates the disposition of anonymous contributions,\textsuperscript{19} and section 14-130 prohibits the conversion of contributions to a personal use unrelated to either a political campaign, or the holding of a public office or party position.\textsuperscript{20}

Campaign contributions and receipts are specifically limited by Election Law section 14-114, which sets forth formulas for computing the maximum permissible contribution per election.\textsuperscript{21} These limits apply to the making of contributions to candidates and political committees in elections for state and local public offices and for party positions.\textsuperscript{22} For candidates running in the general election for state-wide public offices (governor, lieutenant governor, attorney general and comptroller), the limitations are $.005 per registered voter in the state.\textsuperscript{23} In state-wide primaries for public offices and party positions, the limitations are $.005 per voter enrolled in the candidate's party.\textsuperscript{24} Contributions to candidates for local public office in a general election may not exceed $.05 per registered voter in the candidate's district.\textsuperscript{25} Limitations in local primaries for public offices and party positions are $.05 per voter enrolled in the candidate's party in the candidate's district.\textsuperscript{26}

The limitations respecting local elections are subject to a $1000 floor and a $50,000 ceiling.\textsuperscript{27} Since the formula allows $.05 per registered or enrolled voter, the floor takes effect when there are fewer

\begin{itemize}
\item \textsuperscript{16} N.Y. ELEC. LAW §§ 14-102 to -110 (McKinney 1978 & Supp. 1988).
\item \textsuperscript{17} Id. § 14-118 (McKinney 1978 & Supp. 1988).
\item \textsuperscript{18} Id. § 14-120 (McKinney 1978).
\item \textsuperscript{19} Id. § 14-128 (McKinney 1978).
\item \textsuperscript{20} Id. § 14-130 (McKinney Supp. 1988).
\item \textsuperscript{21} \textit{See} id. § 14-114 (McKinney 1978 & Supp. 1988).
\item \textsuperscript{22} Id.
\item \textsuperscript{23} Id. § 14-114(1)(a)(ii) (McKinney 1978).
\item \textsuperscript{24} Id. § 14-114(1)(a)(i) (McKinney 1978).
\item \textsuperscript{25} Id. § 14-114(1)(b)(ii) (McKinney 1978).
\item \textsuperscript{26} Id. § 14-114(1)(b)(i) (McKinney 1978). The numbers of registered and enrolled voters are determined as of the date of the election or the date of the general election in any of the preceding four years, whichever date results in the greatest number. Id. § 14-114(7) (1978).
\item \textsuperscript{27} Id. § 14-114(1) (McKinney 1978). Additional ceilings of $2,500 and $4,000 apply to candidates for State Assembly and Senate, respectively. Id.
\end{itemize}
than 20,000 applicable voters and the ceiling takes effect when there are more than one million applicable voters. Very few campaigns are covered by the ceiling. The $50,000 cap only applies to contributions in the general election and Democratic party primary for city-wide office in New York City.\footnote{In 1985, voter registration in New York City totalled 3,014,459 and Democratic party enrollment in the City totalled 2,115,070. \textit{Department of General Services, City of New York, The Green Book 1988-89: The Official Directory of the City of New York} 449, 450 (1988).} Thus, under New York state law, a person or political action committee may contribute a total of $100,000 to one candidate running in these two elections.\footnote{New York state law also restricts contributions by a candidate's family, regulates expenditures by party committees and constituted committees, and regulates the making of loans. Persons are subject to a $150,000 annual cap on giving and lending in connection with campaigns for state and local public office and party positions within the state. \textit{N.Y. Elec. Law} § 14-114 (McKinney 1978 & Supp. 1988). Corporate contributions are limited to an annual aggregate cap of $5000. \textit{Id.} § 14-116 (McKinney 1978 & Supp. 1988).}

By permitting the making of large campaign contributions, New York state law has engendered a process where candidates may solicit, accept, and rely upon large contributions from a small number of wealthy individuals and well-financed special interest groups. This reliance on large private funding sources in campaigns for public office has created a widely held belief that persons and groups which make large contributions exercise corrupt or improper influence over elected officials.\footnote{In 1986 the state legislature adopted a law which limits contributions by each person with a matter pending before the New York City Board of Estimate for candidates to and members of the Board to an aggregate of $3000 per candidate or member during a period beginning six months before and ending twelve months after the Board's official consideration of such person's matter. These special limitations do not apply to persons that do not have matters before the Board. Moreover, the limit only applies during the eighteen-month period surrounding the Board's official consideration and does not limit the contributions these contributors make at other times. \textit{Id.} § 14-114(9) (McKinney Supp. 1988).} The problem was succinctly summarized in a report issued by the State-City Commission on Integrity in Government, jointly created by Governor Mario Cuomo and Mayor Koch, and chaired by Michael Sovern (the "Sovern Commission"), which recommended public financing of election campaigns:

Contemporary campaign finance resembles a veritable gold rush. The amounts of money that change hands in the course of a politi-
cal campaign not only serve to discourage less affluent candidates, but also result in massive problems of supervision and control to assure compliance with the law by candidates, contributors and political committees. The huge sums involved create vast opportunities for abuse, influence peddling and other improprieties. And they give rise to a substantial appearance of impropriety, a belief that large contributors receive a *quid pro quo* from those they support.\(^{31}\)

However, simply reducing contribution limitations is considered by many to be an inadequate solution. Lower limits may constrain a candidate’s ability to raise money and may also give an advantage to those candidates who are wealthy and to those well connected with professional fundraisers or the party apparatus. Therefore, it is appropriate that public financing of political campaigns accompany limitations on campaign contributions so that all serious candidates will have sufficient funds to mount effective campaigns.

Public financing reduces candidates’ reliance on the traditional, private sources of campaign financing. A system which matches small private contributions with public dollars encourages the solicitation and making of small contributions. Experience in other jurisdictions suggests that public financing brings more people into the political process. For instance, in Seattle, Washington, a local public financing scheme was first adopted in 1978 and expired in 1982.\(^{32}\) During the years for which public funding was available, the number of private contributions to candidates increased, while the average contribution decreased.\(^{33}\) Thus, there was more participation by the public, and less danger of undue influence by large contributors. After the Seattle law expired, the pattern was reversed — larger contributions by fewer people were made in the 1983 election.\(^{34}\) Seattle readopted its public financing law in 1984.\(^{35}\)

A public financing system also provides a handle for controlling rising campaign costs. The Supreme Court in *Buckley v. Valeo*\(^{36}\) expressly identified the provision of public financing as a constitutional

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34. *Id.* at 6-8, 9-10, app. 3.
method of requiring candidates to abide by expenditure limits. Expenditure limitations reduce disparities between the ability of opposing candidates to bring their message to the electorate. Moreover, candidates bound by expenditure limits are compelled to adopt a more efficient, economical and quality-conscious approach to campaigning.

The drive for effective campaign finance reform in New York has been underway for a number of years and has had many supporters at both the state and local levels of government. Former State Assembly Speaker Stanley Fink repeatedly attempted to bring about meaningful contribution and expenditure limits and public financing through the state legislature. In the spring of 1986, his proposals received new impetus from the recommendations of the Sovern Commission which proposed a system of optional public financing for elections to state-wide offices and the state legislature, and to city-wide, borough president, and City Council offices in New York City. Redoubled efforts were made at that time and again the following year to obtain this reform through state legislation. The new Assembly Speaker Mel Miller sponsored a bill to limit contributions and provide public funds to candidates in state-wide, state legislature and New York City campaigns. When this measure was blocked by opposition in the State Senate, Assemblyman Steven Sanders and Senator Roy Goodman offered a bill to cap campaign spending, lower contribution limits, and establish an optional system of public financing for elections in New York City. This proposal was also frustrated by opposition in the State Senate.

After years of focusing on the state legislature, attention turned to New York City to see what could be done locally. In the summer of 1987, New York City Corporation Counsel Peter Zimroth concluded that the New York City Council had the authority to enact campaign finance legislation.

37. Id. at 57 n.65.
43. See infra notes 81-114 and accompanying text (discussing the issue of the city's authority to enact campaign finance legislation).
General Robert Abrams subsequently agreed.\textsuperscript{44} Both the Governor and the Attorney General took strong stands in favor of local campaign finance reform during its consideration by the City Council.\textsuperscript{45}

In September of 1987, a bill prepared by the Corporation Counsel, was introduced in the City Council by Councilmembers Katzman, Messinger, and Michels, at the request of the Mayor.\textsuperscript{46} The proposed New York City Campaign Finance Act received the support of a number of groups at several public hearings conducted by the Governmental Operations Committee of the City Council, including the New York Public Interest Research Group,\textsuperscript{47} Citizens Union,\textsuperscript{48} and Common Cause.\textsuperscript{49} Amendments to the original proposal were developed during several months of negotiations between the City Council, the Mayor's Office, and the Office of the Corporation Counsel. The bill, strongly supported by City Council Vice-Chairman Peter Vallone, passed the Council on February 9, 1988.\textsuperscript{50}

\section*{II. THE CAMPAIGN FINANCE ACT}

The new law provides that candidates for mayor, City Council president, comptroller, borough president or city councilmember may obtain public financing in return for their promise to abide by limitations on campaign contributions and expenditures.\textsuperscript{61} Contribution limits for each election are set at $3000 for candidates to city-wide office,\textsuperscript{52} $2500 for candidates for borough president,\textsuperscript{53} and $2000 for candidates to the Council.\textsuperscript{54} Participating candidates may spend no


\textsuperscript{45} See Council Hearings, supra note 44; Governor's Press Release, supra note 42.

\textsuperscript{46} New York City, N.Y., Council 906 (Sept. 22, 1987).

\textsuperscript{47} See Council Hearings, supra note 44 (testimony of Gene Russianoff, program coordinator, New York Public Interest Research Group, Inc.).

\textsuperscript{48} Id. (testimony of Jeannette Kahlenberg, executive director, Citizens Union of the City of New York).

\textsuperscript{49} Id. (testimony of Hortense Lopez, member of the national governing board, Common Cause).


\textsuperscript{51} New York City Campaign Finance Act, Local Law No. 8 of 1988 (to be codified at New York City, N.Y., ADMIN. CODE §§ 3-701 to -714).

\textsuperscript{52} Id. § 3-703(1)(f)(i).

\textsuperscript{53} Id. § 3-703(1)(f)(ii).

\textsuperscript{54} Id. § 3-703(1)(f)(iii).
more than $2,000,000 in a primary or general election for mayor, $1,750,000 per election for other citywide office, $625,000 per election for borough president, and $60,000 per election for the Council. Candidate expenditures are also capped in the third year of the election cycle.

To receive public funds, a candidate must first demonstrate a modicum of public support by raising a threshold of contributions from a specified number of city residents. Once this threshold is met, contributions will be matched dollar-for-dollar up to $500 per individual contribution. If a candidate chooses not to accept public financing and spends more than half of the applicable expenditure limit for that office, expenditure limits for opposing candidates who participate in the public financing system are removed and they will be eligible for a two-to-one dollar match of contributions. No candidate, however, may receive public funds in excess of one-half the expenditure limit otherwise applicable in an election. Public funds will be provided to eligible candidates for expenditure only during the calendar year in which the election occurs. Special provisions make flat grants available in run-off or court-ordered rerun elections.

55. Id. § 3-706(1)(a).
56. These caps are $150,000 for citywide office, $100,000 for borough president, and $50,000 for council member. Id. § 3-706(2). A newly created Campaign Finance Board is empowered to examine the propriety of applying spending caps for all offices in the first and second years of the election cycle. If the Board finds that they are appropriate, it may mandate such caps subject to disapproval by the City Council. Id. § 3-706(6).
57. For the office of mayor, the threshold is $250,000 in contributions from at least 1000 city residents. Id. § 3-703(2)(a)(i). For City Council president and comptroller, the threshold is $125,000 from at least 500 city residents. Id. § 3-703(2)(a)(ii). The threshold for borough president candidates is determined according to the borough's population, with the minimum threshold being $10,000. Id. § 3-703(2)(a)(iii). Contributions from at least 100 borough residents are required. Id. Candidates for the city council must raise at least $7500 in contributions from at least 50 district residents. Id. § 3-703(2)(a)(iv).

In order to be applied toward the threshold, a contribution must be for at least $10 and be from an individual who resides in the City, not a political action committee or corporation. Id. § 3-702(2) (defining “threshold contribution”); § 3-703(2)(a)(i)-(iv) (setting the thresholds for eligibility). Candidates who meet the threshold in a primary are deemed to have met it in the general election and any run-off election that may occur. Id. § 3-703(2)(b). To be eligible for public funds in a primary, a candidate agrees to be bound by the limitations of the law in the event he or she is a candidate in the general election. Id. § 3-703(3).
58. Id. § 3-705(2). A candidate cannot apply more than $500 in contributions from any one household to meet the threshold and/or to obtain matching funds in any one election. Id.
59. Id. § 3-706(4).
60. Id.
61. Id. § 3-704(1).
62. Id. § 3-705(5). The flat grants are equal to twenty-five percent of the public funds
Public funds may be used by a candidate or authorized committee only for expenses related to educating the voters about the election and the issues in a campaign. For example, funds can be used for advertisements, solicitation of voters or voter registration drives. Funds may not be spent in violation of federal, state, or local laws; for expenses incurred by a candidate who has been disqualified or has had petitions declared invalid, or for expenses incurred after the only remaining opponent has been disqualified until and unless the finding is reversed; for payments to a candidate, a relative of a candidate or a business in which a candidate has a share of ten or more percent; to pay any salary or wage to any individual or entity; to purchase food, drink, or entertainment; or to buy gifts other than brochures, buttons, signs, or other printed campaign materials. If a candidate spends public funds for unauthorized purposes, the candidate is required to pay to the City an amount equal to the unauthorized expenditure.

A new, independent, five-member Campaign Finance Board will administer the public financing system. The Board’s chairperson is to be appointed by the mayor after consultation with the vice-chairman of the City Council. Of the remaining four members, the mayor shall appoint two, no more than one of whom may be a member of any one political party. Similarly, the vice-chairman shall appoint two members, no more than one of whom may be a member of any one political party. Board members’ five-year terms are staggered. Beginning in 1990, the Board is required to make a quadrennial adjustment in the contribution and expenditure limita-
tions to reflect changes in the cost of living.\textsuperscript{78}

With the public financing of elections, the City of New York will be embarking on new, untested waters. As noted earlier, New York will be one of the first localities to try such a comprehensive reform of campaign finance regulation.\textsuperscript{79} Despite best efforts to create an effective, workable law, experience will undoubtedly indicate that changes should be made. The Campaign Finance Board is empowered to review the workings of the law and make such recommendations as it deems appropriate to assure meaningful reform.\textsuperscript{80}

III. LOCAL LEGISLATIVE AUTHORITY AND THE INTERACTION WITH STATE LAW

As previously noted, the New York City Corporation Counsel and the Attorney General have concluded that the City has the authority to adopt a system of public campaign financing.\textsuperscript{81} Article IX of the New York State Constitution establishes in state law the principle of local home rule.\textsuperscript{82} That article sets forth several bases of local legislative authority which support enactment of the New York City Campaign Finance Act. Specifically, article IX provides, “In addition to powers granted in the statute of local governments or in any other law, . . . every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government . . . .”\textsuperscript{83} Not only is this broad authority granted to localities by the people and the legislature, but the Constitution also provides in article IX that the “rights, powers, privileges and immunities granted to local governments by this article shall be liberally construed.”\textsuperscript{84}

The New York City Campaign Finance Act falls within the scope of the city’s “property, affairs or government.” This is clear from the purposes of the law: (a) to help ensure the ethical conduct of city officials by reducing the political influence of large contributors; (b) to give candidates a fair chance to express their views to the

\textsuperscript{78} Id. §§ 3-706(1)(e), 3-703(7).
\textsuperscript{79} See supra note 3 and accompanying text.
\textsuperscript{80} Local Law No. 8 of 1988 (to be codified at NEW YORK, N.Y., ADMIN. CODE § 3-713(1)(a)-(f)).
\textsuperscript{81} See supra notes 43-44 and accompanying text.
\textsuperscript{82} See N.Y. Const. art. IX, § 2(c)(i).
\textsuperscript{83} Id. (emphasis added); accord N.Y. MUN. HOME RULE LAW § 10(1) (McKinney 1969 & Supp. 1988).
\textsuperscript{84} N.Y. Const. art. IX, § 3(c).
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electorate; (c) to keep voters informed of local campaign issues; and (d) to increase public confidence in the electoral process.  

The courts of the state have held that a local law may relate to the "property, affairs or government" of the locality, notwithstanding the fact that it pertains to the electoral process. In Resnick v. County of Ulster, the New York Court of Appeals, relying in part on the "property, affairs or government" provision, rejected a challenge to a county law requiring that vacancies in the county board of supervisors be filled by vote of that body's remaining members.  

Similarly, in La Cagnina v. City of Schenectady, the Supreme Court, Special Term, for Schenectady County upheld a local law prescribing how a proposal being voted on in a referendum was to be stated on the ballot.  

Baldwin v. City of Buffalo is especially significant. There the Court of Appeals upheld against constitutional challenge a local law altering the boundaries of local election districts within the city of Buffalo. The court held that "the State has no paramount interest" in a change in the law pertaining to local elections and the locality may therefore change ward boundaries pursuant to its authority over its "property, affairs or government." This reasoning applies to the public financing of local campaigns as surely as to the alteration of ward boundaries.  

The fact that the state legislature has regulated some aspects of the financing of local elections does not necessarily imply that city authority to act in this area is preempted. In interpreting the home rule provisions of the state constitution, the Court of Appeals has long recognized that many matters of public concern may affect state interests while also relating to the "property, affairs or government" of a locality. In such areas of overlapping interests, state and local laws may coexist. In Adler v. Deegan, for example,  

85. See Local Law No. 8, § 1.  
87. Id.  
88. 100 Misc. 2d 72, 418 N.Y.S.2d 498 (Sup. Ct. 1979).  
89. Id.  
91. Id. at 173, 160 N.E.2d at 445, 189 N.Y.S.2d at 133.  
92. But see infra notes 100-114 and accompanying text (discussing the circumstances where state regulation does preempt local regulatory authority).  
94. See id. (Cardozo, C.J., concurring). As Chief Judge Cardozo stated: [I]f the subject be in a substantial degree a matter of state concern, the [state] Legislature may act, though intermingled with it are the concerns of the locality
Chief Judge Cardozo noted that the enactment of the Multiple Dwelling Law, a special state law establishing minimum structural standards for apartment houses in New York City, did not exclude construction activities from the City's "property, affairs or government." The state's interest in safeguarding public health, embodied in the Multiple Dwelling Law, did not, in Judge Cardozo's view, diminish the city's interest in regulating the density and structure of buildings, embodied in the City's Zoning Resolution. The two enactments could thus exist side by side in an area of "concurrent jurisdiction."

Regulation of the electoral process as it affects local elections is similarly an area of joint state/local interest and jurisdiction. In Procaccino v. Board of Elections, the court recognized this concurrent concern in considering a state law pertaining to the conduct of primary elections for certain local offices in New York City, stating that "the elective process delineated in [the statute] is of concern both to New York City insofar as it affects the City, and to the State, insofar as control over the elective process and its conduct resides in the legislative power . . . ." The court's statement in Procaccino applies equally as well to campaign financing in local contests, which implicates both the city's interest in good government and the state's interest in ensuring fair elections as the basis of a democratic polity. The Election Law and the new City law may thus coexist in the same regulatory area.

Localities are, however, prohibited from adopting legislation which is inconsistent with general state law or which regulates in an area where the state legislature has manifested an intent to "oc-

[However,] I do not say that an affair must be one of city concern exclusively, to bring it within the scope of the powers conferred upon the municipality by . . . the Home Rule article . . . in cases where the state has not undertaken to occupy the field. I assume that, if the affair is partly state and partly local, the city is free to act until the state has intervened. As to concerns of this class there is thus concurrent jurisdiction for each in default of action by the other.

Id. at 491, 167 N.E. at 714.
95. 251 N.Y. 467, 167 N.E. 705 (1929).
96. Id. at 485-86, 167 N.E. at 711.
97. Id. at 485-86, 167 N.E. at 711-12.
99. Id. at 467, 341 N.Y.S.2d at 816.
100. The state constitution prohibits local enactment of laws that are inconsistent with general state law, such as "a law which in terms and in effect applies alike to . . . all cities . . . ." N.Y. Const. art. IX, §§ 2(c), 3(d)(l); see also N.Y. MUN. HOME RULE LAW §§ 2(5), 10(1) (McKinney 1969 & Supp. 1988).
cupy the field."  

The New York City Campaign Finance Act is, however, neither inconsistent with general law nor in an area preempted by state law.

The Court of Appeals has stated as a general proposition that a local law is inconsistent with general law when it prohibits what a general law permits or permits what a general law forbids. In *New York State Club Association v. City of New York*, the Court of Appeals, in upholding a local ordinance which banned discrimination by private clubs as defined therein, observed that the doctrine enunciated in *Wholesale Laundry Board of Trade, Inc. v. City of New York* applied only when a local law "prohibit[s] what would have been permissible under State law ... so as to inhibit the operation of the State's general laws or when the State specifically permits the conduct prohibited at the local level."  

The new law would not permit any action prohibited by state law, as all of the limitations and requirements contained in the Election Law remain unaffected. Furthermore, the local law does not prohibit any conduct permitted under state law. Contributors and candidates remain free to make and receive contributions to the extent permitted by state law. Limitations apply only if the candidate voluntarily chooses to participate in the local system of public funding, in which case the limits are simply the *quid pro quo* for the receipt of public funds.

Current state law restricting campaign contributions does not contain, and the relevant legislative history does not provide, an express statement that the state legislature intended to preempt local laws providing optional public financing of local election campaigns. Where there is no explicit indication of a legislative intent to preempt, the courts will look for evidence that the Legislature intended state law to "occupy the field" that is the subject of such law.

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101. See infra notes 106-08, 110-12 and accompanying text.
106. See Consolidated Edison Co. v. Town of Red Hook, 60 N.Y.2d 99, 456 N.E.2d
Thus, legislative declarations of policy and the history, purposes, and scope of the state’s entrance in a “field” and the nature of the regulatory scheme chosen are evaluated to determine whether such an implicit preemptive intent exists. In addition, local laws have been found preempted where “there are no ‘special conditions’ . . . in the [locality], as opposed to the rest of the State, which warrant enactment of the local ordinance.” An examination of the history, scope and purposes of state laws pertaining to campaign contributions and expenditures demonstrate that existing state law does not preempt the local campaign finance law. The state campaign contribution and receipt rules set forth in article 14 of the Election Law do not constitute a comprehensive and detailed regulatory scheme which is indicative of a legislative intent to occupy the entire field of campaign financing. To the contrary, the scope of article 14 is relatively narrow, focusing on only one aspect of campaign financing — campaign contributions by private persons and entities.109

In analyzing the scheme of preemption, the courts often ask whether the challenged legislation is in an area which inherently demands state-wide uniformity. If so, the courts are more likely to infer an intent by the state legislature to “occupy the field.”110 If not, the courts are more likely to defer to local action.111

In fact, there is simply no need for a state-wide uniform rule with respect to public financing of election campaigns or limitations on campaign contributions and expenditures. The City’s determination that the new law is warranted is based upon particular condi-

487, 468 N.Y.S.2d 596 (1983). In Red Hook, the Court of Appeals stated the general rule as follows:

The intent to preempt need not be express. It is enough that the Legislature has impliedly evinced its desire to do so . . . . A desire to pre-empt may be implied from a declaration of State policy by the Legislature . . . or from the fact that the Legislature has enacted a comprehensive and detailed regulatory scheme in a particular area.

Id. at 105, 456 N.E.2d at 490, 468 N.Y.S.2d at 599 (citations omitted).

107. See id. at 105-07, 456 N.E.2d at 490-92, 468 N.Y.S.2d at 599-600.


109. See supra notes 12-29 and accompanying text (discussing the scope of article 14).


111. See, e.g., id.; see also Dougall v. County of Suffolk, 102 A.D.2d 531, 533-34, 477 N.Y.S.2d 381, 382-83 (2d Dep’t 1984), aff’d, 65 N.Y.2d 668, 481 N.E.2d 254, 491 N.Y.S.2d 622 (1985).

tions existing in New York City. Indeed, the state legislature itself has demonstrated its recognition of the desirability of non-uniformity in this area with the enactment of chapter 689 of the Laws of 1987, legislation applicable only to candidates for and members of the City's Board of Estimate.

IV. CONCLUSION

The New York City Campaign Finance Act will have its first test very shortly, as major local elections for mayor, the other city-wide and borough-wide offices, and the City Council, will be held in 1989. Although there are certain to be some difficulties in gearing up for this new program, it should soon be apparent whether public campaign financing is workable in New York City. If it is, New York's statute may serve as a model for action on the state level and in other state and local jurisdictions in the years to come.

113. Local Law No. 8 of 1988, § 1.
114. See supra note 29.