

# COURT OF APPEALS UPHOLDS TOWN BOARD DISCRETION IN DELIVERING FIRE PROTECTION SERVICES

*Municipal Law Alert*  
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In a case pitting the role of elected representative government versus the will of the people expressed through referendum, the Court of Appeals confirmed that where local governments comply with express statutory requirements, courts will not interfere with their discretionary decisions.

## Background

In order to deliver fire protection services, the Town of Champion created the Champion Fire Protection District (CFPD), and then executed contracts with three separate fire departments: the local Champion Volunteer Fire Company together with the fire departments in the adjacent villages of West Carthage and Copenhagen.

## Legal Issue

*Waite v. Town of Champion*, 2018 WL 3129334 (June 27, 2018) concerned whether the town board properly effected the dissolution of the CFPD. Dissolution of a local government entity (other than a town) is accomplished in the context of a dissolution proceeding, which can be initiated either by the entity's governing body or directly by its electors ("elector initiative"). (*General Municipal Law, Section 772*). This case involves the latter, an elector-initiated dissolution plan. Procedures that must be followed in order to achieve the dissolution of a local government entity are contained in the General Municipal Law.

One key provision of the dissolution procedure requires the governing body of that local government entity to prepare and approve a "dissolution plan" which must specify "the manner and means by which residents of the entity will continue to be furnished municipal services following the entity's dissolution." (*General Municipal Law, Section 772(2)(i)*). That dissolution plan must also specify terms for the disposition of the entity's assets, liabilities, and indebtedness as well as designate a proposed date on which the dissolution becomes effective. (*General Municipal Law, Sections 772(2)(j) and (l)*).

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### Actions taken by the Champion Town Board

A dissolution plan was devised by the Town which provided for the dissolution of the current CFPD and the subsequent creation of two new fire protection districts (“FPDs”) intended to cover the same geographic area as the CFPD. Under the proposed dissolution plan, a contract would be executed with the fire department of the Village of West Carthage to provide fire protection services in FPD 1 and another contract would be executed with the fire department of the Village of Copenhagen to provide fire protection services to FPD 2.

In accordance with the dissolution procedures, the Champion Town Board, after a special meeting and public hearings, approved 3 resolutions: the dissolution of the CFPD together with 2 separate resolutions to create 2 distinct FPDs: FPD 1 and FPD 2. These resolutions were duly filed with the applicable county and state government agencies.

### The Appeal

Town resident petitioners, however, disapproved of the plan which dissolved the CFPD and replaced it with two replacement FPDs and exercised their rights under the statute to pursue a “permissive referendum” to object to the dissolution plan. (*General Municipal Law, Section 785*). Resident petitioners sought to declare the dissolution plan void and to obtain an order directing the Town Board to adopt a dissolution plan that did not involve the creation of an FPD controlled by the Town Board. These petitioners claimed that the Town Board violated the law because it never really dissolved the CFPD but merely divided it in half, thereby retaining control over the provision of fire protection services, against the wishes of the voters.

### Decision

The Court held the town board properly complied with all the requisites to dissolve the CFPD: it complied with all necessary procedural requirements; the dissolution plan was voted on and approved; the CFPD was dissolved on August 10, 2015; its dissolution became effective December 31, 2015; and no wind down was needed since the CFPD did not have any employees, assets or liabilities. Under these facts, the claim that the CFPD was not dissolved is “factually inaccurate.”

Creation of the two new FPDs (and their corollary contracts with the fire departments of the neighboring villages) were done in compliance with the legal duty of the town board to provide fire protection services and in compliance with Town Law provisions.

### Takeaways

On the specific technical question of whether the dissolution of the CFPD did occur where it was replaced by creation of two new FPDs, the majority answered yes. In doing so they rejected the dissent’s argument that the immediate replacement of one FPD with two coterminous FPDs could not legitimately be called a dissolution. Noting that the majority’s view would have allowed the Town to simply request the Old CFPD with a New CFPD, the dissent argued this defeated the will of the people, expressed through the referendum process, to eliminate the CFPD.

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But the majority refused the invitation to carry out what the dissent saw as the clear "will of the people," noting the dissatisfied petitioners "can seek to dissolve the FPDs through an elector-initiated referendum, as they did with the CFPD, or they can petition for the establishment of an FD. Petitioners' failure to secure the former or to pursue the latter approach cannot serve as a basis to void the Town's properly implemented Plan for dissolution. The Act and local political structure have worked as intended, and the Town's actions were not 'affected by an error of law.'"

The case is somewhat unique in that it dealt with interpreting actions initiated by a referendum, which are decidedly limited in New York. But the Court did follow two fairly strong rules of interpretation in municipal cases. First, courts have limited roles beyond determining that the statutory process was complied with. *See e.g., Neville v. Koch*, 79 N.Y.2d 416, 424 (1992) ("in a statutory scheme whose purpose is that the agency decisionmakers focus attention on, and mitigate, environmental consequences, it is the role of the court not to weigh the desirability of proposed action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA, procedurally and substantively.").

Second, courts will defer to governments on discretionary issues rather than try to interpret the "will of the people," as New York does not have a strong role for direct rule. As outlined by Judge Pound, "[g]overnment by representation is still the rule. Direct action by the people is the exception." *McCabe v. Voorhis*, 243 N.Y. 401, 413 (1926). Thus, the Court stopped upon determining compliance with the statutory dissolution scheme, and left the political remedy to the voters and the board.