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Mowry v. DiNapoli

Supreme Court, Appellate Division, Third Department, New York - November 21, 2013 - N.Y.S.2d - 2013 N.Y. Slip Op. 07794

Petitioner was hired as the attorney for the Mexico Central School District in 1974 and served in that capacity until his retirement in 2002. Similarly, petitioner served as the attorney for the Village of Mexico during roughly that same time frame. During these periods, petitioner also served as an attorney for other public entities and maintained a private law practice. In 2010, eight years after his retirement, petitioner received a letter determination from respondent New York State and Local Retirement System informing him that, based upon a review of petitioner's relationship with both the school district and the Village, he had incorrectly been reported as an employee, rather than as an independent contractor.

Petitioner brought Article 78 proceeding challenging determination of State Comptroller denying his application for salary and service credits for his service as school district and village attorney.

The Supreme Court, Appellate Division, held that:

- Attorney was employee of the school district, not an independent contractor;
- Substantial evidence supported Comptroller's determination that attorney was an independent contractor and not an employee of the Village; and
- That determination was not barred by laches.