



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

April 26, 2013

Honorable Members
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Comptroller's Pre-Audit Analysis of 2012 Fiscal Results

Dear Honorable Members:

On April 24, 2013, my office received a copy of a press release and accompanying letter (dated April 25, 2013) issued by the Office of Erie County Comptroller discussing preliminary 2012 fiscal results, which have not yet been audited and are subject to amendment pending the 2012 Budget Balancing Amendments and the work of the County's outside independent auditors.

Comptroller Mychajliw has chosen to make a number of inaccurate statements seemingly designed to mislead the public and the Legislature. The Comptroller's attention-seeking and often inconsistent generalizations provide no specific details that can be reasonably reviewed or even debated and in the instances in which he makes comments, he deliberately omits key details.

For example, while criticizing 2012 Budget estimates and labeling such estimates as creations of my administration, Mr. Mychajliw fails to admit (until making an offhand comment in the second-to-last paragraph of his letter) that the 2012 Budget and estimates therein were created by then-County Executive Christopher Collins and then-Budget Director Gregory Gach who is now Mr. Mychajliw's Deputy Comptroller. In his final statement, Mr. Mychajliw praises the former county executive for the 2012 Budget and says the unaudited 2012 fiscal results "reflect the soundness of the 2012 budget." This is perplexing because the Comptroller spends the majority of his press release and letter attacking the 2012 Budget and its estimates in the adopted budget, only to reverse himself at the end of his letter and praise the former county executive and the 2012 Budget.

The Comptroller cannot have it both ways: either the 2012 Adopted Budget and the estimates therein were fundamentally flawed, as Mr. Mychajliw says repeatedly, or the estimates were reasonable and "sound" as he later claims. This is a central theme throughout his press release and letter. The incongruity of Mr. Mychajliw's statements is significant, which has become an unfortunate pattern in his press releases and statements which are designed to attract media attention but which are often not accurate, or worse, deliberately misleading.

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The Budget is a fluid document and is constantly in flux. Adopted budget and actual results are constantly changing between the development of a Budget and its issuance on October 15th annually, its adoption by the Legislature in early December and the closing out of the fiscal year sixteen or seventeen months later.

The unaudited 2012 Budget actual results show variances in some revenue and expenditure accounts. That happens every year. In fact, there has never been a known case during the past forty (40) years where actual results in all accounts were identical to a projected budget, a fact which Mr. Mychajliw either is unaware of or blatantly ignores.

There are variances between the Division of Budget and Management's October 2012 projections for year-end 2012 and the actual 2012 results. However, Mr. Mychajliw notes, but fails to highlight that the Collins Administration's 2012 Budget was also significantly in variance against the final 2012 results. The Division of Budget and Management estimated an approximately \$4.6 million surplus in October 2012 and the preliminary unaudited estimate in April 2013 is \$4.2 million. That is hardly a major variance or reason for concern. In fact, the difference between the projected surplus and the expended budget represents approximately .033% of the entire budget, hardly a significant amount in its own right, though a positive development. Based on Mr. Mychajliw's concerns, I pose the following rhetorical question to him: when did it become a negative development for the County to report a modest surplus for a fiscal year, especially when other New York counties are experiencing multi-million dollar deficits?

I would also point out that in his February 2013 letter to the Erie County Fiscal Stability ("ECFSA") commenting on the County's revised 2013-2016 Four Year Financial Plan, Comptroller Mychajliw either falsely or erroneously suggested that the County could end 2012 with a "potential deficit." Quite the contrary occurred, raising questions about the credibility and veracity of statements from Mr. Mychajliw and his motives behind making any comments.

Finally, the Comptroller commented on fund balance and an \$83 million fund balance this administration "inherited" from the Collins Administration. We agree that a judicious use of appropriated fund balance is appropriate, as has been the case for several years now, and as agreed to by a supermajority of county legislators. However, we would point out that unlike the Collins Administration, which received more than \$100 million in federal stimulus funds which he used to replenish fund balance, this administration does not have such a luxury and will not benefit from such federal funds any longer. Any surpluses' developed in 2012 and moving forward will be due to judicious budgeting and control measures, and not due to federal largesse.

As the former comptroller of the County, it is disappointing to see any comptroller make a series of false statements and representations like those contained throughout Mr. Mychajliw's letter and press release. Furthermore, it is inappropriate for the Comptroller's Office to make any detailed comment on accounts as if they are final until after the County's outside independent auditors at Drescher & Malecki LLP complete and issue the County's audited 2012 financial statements in June 2013. As has been the case in the past, until such time as the independent auditor issues the final audited financial statements, all account lines are subject to revision. Since the comptroller chose to

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take a media driven path by issuing his press release, we are left with no choice but to rebut his inaccurate and inconsistent statements contained therein.

2012 Issues

The preliminary, unaudited fiscal results for 2012 reveal several positive and several troubling trends, a number of which Comptroller Mychajliw has chosen to ignore or misrepresent.

Positive 2012 News

The County ended 2012 with an unaudited surplus of \$4.2 million, pending approval of the 2012 Budget Balancing Amendments. That is positive and to be commended. One factor behind the positive variance was vacancy control, overtime control and budgetary control measures undertaken by this administration, as well as the credit mechanism signed with Erie County Medical Center Corporation ("ECMCC") regarding intergovernmental transfer ("IGT") and other obligations of both parties. Other positive variances included \$1.4 million in unexpected revenue through the County Clerk Registrar Division from recording fees as more homeowners and property owners conducted property sales and \$941,000 in new revenue in the Jail Management Division due to the County receiving payment from the City of Buffalo with the termination of the Buffalo Cellblock function. Finally, due to the mild winter in 2012, the County spent less than expected in the Road Fund on highway services.

And finally, it is encouraging that the County appears to have ended 2012 without needing to use the budgeted \$7.4 million of appropriated fund balance which the Collins Administration and Mr. Gach projected would be needed and which they placed into the 2012 Budget. At the same time, this example once again, reveals yet another inconsistency in Mr. Mychajliw's letter and statements when he praises the former administration while criticizing the budgeted use of fund balance.

Negative 2012 News

However, there were other worrisome trends for 2012, several of which could bode poorly for 2013 due to the Legislature's Budget amendments. The Sheriff Division (i.e. road patrol) went over-budget in 2012 by \$916,000 in overtime and \$835,000 in fringe benefits. The Jail Management Division went over-budget by \$2.5 million in overtime and \$3.75 million in fringe benefits. Because your Honorable Body cut the 2013 appropriations in several of these accounts, there is significant risk the County will not meet budget in 2013 in these areas. Due to issues associated with the U.S. Department of Justice and New York State Commission of Correction, overtime in the Department of Health, largely but not exclusively for correctional health services was also over-budget in 2012 by \$662,000.

In 2012, the Poloncarz Administration found and corrected a \$5 million revenue accrual error made in 2011 in the Department of Social Services which negatively affected the County's 2012 bottom line by \$5 million. In addition, in 2012 the County was compelled to charge off \$2.4 million of Federal Medical Assistance Percentage ("FMAP") revenue which was previously recorded in 2011. This action was unbudgeted by the Collins Administration and not expected. In addition, the County was required to make a disproportionate share/upper payment limit payment in 2012 that was also not budgeted by the Collins Administration.

2013 Issues

The Comptroller's letter also praises the Legislature for amending the 2013 Budget while condemning my administration for "attempt[ing] to raise property taxes last year...based on flawed fiscal projections and inflated budget categories." I find this astounding considering Mr. Mychajliw has publically agreed, on numerous occasions, with my administration and ECFSA that there are cumulative multi-million annual budget gaps in the 2013 Budget and the 2014-2016 out years of the Four Year Financial Plan ("Plan"), and even gone so far as to formally ask ECFSA to consider entering a control period. The more than \$25 million in new budget gaps that Mr. Mychajliw agrees exist did not exist in my original Plan, said Plan having been approved by ECFSA as a balanced and reasonable plan, but were the direct result of the Legislature's decision to eliminate \$8.5 million in reoccurring revenue without making balanced or actual, reasonable reductions in spending. Furthermore, the 2012 unaudited results show that in key accounts where the Legislature reduced appropriations for 2013, the County incurred negative variances and certain departments went over-budget significantly (including the Sheriff). Either Mr. Mychajliw agrees with my administration and ECFSA's assessment or he doesn't; he can't have it both ways.

2013 Sales Tax Receipts

As your Honorable Body is well-aware, having approved the amended 2013 Budget and its sales tax revenue estimates, this administration noted in the 2013 Budget that based on prior year trends averaging approximately 3% annual growth in sales tax, the 2013 target was reasonable. For the first three months of 2013, we are not meeting budget, but as we have constantly noted, sales tax is a volatile revenue stream and there are frequent swings from month to month, and quarterly reconciliations and prior period adjustments by the New York State Department of Taxation and Finance. It is important to keep in mind that until the first quarter 2013 reconciliation, the County was well above budget for sales tax in the first several months of 2013 at 5.49% growth over the same period in 2012. If sales tax revenues reflect anything, it is that there are few recent trends on which to gauge on a month-to-month basis. While cautious, no one should be panicking, especially the Comptroller, about this revenue source with only three months of actual data available.

Positive 2013 Trends

While not noted by Mr. Mychajliw in his press release and letter to Honorable Body, there are several ongoing positive trends in 2013 which my office has already advised your Honorable Body of, including:

- In the adopted 2013-2014 State Budget, all counties will benefit from an adjustment in the local share Medicaid-MMIS account. For Erie County, the Department of Social Services estimates a 2013 Medicaid-MMIS savings of \$1.8 million against the County's adopted 2013 Budget.
- Property tax collections, including delinquent property owners and collections through the Department of Real Property's recent foreclosure sale are highly positive. We currently estimate additional revenue totaling \$ 1.9 million in 2013 over-budget.

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- In the adopted 2013-2014 State Budget, all counties will benefit from an adjustment in the State's Consolidated Highway Improvement Program ("CHIPs"). For Erie County, in the SFY 2013-2014 the County will receive \$1.3 million more in CHIPs aid than anticipated.
- Due to a variety of factors, including but not limited to the growth of third party worker's compensation reimbursements, reduced expectations for old ECMCC costs (both workers compensation and retiree healthcare) and the tightening of pharmacy benefit actions starting in 2012 under a new pharmacy benefit manager, we have experienced reduced costs for both employee and retiree healthcare in 2012 and continuing in 2013.
- The opportunity to potentially opt into the State's new pension amortization program and save millions of dollars in the County's retirement bill due in December 2013 or February 2014.

I welcome an earnest and vigorous discussion about these issues. What neither I nor my staff will ignore or tolerate are reports or comments that are not factually correct and/or laden with innuendo or false representations for political purposes. Furthermore, these statements can have a deleterious effect on the County because Wall Street rating agencies review these reports and can often lead the agencies to incorrectly assume the county's finances are in a worse shape than they actually are. Unfortunately, when given a chance to work cooperatively with the Division of Budget and Management Mr. Mychajliw and his Deputy Comptroller, who created the 2012 Budget, chose to take the low road and engage in a partisan attack, potentially causing economic harm to the County.

In his short tenure as Comptroller, Mr. Mychajliw has made a habit of not working with my administration to address financial concerns and issues in a cooperative and collegial manner. His latest report bears that out. It is my hope in the future he will consult with the Division of Budget and Management before inaccurately commenting in public forums.

Sincerely yours,



Mark C. Poloncarz, Esq.
Erie County Executive

MCP/tcc

cc: Erie County Comptroller Stefan Mychajliw
Erie County Fiscal Stability Authority
Robert W. Keating, Director of Budget and Management