



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

April 28, 2014

Honorable Stefan I. Mychajliw
Erie County Comptroller
95 Franklin Street, 11th Floor
Buffalo, New York 14202

Re: Comptroller Investigation into Bureau of Weights and Measures Tip Line Call

Dear Comptroller Mychajliw:

As you know, on April 23rd at approximately 8:15 am, Erie County Deputy Comptroller—Audit Christopher Musialowski hand-delivered a letter addressed to Department of Public Works Commissioner John Loffredo stating that the Comptroller's Office was commencing an investigation of the Bureau of Weights and Measures ("W&M") based on an anonymous tip received by your office.

Attached to the letter were subpoenas issued by the Comptroller's Office demanding an extensive amount of documentation and ordering that W&M employees be made available to the Comptroller's Office for interview. At that time, Mr. Musialowski refused to divulge what the tipster was alleging, which is outside of standard protocol in the Comptroller's Office for vetting such whistleblower tips.

Unbeknownst to Commissioner Loffredo, after dropping off the letter, Mr. Musialowski immediately traveled to the W&M office at 2380 Clinton Street in Cheektowaga. Mr. Musialowski was accompanied by an on-duty, uniformed and armed Erie County Sheriff's Deputy. Mr. Musialowski then ordered W&M Director Edwin Gonsiorek, a career civil servant, to cooperate and served a subpoena on him directing him to provide a vast quantity of information. Mr. Gonsiorek cooperated and immediately provided the requested data during an approximate thirty minute period, with Mr. Musialowski and the Sheriff Deputy waiting in his presence.

We subsequently learned that Associate Deputy Comptroller Bryan Fiume had previously contacted the Erie County Sheriff's Office and represented to them that Mr. Musialowski required the assistance of an armed Sheriff's Deputy because he "imminently feared for his safety."

As I stated in my telephone call to you at 12:00 pm on April 23, I must express my extreme disappointment in your office's abuse of your powers granted by the Erie County Charter ("Charter"). While Section 2607 of the Charter grants the Comptroller the power to issue subpoenas, that power is not absolute and should not be abused. In my six years as Comptroller, I issued subpoenas once, and only as a last resort after the Collins' administration refused to cooperate with my auditors. In contrast, you have issued subpoenas twice over the past twelve months in relation to whistleblower tips,

Letter to Comptroller Mychajliw on Weights and Measures Investigation

April 28, 2014

Page 2 of 3

including the dubious Medicaid audit/recycling tote matter in the Department of Social Services (“DSS”) which was discredited. Subpoenas are only necessary if cooperation does not exist. In this instance, like in DSS, even after cooperation was pledged, and before any allegations had been stated, let alone proven, you took aggressive legal action as a first step and had Mr. Musialowski serve the subpoenas in the presence of a fully armed Erie County Sheriff’s Deputy.

Mr. Gonsiorek informed me that Mr. Musialowski stated to him that if he did not turn over the subpoenaed information “there would be repercussions.” Mr. Gonsiorek explained to Commissioner Loffredo and I that he felt intimidated and feared he could be arrested by the Erie County Sheriff’s Deputy if he did not immediately comply with the subpoena request. I believe this was not only an inappropriate use of police power, but degrades the respect we all should have for our own county employees. While we may never fully agree on all matters, I hope that we can agree county employees should not be put at fear of an imminent arrest if they do not immediately comply with a subpoena served upon them without notice. They should have an opportunity to consult with their department head and the county attorney prior to providing records.

I told you on our telephone call that the Department of Public Works and W&M would cooperate fully with any inquiry your office undertook. As the former County Comptroller who set-up the whistleblower tip lines, I have always supported the investigation of possible waste, fraud or abuse. As I stated during our phone conversation, if there is a problem or issue at W&M, then action should be taken to address that situation, I support such an inquiry, and, if inappropriate actions have been taken by staff of W&M, I want to know about it hold the appropriate individuals accountable. I would hope that if the “tip” is serious enough to warrant subpoenas, you would work cooperatively with my administration to take action – not act unilaterally. I also adhered rigorously to the standards contained in the Generally Accepted Government Auditing protocols. This involves an entrance conference, a statement of the scope of the proposed audit, and a request for cooperation with the involved department or agency.

In this instance, even without the entrance conference or an indication of the planned scope of the audit, Commissioner Loffredo promised full cooperation. Yet you still served the subpoenas and sent a Deputy Sheriff. This adds drama but not substance to your efforts, misallocates public safety resources, harms the reputation for professionalism of the Comptroller’s Office and intimidates county employees unnecessarily.

Your office’s request and use, under false pretenses, of an armed Erie County Sheriff’s Deputy to accompany Mr. Musialowski to W&M is unacceptable. There was clearly no threat or reason for a police officer to accompany your audit deputy to W&M. Mr. Gonsiorek cooperated and provided Mr. Musialowski with a flash drive of documents, as well as paper documents.

Your use of an armed police officer was a de facto intimidation tactic against W&M, made all the more egregious by your refusal to state the reasons for, or target of your investigation to the Commissioner of Public Works or to my office. Additionally, this appears to have been the first time to anyone’s knowledge that such an event occurred. As noted, I issued a subpoena only one time when the Collins’ Administration refused to turn over documentation after a prolonged effort to obtain them through other means, and it was served through the County Attorney’s Office, not with an Erie County

Letter to Comptroller Mychajliw on Weights and Measures Investigation

April 28, 2014

Page 3 of 3

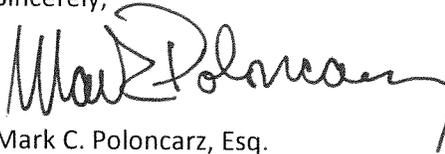
Sheriff's Deputy being present. As I relayed to you in our phone conversation, I spoke to the Hon. Alfreda Slominski prior to our conversation and she rarely issued subpoenas during her many years in office and never had them served with a Erie County Sheriff's Deputy being present. It appears no similar action was taken during the administrations of Comptroller Naples nor Comptroller Shenk.

If your Office was truly worried that documentation might be destroyed, as you relayed to me, service of such subpoenas could have been effectuated through the use of a member of the County Attorney's staff or Commissioner Loffredo being present, not an armed Erie County Sheriff's Deputy. Your Office's action set a dangerous precedent, is an abuse of your power and is wrong.

Furthermore, as I stated to you in our conversation, if you need to contact me to discuss such a delicate matter I ask you to call me on my mobile phone, not leave a voice message with my Office. I have called you on your mobile phone to discuss important matters with you during non-work hours (most recently being during the Blizzards) and ask you to do the same.

My hope is this is a one-time incident and moving forward we never will have to deal with such a matter again. As always, if there is an urgent matter you need to discuss with me, please contact me on my mobile phone regardless of the time of day.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Poloncarz". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark C. Poloncarz, Esq.
Erie County Executive

MCP/mt

cc: Erie County Attorney Michael Siragusa
John Loffredo, Commissioner of Public Works