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ERIE COUNTY LEGISLATURE

HON. LYNNE DIXON
LEGISLATOR
DISTRICT 9

November 5, 2012

Michael Siragusa, Esq.
Erie County Attorney
95 Franklin Street, Suite 1634
Buffalo, New York 14202

Dear County Attorney Siragusa:

This letter serves as a follow-up to our conversation regarding the legality of Sheriff's office expenditures as outlined in County Comptroller Shenk's audit findings discussed at Thursday's Public Safety Committee meeting. I know that you were present for most, but not all, of the meeting so I will try to briefly highlight my questions.

As part of his audit, Comptroller Shenk reviewed expenditures made from revenues from the commissary and telephone funds. Even though these are separate funds, the Comptroller combined them for purposes of his analysis. The Comptroller then found that 75% of the expenditures were acceptable, 15% were questionable and 10% were unacceptable. It appears that the Comptroller created this rubric based on whether the expenditures directly benefitted prisoners (acceptable), indirectly benefitted prisoners (questionable) or did not benefit prisoners (unacceptable). He stated that he created this rubric based on a requirement that commissary fund expenditures are supposed to benefit prisoners.

Is there a legal requirement that commissary fund expenditures directly benefit prisoners? Using the Comptroller's reasoning, spending tax dollars on his department would be considered questionable, because the Comptroller's office indirectly benefits residents of Erie County with audits and reviews. However, spending tax dollars on audits and reviews is certainly legal and permissible and, in many cases, advisable. Similarly, I would like to know whether the expenditures made by the Sheriff from the commissary fund were legal and permissible. If the law does indeed define what "questionable" expenditures are, this would help me make an informed opinion of the audit results. This will allow me to evaluate whether the Comptroller's statement is based on law and fact, or merely his opinion of what should be New York State law and policy.

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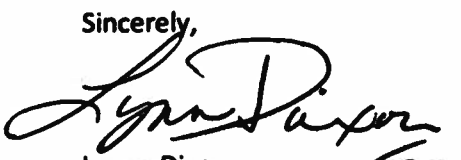
Based on statements made by the Sheriff and the Comptroller, expenditures from the commissary fund and telephone fund have different rules. The Comptroller acknowledged that the 10% of expenditures that he labeled unacceptable were expenditures made from the telephone fund. The Sheriff stated that the expenditures made from the telephone fund were proper. In an article in the Buffalo News, New York State Commission of Correction spokeswoman Janine Kava is quoted as saying "The commission has no regulation on how that money is spent. It's a matter for the sheriff and the county." Were the expenditures made by the Sheriff from the telephone fund legal and permissible? Again, this will allow me to evaluate whether the Comptroller's statement is based on law and fact, or merely his opinion of what should be New York State law and policy.

In summary, I am seeking your opinion as to the following questions:

> Were the Comptroller's descriptors of "acceptable," "questionable," and "unacceptable" based on legal definitions?
>
> Were the expenditures made from the commissary fund by the Sheriff labeled as "questionable" legal and permissible?
>
> Were the expenditures made from the telephone fund by the Sheriff labeled as "unacceptable" legal and permissible?

As always, thank you for your insight into this matter. If you have any questions for me, or require further information, please do not hesitate to contact me.

Sincerely,



Lynne Dixon
Erie County Legislator
District 9