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COUNTY OF ERIE

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DEPARTMENT OF LAW

December 11, 2012

VIA HAND DELIVERY
Joseph Sacco, Secretary
Community Corrections Advisory Board
92 Franklin Street, 4th Floor
Buffalo, NY 14202

RE: Request for Legal Opinion – Telephone Funds

Dear Mr. Sacco:

I have received and reviewed your letter of November 29, 2012, requesting a legal opinion with respect to the Erie County Sheriff's use of telephone revenues. Specifically, you have requested a legal opinion addressing the following issue: "Does the Sheriff's Office have sole control over the funds, or should the funds be deposited through the Comptroller's Office and appropriated through established county procedures?"

New York State County Law Section 201 entitled "Compensation of officers" specifically states: "[A]ll fees, percentages, emoluments or other compensation received by any such officer by virtue of his office from whatever source shall belong to the county and be paid into the county treasury monthly on or before the tenth day of the month. Each such deposit shall be accompanied by a statement in summary form of the sums so paid." Although this is not a situation wherein the Sheriff has kept or is seeking to keep the telephone revenues as additional compensation, this section does direct that all county officers turn over such monies to the county treasurer. This requirement also applies to all county employees. See New York State County Law Section 205. Furthermore, New York State County Law Section 407 entitled "Account of fees" states that "[T]he county officer authorized to receive fees or other form of compensation belonging to the county shall keep a record showing the nature thereof, from whom received, date of receipt, amount and when paid to the county treasurer."

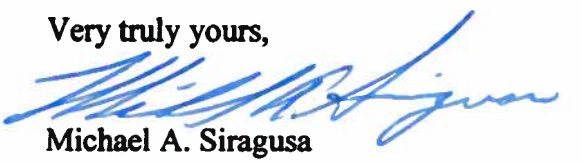
By way of further illustration I point to the proper treatment of jail commissary funds. Pursuant to its authority under New York State Corrections Law Section 45(6), the New York State Commission of Correction has promulgated the following regulation: "Profits resulting from commissary sales shall be deposited in a separate bank account and shall be utilized only

for purposes of prisoner welfare and rehabilitation" (9 NYCRR 7016.1(c)). This regulation effectively excludes commissary funds from being treated as "fees or other form of compensation belonging to the county" within the meaning of County Law Sections 201, 205, and 407. Therefore, such profits from commissary sales do not have to be turned over to the county Comptroller's Office, but are instead deposited in a separate bank account maintained by the sheriff (9 NYCRR 7016.1(a)). In stark contrast to the provisions governing the treatment of Commissary Funds, there exist no such rules or regulations which would permit a county sheriff in New York State to accept and appropriate telephone revenue monies unilaterally. Accordingly, absent such provision of law, telephone revenues must be treated as "fees or other form of compensation belonging to the county" and paid over to the County Comptroller.

Given the above, it is my opinion that, in accordance with New York State County Law Sections 201, 205 and 407, the Sheriff does not have sole control over the telephone revenues generated and that such revenues must be remitted to the Erie County Comptroller and appropriated through established county procedures.

Please advise if you need any additional information. Thank you.

Very truly yours,



Michael A. Siragusa
Erie County Attorney