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ERIE COUNTY LEGISLATURE

REPUBLICAN CAUCUS

May 8, 2012

Mr. Michael A. Siragusa, Esq.
Erie County Attorney
95 Franklin Street – Room 1634
Buffalo, New York 14202

Re: Opinion Request Regarding Communication 19D-5 (2011)

Dear County Attorney Siragusa:

Erie County Legislature Communication 19D-5 (2011) is currently in the legislature's Public Safety Committee. I enclose a copy of the item for your review, along with the amendment to the item which was approved at the May 3, 2012 Public Safety Committee meeting. I write to you to request your legal opinion regarding several issues.

The resolution is a departmental communication that is not sponsored by an elected official. Can it be approved by the legislature in its current form?

The first resolved clause recommends the position of Ombudsman be created in the 2012 budget. The second resolved clause states that the position is created. Creation of the position would be amending the 2012 budget. However, the resolution includes no budgetary information. Is this proper and would the resolution be effective without such language?

If so, where would the money to fund the budget come from?

The third through seventh resolved paragraphs include certain duties of the Ombudsman. Are these duties exclusive to the Ombudsman, or are they duplicative and perhaps competing with other officials, including elected officials? The seventh resolved in particular gives the Ombudsman the power to facilitate fair settlements. Would this resolution have the effect of changing duties assigned by the Erie County Charter to elected officials? If so, would this require a revision to the Erie County Charter?

The ninth resolved paragraph states that the Ombudsman may not be an employee or member of the Erie County Sheriff's Office. This would infer that the Ombudsman may otherwise be an Erie County employee. Is it proper for an Erie County employee to

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hold multiple employment positions with Erie County? If so, what guidelines must the employee observe?

The tenth resolved paragraph states that the Ombudsman will be appointed by the Erie County Community Corrections Advisory Board. Is it proper for an advisory group made up of non-elected and non-employee members to make hiring decisions for Erie County?

The resolution does not discuss a term of office for the Ombudsman or termination procedures for the position. If passed without such information, what would be the default provisions?

The final resolved paragraph states possibilities for funding the position, including the commissary fund and inmate telephone funds. Is it proper, pursuant to 9 NYCRR 7016.1 (a), for the Sheriff to not maintain and operate this fund?

It is anticipated that the legislature will wish to move forward on this item in the near future. You answers to the questions posed in this correspondence, as well as any other insight you may wish to offer, will be very helpful in guiding my decision on how to proceed with this item. Thank you very much for your assistance. If you have any questions for us, please do not hesitate to contact us.

Sincerely,

Edward A. Rath, III

Lynne M. Dixon

Cc: Hon. Timothy R. Hogues
Chair, Public Safety Committee