

SUSPENSION

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MEMORANDUM

March 15, 2018

RE: Legal Opinion Regarding INTRO. 6-2 (2018), Erie County Water Authority

Dear Honorable Members of the Erie County Legislature:

INTRO. 6-2 (2018) has been presented to your Honorable Body seeking a "90-day moratorium on the selection and seating of any commissioner to the Erie County Water Authority," as well as seeking to "undertake a thorough review of the major reform options and to do it in full transparency." There is a question as to whether Intro 6-2 (2018) conflicts with State law as offered.

Public Authorities Law - PBA § 1053, governs how appointments of commissioners are made and the procedure therein as follows:

"Any subsequent appointment shall be made for a term of three years and shall be made by the chairman of the board of supervisors of the county of Erie, pursuant to nominations in writing by the majority, respectively, of the supervisors of each political party represented on such board of supervisors, subject to confirmation by a majority of such board of supervisors. All members shall continue to hold office until their successors are appointed and qualify."

Generally speaking, no local law or resolution may be inconsistent with any provision of a State constitution, which involves restrictions generally applicable to all laws, such as due process of law and equal protection laws, as well as specific restrictions in Article 9 or other articles of the State constitution.

Subdivision 1 of Section 11 of the Municipal Home Rule Law contains specific restrictions on the power to adopt local laws or resolutions. It expressly provides that a, "local government shall not be deemed authorized to adopt a local law which supersedes a State statute relating to the subject in question" (in this case Public Authorities Law § 1053).

In certain instances, there is a clear expression in the law itself to the effect that the State has exercised the right of jurisdiction over the particular subject involved. In this case, Intro 6-2 (2018) is seeking to supersede Public Authorities Law § 1053 by thwarting the legal mechanism of seating a commissioner to the Erie County Water Authority.

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In conclusion, because the process to nominate and appoint commissioners of the Erie County Water Authority is specifically set out in State law, any deviation from that process could be in conflict with State law.

Respectfully submitted,



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