

SUSPENSION



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County of Erie

MARK C. POLONCARZ
COMPTROLLER

FM

January 20, 2011

Martin A. Polowy, Esq.
Erie County Attorney's Office
95 Franklin Street, 16th Floor
Buffalo, New York 14202

Re: 2011 Budgeted Positions

Dear Mr. Polowy:

In the County Executive's proposed 2011 budget, sixteen (16) dispatcher positions were deleted from the Office of Sheriff ("Sheriff") and moved to the Department of Central Police Services ("CPS"). Subsequently, the Erie County Legislature ("Legislature") deleted those positions from CPS and returned them back to the Sheriff, as well as deleted the position of County Attorney and restored said position but at a reduced salary. Subsequently the County Executive vetoed the additions and attempted to declare the Legislature's deletions "null and void."

On December 14, 2010, New York State Supreme Court Justice Joseph Glownia held that (1) "[t]he Erie County Charter does not permit the County Executive to declare reductions to the budget null and void"; (2) the "Erie County Legislature's 2011 budget reduction amendments complied with 2608 of the Erie County Charter"; and (3) the "Erie County Legislature's 2011 budget reduction amendments were filed prior to the forty-eight hour period requiring a line item vote." Therefore, the Legislature's cuts to the County Executive's proposed 2011 budget were enacted lawfully.

After Judge Glownia rendered his decision, the Legislature held a meeting in an attempt to override the County Executive's vetoes, but that override vote failed. As a result, none of the original 16 dispatcher positions in County government exist in any form because (1) the County Executive's original proposal to move the positions to CPS was cut from the budget by the Legislature and (2) the Legislature's attempt to restore those positions to the Sheriff failed when the override vote failed. The same can be said of the position of County Attorney.

While there is presently no individual in the position of County Attorney, it is my understanding you are presently in the title of First County Attorney, there are 16 dispatchers presently employed by the County in phantom positions that do not exist in the adopted budget. Our office can confirm that as of January 14, 2011, these positions were identified in the

2E-17

Poloncarz Employees Status Letter to Polowy
January 20, 2011
Page 2 of 2

County's SAP accounting system as being in the Office of the Sheriff; however, pursuant to the County Executive's actions, those positions were deleted from the 2011 budget. A listing of the individuals is enclosed herewith identifying their current positions.

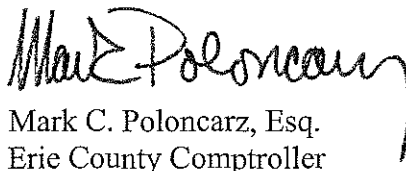
On January 14, 2011, I had a telephone conversation with John Greenan, Commissioner of Personnel, who confirmed that the individuals were still employed by the County and working in positions under the Sheriff, but it was the administration's intention to move these individuals to CPS. When asked under what authority could those positions be moved to CPS, or for that matter are they currently in the Sheriff's Department, Mr. Greenan referred the undersigned to you for a legal opinion.

It is our Office's opinion that no budgeted positions exist for these employees. While I agree that these employees are performing a needed service to the citizens of the County, and must be paid under the Fair Labor Standards Act for any work they have previously provided to the County, there currently is no budgeted position to pay these employees. Additionally, our Office is concerned that the failure to have a formally adopted budget position for each of these individuals could subject the County to significant liability if one of these "employees" is injured while performing services for the County in a job that does not legally exist.

As such, please confirm in writing to the undersigned by 5:00 pm on Friday, January 21, 2011, an opinion on (1) how the County could legally employee individuals as employees if the positions they are working in do not exist in the adopted budget; (2) the current status of these "employees" (if they are employed and, if so, in what department(s) are they employed); (3) how they could be paid by the County for performing services in positions that no longer exist; and (4) whether the County is assuming significant liabilities (e.g., personal injury instead of workers' compensation, etc.) if one of the individuals gets injured while "working" for the County in a position that does not exist.

If you have any questions please call the undersigned at your earliest convenience.

Sincerely yours,


Mark C. Poloncarz, Esq.
Erie County Comptroller

MCP/nr
Encl.

cc: Erie County Legislature ✓
Hon. Christopher C. Collins, Erie County Executive
Hon. Timothy B. Howard, Erie County Sheriff
John Greenan, Personnel Commissioner
Erie County Fiscal Stability Authority

Dept	Position	Job Group	Current Name	PN	Current Salary
1 Office of the Sheriff	*Dispatcher (Sheriff)	7	Andrew Birtch	17264	\$ 31,604.00
2 Office of the Sheriff	*Dispatcher (Sheriff)	7	Michael Barberio JR	17661	\$ 31,604.00
3 Office of the Sheriff	*Dispatcher (Sheriff)	7	Broc Dehn	8002	\$ 38,160.00
4 Office of the Sheriff	*Dispatcher (Sheriff)	7	Kimberly Geniti	17251	\$ 31,604.00
5 Office of the Sheriff	*Dispatcher (Sheriff)	7	Thomas Gilray JR	17660	\$ 31,604.00
6 Office of the Sheriff	*Dispatcher (Sheriff)	7	Michael Graczyk	5338	\$ 41,739.00
7 Office of the Sheriff	*Dispatcher (Sheriff)	7	Karen Gruber	16380	\$ 31,604.00
8 Office of the Sheriff	*Dispatcher (Sheriff)	7	Gregory Hayden	5337	\$ 41,739.00
9 Office of the Sheriff	*Dispatcher (Sheriff)	7	Darci Hultquist	5336	\$ 39,951.00
10 Office of the Sheriff	*Dispatcher (Sheriff)	7	Timothy Max JR	18165	\$ 29,817.00
11 Office of the Sheriff	*Dispatcher (Sheriff)	7	Joseph Sajdak	5312	\$ 39,050.00
12 Office of the Sheriff	*Dispatcher (Sheriff)	7	Robert Trask	5342	\$ 39,951.00
13 Office of the Sheriff	*Dispatcher (Sheriff)	7	Tairra Whitis	17250	\$ 31,604.00
14 Office of the Sheriff	*Dispatcher (Sheriff)	7	Empty position		
1 Office of the Sheriff	*Dispatcher (Sheriff) 55A	7	Michael Brucklier	5446	\$ 42,632.00
2 Office of the Sheriff	*Dispatcher (Sheriff) 55A	7	Mark O'Brien	16297	\$ 33,249.00