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County of Erie

MARK C. POLONCARZ
COMPTROLLER

February 15, 2011

Senator Patrick M. Gallivan
New York State Senate
947 Legislative Office Building
Albany, New York 12247

By Facsimile 518-426-6949 and U.S. Mail

Re: Erie County Fund Balance and Extension of the One Percent Sales Tax

Dear ~~Senator Gallivan~~: Pat,

Thank you for your introduction of Senate Bill No. 2787 which will allow Erie County (the "County") to continue to negotiate bonds at private sale through June 30, 2012. The passage of this legislation would allow the County to adjust sale dates, coupon rates and maturities to ensure a more successful sale of bonds, which would, in turn, save our constituents money through reduced interest costs. On February 9, 2011, I transmitted to the Erie County Legislature a letter and proposed resolution adopting home rule requests for the Senate and corresponding Assembly Bills. A copy of that home rule request is enclosed herein. I thank you for your introduction of the bill and look forward to its successful passage later this year.

I am in receipt of your letter dated February 9, 2011 regarding the potential extension of the one percent (1%) sales tax and the County's current fund balance. Please be advised that the County Executive's calculations of the current fund balance and corresponding five percent (5%) threshold thereto are incorrect. As explained herein, the County Executive's calculations do not follow Generally Accepted Accounting Principles and have been rejected by both this Office and our independent auditor Deloitte & Touche, LLP ("D&T"). The County Executive included his restatement of fund balance in his Budget Messages for Fiscal Years ("FY") 2010 and 2011, and each time this office rejected said restatement in our report on his proposed budgets.[1] Moreover, the County's annual Financial Statements accurately state the current level of fund balance, not the County Executive's Budget Message.

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[1] See Comptroller's review of the County Executive's Proposed 2011 Budget and Four Year Financial Plan dated October 13, 2010, at page 14, and Comptroller's review of the County Executive's Proposed 2010 Budget and Four Year Financial Plan dated October 21, 2009, at page 17.

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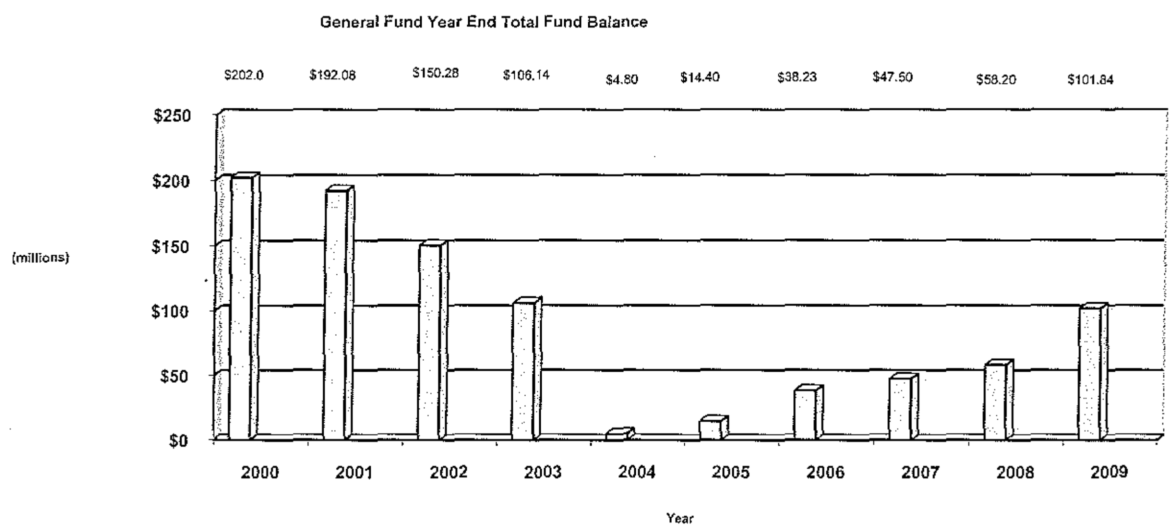
As you know, the County's fund balance of over $200 million was reduced to less than $5 million as a result of the fiscal meltdown that led to the notorious "Red – Green Budget" of the Giambra Administration. Since then, the County has slowly restored its fund balance and, as a result, its credit rating back to the "A" category.[2]

Figure 1 below identifies the significant reduction and then growth of fund balance from FY 2000 – 2009. As shown below, FY 05 results generated a $9.6 million surplus, though primarily as a result of the refinancing of tobacco settlement bonds; FY 06 results generated a true $23.83 million surplus, which was not predicated on one shot mechanisms like the sale of tobacco bonds; FY 07 results generated a $9.31 million surplus; FY 08 results generated a $10.65 million surplus; and FY 09 results generated a $43.65 million surplus. This led to a total General Fund Balance of $101.84 million at year end 2009, of which $74.05 million was undesignated and unreserved.[3] Given the requirements of the Four Year Plan, sound municipal finance practice and the Government Finance Officers Association's ("GFOA") recommendations, the replenishment of fund balance is a positive and necessary development.

Figure 1



[2] The County is presently rated "A2" by Moody's, "A" by Fitch and "BBB+" by S&P.

[3] The General Fund Balance total of $101.84 million includes other County funds and encumbered amounts that are not included in the determination of the undesignated and unreserved fund balance. Additionally, the County has not yet issued its Financial Statements for FY 2010 and therefore has not closed last year. While the County is trending to end 2010 with a surplus, the amount cannot be determined until the Financial Statements are audited and issued, which will not occur until sometime in June 2011.

As referenced in your letter, as of January 1, 2007, the County Charter requires the maintenance of a fund balance equal to or greater than 5% of the amount contained in the budget of each fund in the immediately preceding fiscal year. This means for 2011, based on an adjusted 2010 General Fund "operations budget" of $1.048 billion (adjusted for the sales tax sharing and Library related expenditures), undesignated fund balance for the General Fund should be approximately $53.25 million. At year-end 2009, total undesignated unreserved General Fund balance was $74.05 million. However, the 2011 Budget appropriates $16.7 million of fund balance for present year operating expenses. Thus, while our office cannot state the fund balance total upon the close of FY 2010, we do know that of the prior undesignated unreserved General Fund balance of $74.05 million, $16.7 million will be spent in 2011 to cover gaps that otherwise exist.

As stated above, the County Executive improperly restates the County's General Fund Balance in his FY 11 Proposed Budget, which follows his improper restatement in 2010. Under this restatement, the County Executive represents that the "Restated Undesignated General Fund Balance" is $131,989,342 after the addition of 2009 and 2010 community college and Board of Elections re-spread revenues (which are already budgeted for elsewhere), and hypothetical collections of 2006, 2007, 2008, 2009 and 2010 tax liens (totaling $36,523,690) to create a fictitious General Fund Balance of $131.99 million.

This office rejects his restatement, as does D&T, the Erie County Fiscal Stability Authority, and the rating agencies which rate the County. This restatement also does not meet Generally Accepted Accounting Principles and Governmental Accounting Standards Board pronouncements. Projecting hypothetical future tax lien collections as current available fund balance is not sound accounting or financial practice.

Furthermore, while the Erie County Charter very clearly identifies the fund balance 5% maintenance requirement, the County Executive asserts in his FY 11 Proposed Budget that the base County budget number for the 5% calculation is not the "operations budget" from 2010 of $1.048 billion, but a "2011 County Share Operations Budget" totaling $679,406,992. Under his misstatement, the 5% fund balance threshold is therefore $33.97 million, and not $53.25 million.

We believe the administration engaged in this restatement to create an imaginary "County Share Operations Budget" in order to make available additional fund balance as a potential revenue source to cover budget gaps – likely in 2012. The fact that the administration uses nearly $17 million of General Fund balance in 2011 reveals their intentions very clearly.

This is a serious matter with significant negative consequences to the County. We do not accept such a phony restatement to revise the General Fund Balance based on unaccepted accounting practices. This type of gimmickry is not only unacceptable but also contrary to Generally Accepted Accounting Principles.

As such, you must disregard the County Executive's improper restatement of fund balance in your deliberations and consider the County's true fund balance and correct calculation of the 5% fund balance threshold, which, as of FY 2009, is $74.05 million (of which $16.7 million is to be appropriated in FY 2011) and $53.25 million, respectively.

In regards to the extension of the one percent (1%) sales tax, the FY 2011 Budget anticipates collecting $151,043,491 in sales tax directly related to the 1% sales tax extension, of which $138,543.491 is the County's share and $12,500,000 is shared with local cities, towns and villages. The current extension of the 1% sales tax expires on November 30, 2011.

I agree with your general premise that the burden placed on local taxpayers is too high. In fact, I share your concerns regarding the size of Erie County's sales tax. As I stated in my 2007 report on sales tax and the sharing thereof:

> This office is keenly aware of the consequences and issues associated with the sales tax and sales tax sharing but we believe that Erie County Government, working in cooperation with the local delegation of the New York State Legislature, and city, town, village and school officials, must reexamine the entire question of sales tax revenue sharing, as well as the 1977 Agreement. Reexamination of this issue will also resolve the issue of whether the 1.00% "temporary" sales tax should be made permanent, and whether the other "temporary" 0.75% sales tax will be needed going forward.[4]

Like you I am concerned about the amount of our sales tax and the negative impact it may have on our local economy. That is the reason, since issuing the sales tax report in 2007, I have advocated for a discussion between state, county and local officials to address the size of the County's sales tax. However, if the 1% sales tax extension is allowed to lapse without implementing other measures to ensure the fiscal stability of the County, while the County may be able to end 2011 with a balanced budget, the negative impact on 2012 and beyond would be so significant that it would likely jeopardize the County's current "A" credit rating and the County's ability to deliver needed services. It would also result in the significant reduction in revenue for the cities, towns and villages.

[4] See Comptroller's Review of Revenues Derived from Erie County's Sales Tax and the Sharing Thereof with Other Entities, dated September 4, 2007, http://www.erie.gov/comptroller/pdfs/review_2007_sales_tax_report.pdf, at page 12.

Finally, I might have given you the wrong impression when we spoke earlier regarding which County office seeks the extension of all portions of the sales tax. It is the County Executive's Office that must introduce the home rule message request to the Legislature for the extension of all portions of the County's sales tax; not my office. If I provided you with the wrong impression, then I apologize for any confusion that may have resulted.

I hope this correspondence effectively addresses any questions you or your staff might have related to the County's true fund balance, confusion that should not exist but for the County Executive's attempt to mislead the public on the County's current financial standing, and which branch of County government must pursue the extension of the sales tax.

Once again, I thank you for your introduction of Senate Bill No. 2787 and if you have any questions on any matter related to Erie County please feel free to contact 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
Hon. Michael Ranzenhofer
Hon. Mark Grisanti
Hon. Timothy Kennedy
Erie County Fiscal Stability Authority