



County of Erie

MARK C. POLONCARZ
COMPTROLLER

September 28, 2011

Jeremy A. Colby, Esq.
Erie County Attorney
95 Franklin Street, Room 1600
Buffalo, New York 14202

Re: Waste, Fraud and Abuse Tip Line Communication

Dear Mr. Colby:

Please be advised that I am in receipt of your letter dated September 16, 2011 which is in response to Deputy Comptroller Michael Szukala's September 15, 2011 letter to Commissioner Brian McLaughlin in regard to an anonymous communication received through our waste, fraud and abuse reporting mechanism.

I am a bit perplexed as to why you would address the letter to the undersigned when (1) the original letter was not addressed to you and (2) I did not draft the original letter. Additionally, I find the caustic tenor of your letter to be remarkable considering you are addressing (1) a client you are supposedly representing; (2) a public official; and (3) a fellow attorney. It is disappointing to see that the nasty tone and tenor of the county executive has filtered down to his appointee, though not surprising.

Furthermore, considering you represent multiple parties, including in this scenario this office, Commissioner McLaughlin, Commissioner Vito and the county executive, I do not believe you can adequately represent any party in this matter. I suggest you review New York Ethical Canon § 5-15 and Disciplinary Rule 5-105 for guidance on when an attorney should not represent multiple clients due to the inability to exercise independent judgment.

Notwithstanding the forgoing and for the record, I dispute the statement contained in your letter that "Your Office has no authority to make such an inquiry or to demand compliance by today." While various state laws and county charter and code provisions set forth the duties and powers of the Division of Audit and Control, our office disputes your contention that said legislation is the only source of authority for the Division of Audit and Control.

The Erie County Comptroller's Office is responsible for the development of the County's internal control policies and system. It is the County's internal controls, rules and policies that insure the accuracy and completeness of the County's official accounting records. The authority for this is detailed in Erie County's Accounting Policies (as available on Erie County's SharePoint system), Erie County Charter § 19.02, and Erie County Code § 12.02.

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Guiding the Comptroller's development of the County's internal control system is a series of professional standards. In some cases these standards are specified, as in the Erie County Charter § 1902 (b) which requires the Comptroller to use "standards and policies prescribed by the New York state comptroller and the governmental accounting standards board" and in Erie County Charter § 1902 (e) and (g) which requires the Comptroller's Office to perform specific tasks "in conformity with generally accepted auditing standards as prescribed by the american institute of certified public accountants and the comptroller general of the United States."

I cite these paragraphs to make the point that various professional standards and the County's Accounting Policies also mandate the Comptroller's Office perform certain activities. In other cases the standards are not specified in county law but are required under generally accepted accounting and auditing principles.

For your information, the Government Finance Officers Association of the United States and Canada ("GFOA") 2005 publication titled *Governmental Accounting, Auditing, and Financial Reporting* (aka the "Blue Book"), outlines the following five essential elements of a comprehensive framework for internal control:

- Provide a favorable control environment
- Provide for the continuing assessment of risk
- Provide for the design, implementation, and maintenance of effective control-related policies and procedures
- Provide for the effective communication of information
- Provide for continuous monitoring of the effectiveness of control-related policies and procedures, as well as the resolution of any potential problems identified

Therefore, as provided under the standards of the GFOA, the Comptroller's Office has the authority (and ability) to assess risk to the County and is mandated to monitor the effectiveness of control related policies and procedures.

Additionally, please be advised that Generally Accepted Government Auditing Standards ("GAGAS") provide for the examination of abuse and that said review is subjective in nature. As stated in Chapter 4 §§ 4.12 and 4.13 of the GAGAS:

4.12 Abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. Abuse also includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate. Abuse does not necessarily involve fraud, violation of laws, regulations, or provisions of a contract or grant agreement.

4.13 If during the course of the audit, auditors become aware of abuse that could be quantitatively or qualitatively material to the financial statements, auditors should apply audit procedures specifically directed to ascertain the potential effect on the financial

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statements or other financial data significant to the audit objectives. After performing additional work, auditors may discover that the abuse represents potential fraud or illegal acts. Because the determination of abuse is subjective, auditors are not required to provide reasonable assurance of detecting abuse.

As stated above, our office is required to review for potential abuse, the determination of which is subjective in nature, and based on our requirement to adequately maintain and review the County's fiscal state and internal control structure. Thus your contention that the Comptroller's Office cannot examine specific activities, policies or inquire into the identities of specific persons engaged in a county related activity, law-enforcement related or not, is incorrect.

Mr. Szukala requested information pertaining to the tip line accusation concerning Mr. Vito's activities in conjunction with a "volunteer roundup" on Kensington Avenue in Buffalo. Answers to the questions below allow the Comptroller's Office to assess risk to the County, to determine if such activity occurred and to determine if accounting or other policies were violated, the extent of any violation and the nature and extent of any abuse.

Once more, as the attorney representing not only the various departments of our government but the people of our community, I would expect your office's assistance to be rendered to my office in our investigation into any possible waste, fraud or abuse reported through our reporting mechanisms. Unfortunately, based on your caustic letter it would appear your office is incapable of representing this office in this matter due to the significant conflicts that exist.

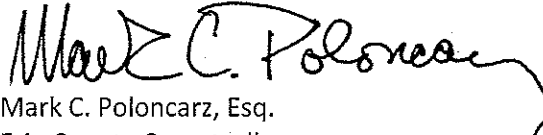
As such, our office will once again request Commissioner Brian McLaughlin to respond to our initial letter addressed to him and answer the below-described questions:

- Did Commissioner Vito participate in the aforementioned operation or any previous operation of the Probation Department, and if so, what was the scope of his participation?
- Does Commissioner Vito have a permit to carry a firearm? Did he carry a firearm during this operation? Even if he should possess a permit to carry a firearm, who authorized Mr. Vito's participation in the aforementioned operation?
- Is it true that during this probation violators 'roundup' a Johnny Williams, or another named individual, sustained injury from jumping out of a third floor window in an effort to evade officers? If so, please provide any details available regarding this matter.
- Who was the officer in charge of this operation?
- What rules exist governing who may or may not participate in official Probation Department business, and were they followed?

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If you have any questions regarding this or other matters please contact the undersigned at your earliest convenience.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Mark C. Poloncarz", with a stylized flourish at the end.

Mark C. Poloncarz, Esq.
Erie County Comptroller

MCP/nr

Cc: Hon. Christopher C. Collins
Erie County Legislature
Erie County Fiscal Stability Authority
Commissioner Peter M. Vito
Director Brian McLaughlin