# COUNTY OF ERIE

**MARK C. POLONCARZ**
COUNTY EXECUTIVE

May 31, 2014

Hon. Stefan I. Mychajliw
Erie County Comptroller
95 Franklin Street, 11th Floor
Buffalo, New York 14202

**Re: 2014 Capital Borrowing**

Dear Comptroller Mychajliw:

On April 3, 2014, the Erie County Legislature ("Legislature") approved Comm. 6E-4, the 2014 Consolidated Bond Resolution. The Legislature's approval started the process for commencing the County's 2014 capital projects, including providing for cash advances and proceeding to market to sell the bonds to finance the 2014 capital projects ($28,851,784).

In addition, in March 2014, the Division of Budget and Management informed your office that the County's Division of Sewerage Management was seeking bonds to be sold for six specific projects that had previously been approved via bond resolutions by the Legislature ($3,680,000). Your office agreed to include the Sewer bonds in the 2014 bond sale.

Under Article 18, Section 1802 (a) of the Erie County Charter ("Charter"), you serve as chief fiscal officer of the County in which role you "oversee the fiscal affairs of the county including the sale of all bonds and notes."

Section 1802 (k) of the Charter specifically states that you shall:

> With the assistance of the county attorney or his or her designee, prepare bond resolutions for approval by the county legislature and secure funds from the bond market for approved capital projects. Notification of plans to secure both funds shall be provided to the county executive and the legislature fifteen days in advance of borrowing. A report of funds secured shall be provided to the county

> executive, legislature, finance commissioner, and budget director within fifteen days after funds are secured. This report shall disclose the type of instrument used, all costs associated with the borrowing interest rate, and repayment schedule. *In addition, once the Erie county legislature and county executive approve the bond resolution, the comptroller must, as requested, seek financing of said bond resolution.* Furthermore, after the required approvals by the Erie county legislature and the county executive, funds approved for capital projects must be released by the comptroller.

Under the Charter, once the County Executive requests that you seek financing of the bond resolution, you must, as required, proceed in that task. Your role as comptroller is ministerial in function. **Therefore, I hereby request that you seek financing for the 2014 capital and Sewer bonds.**

As you know based on our telephone conversations on May 29th, my administration has received an underwriting proposal from working with M&T Securities, a division of M&T Bank ("M&T"). The M&T proposal is less costly to the County than the underwriting proposal/analysis developed by the Erie County Fiscal Stability Authority ("ECFSA") and provided to the County in March 2014. I believe the M&T proposal is advantageous to the County in both its cost and the positive implications to the County of re-entering the credit markets. Based on what you stated to the undersigned during our telephone conversations, I was lead to believe you agreed it was time for the County to return to the bond markets through a bond issuance carried out by your office.

Based on our discussions, and at your request, we have scheduled a meeting on Monday, June 3rd at 10:00 am to discuss this matter. I had hoped to meet with you on Thursday or yesterday and to have a dialogue about this matter prior to you making any decisions.

However, I was disheartened to see your comments in local media outlets on May 30th in which you were quoted or cited as stating that you believe ECFSA should continue to borrow on behalf of the County even before you had conducted any underwriting request for proposals ("RFP") or met with me to discuss the M&T proposal or other facts related to this issue.

In fact, in response to my recommendation that the County borrow under our own authority, you told WIVB-TV: "It's bizarre because the county executive's office has nothing to do with that process. By the law, borrowing goes through the chief financial officer, which is me as county comptroller."

You stated to WBFO-FM that "We've been heavily involved here in the Comptroller's Office in the process of borrowing since February. And when we make a decision on the process we'll let the county executive know. And we'll let the public know as well." In my opinion, it is the statements you have made that are in fact 'bizarre,' because (1) it shows a lack of understanding on your part of the borrowing process under the Charter; and (2) aside from asking the County's financial advisor, First Southwest Company, to conduct an analysis of County borrowing in March 2014, your office has done nothing else concerning borrowing, including conducting a RFP and soliciting bond proposals from potential underwriters to determine the potential costs of borrowing. In fact, the Division of Budget and Management asked your office in March 2014 to conduct an underwriting RFP but was rebuffed.

What I also find 'bizarre' is that since you clocked in the bond resolution at the Legislature on March 17, 2014, nearly 2 and half months have passed and you have not found the time to conduct an underwriting RFP but did find the time, according to your own reports, to visit 17 senior centers, participated in at least 19 tours of cultural agencies, spoke to at least 9 groups including the UB Ukrainian Association and Parwood Patio Homeowners Association, and met with at least 10 local municipal leaders, with your staff during government work hours. While I understand the need to communicate with our constituents, I find it disappointing you seem to spend much of your time in what can only be described as a public relations tour instead of performing the task of comptroller, tasks I know well having served in that capacity for 6 years.

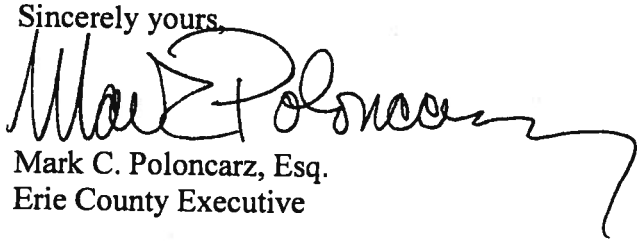
Because your office failed in your Charter-mandated responsibility and did not conduct a RFP, my administration reached out to M&T and received a proposal. You should have aggressively sought underwriting bids, analyzed them, and determined the cheapest possible costs and options for the County – be it borrowing through ECFSA or under our own authority. Instead, you simply reiterated your long-standing position that the County should, in perpetuity, borrow under ECFSA's authority.

That is not an option, particularly in the years to come as the County is likely to face a situation whereby the County will need to return to issuing thirty year or perhaps longer bonds to finance projects such as the potential need for a new football stadium for the Buffalo Bills. Similar to my two predecessors, I will not support ECFSA issuing bonds under its own authority for thirty years and perpetuating its existence to 2045 or beyond.

Contrary to your media comments on May 29th, I urge you to carefully review the M&T proposal and to give it due consideration. In the event you do not wish to engage M&T for the underwriting of the 2014 bonds, which is your prerogative under the Charter, I request that you immediately issue a RFP and solicit responses from underwriters. Time is of the essence on 2014 capital work, including road and bridge projects, and your failure to conduct a RFP in March or April 2014 was unacceptable.

I look forward to meeting with you on Monday, June 3rd at 10:00 am to discuss this matter.

Sincerely yours,



Mark C. Poloncarz, Esq.
Erie County Executive

MCP/tcc

cc: Erie County Attorney Michael Siragusa
Robert W. Keating, Director of Budget and Management
Erie County Legislature
Erie County Fiscal Stability Authority