



COUNTY OF ERIE

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August 27, 2015

Hon. John Mills, Chairman
Erie County Legislature
95 Franklin Street, 4th Floor
Buffalo, NY 14202

Stephen Boyd, Chairman
Erie Community College Board of Trustees
C/O President's Office
City Campus
121 Ellicott Street
Buffalo, NY 14203

Re: Appointment of Danise C. Wilson
Erie Community College Board of Trustees

Dear Chairmen Mills and Boyd:

By letter dated July 10, 2015 and filed with the Clerk of the Erie County Legislature on July 13, 2015, County Executive Mark C. Poloncarz appointed Ms. Danise C. Wilson, MPH, as a Trustee Erie Community College "...for a seven year term effective July 1, 2015." (ECL Comm. 14E-9). That appointment was referred to the Erie County Legislature's Community Enrichment Committee at the County Legislature's July 16, 2015 meeting. There has been no further action by the County Legislature on that appointment as of this date.

Education Law §6306 provides generally for ten (10) member boards of trustees for community colleges. One (1) member is a student elected by and from the student body, four (4) members are appointed by the Governor, and five (5) members are to be appointed by the local legislative body of the respective county. Erie County Charter §2301 provides that the appointments to be made under Education Law §6306 "shall be exercised by the county executive, subject to confirmation by the county legislature."

The County Charter appointment provision controls over the Education Law because Education Law §6306 is not a general law as it is not applicable uniformly across the state. New York City is expressly excepted from the appointment provisions of §6306. The Erie County Charter's delegation of the appointment power from the County Legislature to the County

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Executive is a proper exercise of home rule powers of a local government "...to adopt and amend local laws...not inconsistent with any general law relating to its property affairs or government." See MHRL §10(1)(i). As §6306 is not a general law, County Charter §2301 controls.

It is my understanding that Ms. Wilson is filling a seat that Ernestine Green had been occupying in a hold-over status. Public Officers Law §5 provides that the person holding over serves until "...his successor is chosen and qualified..." The County Executive's appointment (i.e., Ms. Wilson was "chosen and qualified") was effective on July 13, 2015 when the County Executive's letter of appointment was filed with the Erie County Legislature, by operation of the Erie County Administrative Code.

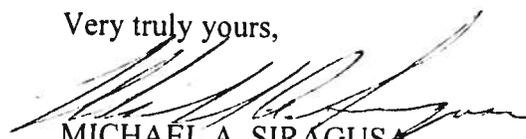
Each appointment by the county executive which is made in conformity with all requirements of the charter, this code and other applicable law, and which is subject to confirmation by the county legislature shall be valid until such confirmation has been voted upon by such board, or until thirty (30) days have expired after the filing of notice of such appointment. See Erie County Administrative Code §3.09(a).

The conclusion that Ms. Wilson's appointment became effective as of the filing by the County Executive is further supported by the provisions of the Administrative Code addressing what happens if the appointment is rejected by the County Legislature. In such event "...the term of the interim appointment is terminated and the office or position shall be deemed vacant as of the end of the day of such vote." See Erie County Administrative Code §3.09(a).

Therefore, as of the filing of the appointment letter on July 13, 2015, Ms. Wilson was duly appointed to the Erie Community College Board of Trustees and is entitled to perform all of the duties of the office of trustee. Moreover, thirty (30) days have elapsed since the filing of notice of Ms. Wilson's appointment with the County Legislature, without any action taken by the County Legislature. Therefore, confirmation of Ms. Wilson's appointment by the County Legislature is no longer required. Accordingly, Ms. Wilson is currently a full voting member of the Erie Community College Board of Trustees.

Please feel free to contact me with any questions.

Very truly yours,



MICHAEL A. SIRAGUSA
Erie County Attorney