



ECLEG MAY18'16 PM 4:18

## COUNTY OF ERIE

MICHAEL A. SIRAGUSA  
COUNTY ATTORNEY

MARK C. POLONCARZ  
COUNTY EXECUTIVE

DEPARTMENT OF LAW

MICHELLE M. PARKER  
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH  
SECOND ASSISTANT COUNTY ATTORNEY

May 18, 2016

**VIA HAND DELIVERY**

Hon. John J. Mills, Chairman  
Erie County Legislature  
Old Erie County Hall  
92 Franklin Street, 4<sup>th</sup> Floor  
Buffalo, NY 14202

Re: Erie County Legislator Joseph C. Lorigo  
Outside Counsel Opinions – Incompatibility Issue

Dear Chairman Mills:

I write in response to your letter dated May 17, 2016 in regard to opinions rendered by outside counsel on the issue of whether Erie County Legislator Joseph C. Lorigo could simultaneously hold the position of Erie County Legislator as well as the position of Town Prosecutor of the Town of West Seneca. Please understand that although I cannot address all of the questions posed in your letter due to attorney-client privilege prohibitions, I will endeavor to explain to you the situation that was presented to my office and the actions we undertook to have our concerns addressed.

As you know, as County Attorney, I am “the legal advisor for the county and, on its behalf in county matters, of its officers and administrative units.” See Erie County Charter, Art. 6, Sec. 602. My prime responsibility is to the county as a whole and to assure that actions taken on behalf of the county, whether it be by an individual elected official or by the legislature as a whole, are lawful, appropriate and binding.

In January of 2016 my office was advised that Legislator Lorigo was appointed to the position of Town Prosecutor in the Town of West Seneca, and concern was raised as to whether Legislator Lorigo could legally hold both positions. In order to avoid the conflict that my office would be placed in if it, after conducting the requisite investigation and legal research, were to find that the legislator could not hold both positions, I felt it prudent to employ outside counsel to look into this issue. Accordingly, I engaged the firm of Kavinoky & Cook to do same. At no time did I direct Kavinoky & Cook to make a particular finding that the positions

Comm. 10D-7

May 18, 2016

Page -2-

were incompatible or that Legislator Lorigo had vacated his seat on the Legislature as a result of being appointed to the position of Town Prosecutor. I simply posed the question of whether or not there was a legal impediment to Legislator Lorigo holding both positions.

Once the investigation and legal research was finalized by the Kavinoky firm, we were presented with a memorandum that opined that the two positions were in fact incompatible, and therefore, Legislator Lorigo could not simultaneously hold both positions. Additionally, and most concerning, the memorandum cited cases that held that when there is either a common law or statutory prohibition against the holding of incompatible offices, a person who accepts and qualifies for a second incompatible office is held to vacate, or by implication resign from, the first office upon acceptance of the second office. Because we were faced with the possibility that a sitting Erie County Legislator may have vacated his seat by being appointed to the position of West Seneca Town Prosecutor and acting as same, I sought a second opinion from the firm of Hodgson Russ, which in effect agreed with the Kavinoky opinion.

In the matter at hand, I was faced with the unthinkable possibility that Legislator Lorigo may have vacated his seat on the legislature, thereby placing a cloud of uncertainty around any and all actions taken by the legislature. I am the chief legal counsel to the County of Erie, a New York state municipal corporation with a \$1.7 billion budget. If there are actions taken by any elected official that could possibly jeopardize the decisions made and actions taken by the county's governing body, it is my duty to investigate same and take any and all necessary action to remedy the situation and/or to determine that said actions are lawful. In this case, the monies spent on remedying the situation were well justified to protect the actions of a legislative body that oversees and controls a \$1.7 billion budget.

As soon as both opinions were finalized, I immediately notified the legislator and provided to him copies of both opinions. I personally met with the legislator to discuss options. As a result of that meeting, I was under the impression that Legislator Lorigo would not accept the position of Town Prosecutor and that the matter would be laid to rest. However, we were then provided with an opinion from Phillips, Lytle which contradicted the two opinions we had received. We had no choice but to respond to that opinion. Both Kavinoky & Cook and Hodgson Russ supplied us with a response to the Phillips Lytle memo. As you know, both firms disagreed with the conclusion reached by the Phillips firm that the positions were compatible. The disagreement amongst the firms, at the very least, cast a cloud of uncertainty of the constitution of the Erie County Legislature. In any event, Legislator Lorigo agreed to not accept the town prosecutor position. Accordingly, I opined that although I could not guarantee how a court would rule, it was my opinion that since Legislator Lorigo decided to not accept the prosecutor position and chose to maintain his seat on the legislature, he continued to validly hold his legislative seat.

Please understand the seriousness of this issue. There is a series of cases that stand for the proposition that when a public official takes a second incompatible position they forfeit the first. The potential implications of this situation are staggering and could have jeopardized every action the legislature has and/or will take. Every action my office took was an attempt to insulate the County from the adverse consequences of such a situation.

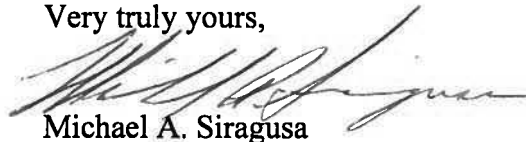
May 18, 2016

Page -3-

It is unfortunate that this situation has been portrayed as a "political witch-hunt." My office performed its duty after we were presented with the above situation. We looked into the situation and reported our results to the legislator. Legislator Lorigo decided not to accept the position of Town Prosecutor, and thereby avoided the potential damage to your honorable body. At no time did I go to the press with this situation. I went directly to Legislator Lorigo with our findings and he took the requisite corrective action as discussed above.

All actions taken were at no time politically motivated. The actions taken by me and my office were taken to protect the integrity and composition of the Erie County Legislature. I am sure you would agree that the situation could have been handled much differently if there were other motivating factors. It is time to put this matter behind us and focus our efforts on continuing to move this community in a forward direction.

Very truly yours,



Michael A. Siragusa  
Erie County Attorney

cc: Honorable Members of the Erie County Legislature  
Hon. Mark C. Poloncarz  
Hon. Christopher L. Jacobs  
Hon. Stefan I. Mychajliw  
Acting District Attorney Michael J. Flaherty, Jr.  
Hodgson Russ, LLP  
Kavinoky & Cook, LLP