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ERIE COUNTY LEGISLATURE

HON. JOHN J. MILLS
CHAIRMAN OF THE LEGISLATURE
11TH DISTRICT LEGISLATOR

May 17, 2016

Mr. Michael A. Siragusa
Erie County Attorney
95 Franklin Street, 16th Floor
Buffalo, New York 14202

Dear Mr. Siragusa:

I am writing in regards to the recent legal opinions you delivered to my colleague, Erie County Legislator Joseph C. Lorigo. After months of investigation, we have serious concerns about the manner in which you acted in your capacity as County Attorney, as well as concerns regarding the possible involvement of the County Executive, the engagement of this entire process and everyone involved. We plan to further investigate our concerns and, if necessary, issue subpoenas for information related to this proceeding in the near future.

On Thursday, January 21, 2016, moments before the Legislature's session was about to begin, you arrived at the Legislature to deliver Legislator Lorigo two legal opinions that presented the claim that he was no longer a Legislator because he had accepted a position with the Town of West Seneca as a Town Prosecutor. The opinions were prepared by the law firms Hodgson Russ LLP and Kavinoky Cook LLP. While each opinion varied slightly, they held the same conclusion that Legislator Lorigo had vacated his office.

Considering the opinions were delivered by the County Attorney, one can assume that they were asked for on behalf of the taxpayer, and that the taxpayer will be paying the legal fees. While, at his own expense, Legislator Lorigo sought an opinion from the law firm Phillips Lytle, which refuted the opinions.

The Phillips Lytle opinion eviscerated the Hodgson Russ and Kavinoky Cook opinions, and it did so very easily. We say easily, because it did so by pointing out the legal language that should have been obvious to both firms, had they been seeking a true answer to whether or not Legislator Lorigo vacated his seat by accepting the Town Prosecutor job. This brings into question what they were hired to issue an opinion on, who hired them, and who will ultimately pay the bill for their legal services.

Despite the level of doubt created by the Phillips Lytle opinion on the legitimacy of the original Hodgson Russ and Kavinoky Cook opinions, you re-engaged both firms to issue opinions combating the Hodgson Russ findings.

Unfortunately, the argument in their opinion rests on the dicta of the case, and not the actual holding of the case. The case held that the elected official was free to choose which office to continue in, and not that they had vacated one by accepting the other. The absence of this holding in the second Hodgson Russ opinion, again, brings into question what question they were engaged by the County to answer, and who was seeking the answer.

We find it very hard to believe that a firm as respected as Hodgson Russ would issue an opinion on this question, and miss the obvious holding of the very case they cited. We believe their opinion could only have been reached if they were asked by the County Attorney to find a reason that Legislator Lorigo had vacated his seat, rather than whether or not he had through his actions. In our opinion, there is a clear distinction between the two questions and this Legislature deserves an answer as to what was specifically asked of both firms and by whom.

It is also important to note that both firms and individuals that directly worked on these opinions are significant financial contributors to County Executive Mark Poloncarz. Kavinoky Cook LLC is also a former employer of the County Executive.

As Legislators we are very seriously concerned that these firms, who have direct political ties to the County Executive, were engaged to participate in a political witch hunt, rather than an exploration of facts to achieve the outcome of good governance. We also firmly believe that if the county is being billed for their legal services, all communications relating to the engagement should be made public. **We request you deliver to the Legislature a copy of all communications and correspondence between county officials and attorneys at both Hodgson Russ and Kavinoky Cook relating to this matter. Additionally, we are requesting that you draft a memorandum to the Legislature that clarifies, very specifically, what you asked these firms to deliver an opinion on.**

The Legislature will also reserve the right to compel the appearance of all parties involved at a future meeting of the Legislature to address this matter.

By charter, the County Attorney has a legal obligation to serve as counsel to all officers of the county, including Legislator Lorigo. Therefore, you are clearly conflicted in managing this yourself. We also believe that if you took seriously your obligation to serve the Legislature and Executive as separate but equal branches of government, you would have notified them of this issue before contracting with outside counsel.

After further inquiry, we have learned that almost $25,000 in taxpayer money was spent on these legal opinions against Legislator Lorigo.

The original issue seems to center around two points. Whether or not Legislator Lorigo was the Town Prosecutor already and whether or not he could be at all. Why wasn't the County Clerk contacted to determine whether or not Legislator Lorigo had filed an oath card for the position of Town Prosecutor? Why wasn't the District Attorney contacted as to whether or not he had approved Legislator Lorigo to practice as the Town Prosecutor? Why wasn't the Board of Elections contacted to issue an opinion on

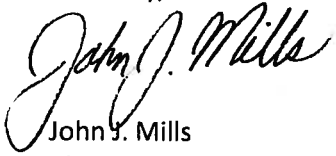
whether or not Legislator Lorigo had vacated his seat through the actions you accused him of? Not only would this course of action have been sensible, it would have saved tens of thousands of taxpayer dollars.

We hope that you have a very good explanation for why the county pursued the course of action that it did. We certainly hope this was not a politically motivated action. However, it is hard for us to ignore the obvious questions. Why wasn't this matter explored internally with the County Offices that are directly impacted? How could such prominent law firms issue opinions on this matter that conflict with the holdings of the very cases they cited? In drafting those opinions why didn't you or the attorneys at those firms contact any of the appropriate and impacted county officials or departments?

Until our questions are answered, we would also ask that the County refrain from making payment for any of these legal opinions. The taxpayers deserve to know what they are paying for before they do so. Therefore, we need to know what was asked for, who asked for it, and why.

If we are incorrect in our assumption that the taxpayers are paying for this, we would then appreciate an explanation for your extensive involvement in the matter.

Sincerely,



John J. Mills
Chairman of the Erie County Legislature

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