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## ERIE COUNTY COMPTROLLER

HON. STEFAN I. MYCHAJLIW

May 18, 2016

The Honorable John J. Mills  
Erie County Legislature Chairman  
92 Franklin Street  
Buffalo, New York 14202

RE: Abuse of Power by County Executive Poloncarz

Dear Chairman Mills:

Thank you for your correspondence concerning Erie County Executive Mark C. Poloncarz spending almost \$25,000 in taxpayer dollars to his former employer. The purpose of the spending appears to be securing a positive opinion to support Mr. Poloncarz's attempt to remove Erie County Legislator Joseph Lorigo in the courts, rather than through the democratic process. The County Executive's lack of transparency on this issue is disturbing, and I support your efforts to obtain answers to our shared concerns.

The legal opinions surround the question of whether Majority Leader Joseph Lorigo could serve as a county legislator and a town prosecutor.

Among your concerns, you note the potential conflict of interest that remains unaddressed by our County Attorney. In particular, the County Attorney represents all elected officials. Obviously, the County Attorney realized that adverse action was being contemplated against his client, Mr. Lorigo. Rather than notify Mr. Lorigo, he worked with Mr. Poloncarz's former law firm, Kavinoky & Cook, and attorneys from Hodgson & Russ, to secure an opinion adverse to Mr. Lorigo. Mr. Lorigo was blindsided by this concerted effort moments before a legislative session and weeks after this process began. At that time, rather than offer Mr. Lorigo outside counsel of his own, the County Attorney pressed the issue with Mr. Lorigo, who was forced to secure counsel of his own at his own expense.

Such actions certainly seem to support your assertion:

**"It was a political witch hunt...I think Mark (Poloncarz) should pay it out of his own pocket. Joe Lorigo had to,"** Honorable John J. Mills, Erie County Legislature Chairman

*Source: Time Warner Cable News, "Legislature Chairman: Poloncarz Used County Money To Pursue 'Political Witch Hunt,'" Ryan Whalen, May 17th, 2016*

Given the lack of transparency and questionable procedure pursued to secure favorable legal opinions, Mr. Lorigo's public comments also deserve merit:

**"It seems to me like it was Mark Poloncarz trying to get a personal vendetta taken care of using taxpayer money. And that's a problem. These actions were taken in secret without ever discussing it with me. I think the public needs to know that the County Executive is using their dollars as his own personal attack fund,"** Honorable Joseph Lorigo, Erie County Legislature Majority Leader.

*Source: WIVB.com, "Lorigo: County executive wasted \$25K in 'political witch hunt,'" Dave Greber, May 17<sup>th</sup>, 2016*

You deserve answers as to why the obvious conflict of interest was ignored and why the process occurred at all. But there are other questions that need answers as well:

- The mirrored opinions by Kavinoky and Cook and Hodgson Russ, which reference each other, rely on dicta of a key case in a similar set of facts elsewhere in New York State, rather than the actual holding. Why wasn't Mr. Lorigo notified that he could choose which position he preferred and instead told that he must vacate his legislative position?
- Why didn't anyone, including the County Attorney, check to see if Mr. Lorigo had filed an oath card accepting the position of prosecutor. Such a finding could have rendered the matter moot.
- Why didn't anyone, including the County Attorney, check with the District Attorney to see if Mr. Lorigo was officially accepted as prosecutor. To paraphrase GEICO, "fifteen minutes could save you \$25,000." Or in this case, thirty seconds.

Again, you deserve answers to your questions regarding motive and process. I support your demands for transparency on behalf of the taxpayers of Erie County.

In the meantime, I still have invoices demanding payment to the firms involved in this matter. Please let me know if County Executive Mark C. Poloncarz agrees with your suggestion that he pay these legal bills out of his own pocket. Legislator Lorigo was forced to. I agree with you. Taxpayers should not be on the hook for Mr. Poloncarz abusing taxpayer dollars to eliminate his political rivals.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stefan I. Mychajliw', with a long horizontal flourish extending to the right.

STEFAN I. MYCHAJLIW  
Erie County Comptroller