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COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

June 15, 2016

Hon. John J. Mills, Chairman
Erie County Legislature
92 Franklin Street, Fourth Floor
Buffalo, New York 14202

Re: 2016 Legislative Sessions/Agendas File

Dear Chairman Mills:

I have been provided with a copy of your letter dated June 9, 2016, which was received in the County Executive's office on June 13, 2016, concerning the County Executive's appointment of an individual to the position of Director of the Division on the Status of Women (i.e. Executive Director of the Commission on the Status of Women).

In your letter, you stated you were "concerned by the method" in which the new director was appointed and that the County Executive acted in an "improper" manner in appointing the director. You further asserted that the County Executive did not follow "appropriate procedure". Finally, you indicated that you "have not been able to locate this position in the 2016 Budget" and "have some concerns related to how the County is funding it."

After reading your letter, I believed I could best explain Erie County Charter ("Charter") provisions regarding this appointment process. Please note that this response addresses only the legal issues you raised and the Charter provisions concerning this appointment. As per your request in your letter, it is my understanding that the Division of Budget and Management will be sending a representative to the Legislature's Finance and Management Committee to discuss the budgetary/fiscal question you posed.

On February 2, 2016, the prior Commissioner of Public Advocacy separated from County service, leaving that position vacant. The County Executive determined that it was necessary to fill the vacant title of Director of the Division on the Status of Women and to conduct the important work of that division. Prior to the County Executive's action on this appointment, we were consulted by, and advised his office regarding the position of Director of the Division on the Status of Women and the appointment therein.

There are two Articles of the Charter which pertain to this issue: Article 3 and Article 17.

The County Executive's powers and duties are defined in Article 3 of the Charter. Section 302 of the Charter enumerates the powers and duties of the County Executive. In pertinent part, that Section states:

> "Powers and duties. The county executive, in addition to any other powers and duties provided by this charter shall:
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> a. Be the chief executive officer and administrative head of the county government.
> b. Except as otherwise provided in this charter, and subject to confirmation where so provided, appoint to serve during his or her pleasure the head of every department and other administrative unit of the county and the officers and employees in his or her own office.
> c. Supervise and direct the internal organization and reorganization of each department or other administrative unit the head of which he or she has power to appoint."

In addition, pursuant to Section 307 of the Charter, the County Executive is given the power and is required to "appoint, to serve during his or her pleasure or for such term as may be specified in this charter, the head of every department, division or other administrative unit not administered by another elective official. . . The county executive may appoint one head for two or more departments, divisions or other administrative units, subject to all requirements as to qualifications and confirmation, *or may himself so serve without such confirmation*" (emphasis added).

Article 17 of the Charter concerns the Office of Public Advocacy. Section 1706 defines the Division on the Status of Women, which shall be led by a director, who "shall be appointed by and shall serve at the pleasure of the commissioner" (of Public Advocacy). Section 1701 states that "There shall be an office of public advocacy, the head of which shall be the commissioner. The commissioner of said office shall be appointed from among the division directors by, and shall serve at the pleasure of, the county executive, subject to approval of the county Legislature."

Since February 2, 2016, absent a Commissioner of Public Advocacy, and under his authority in Section 307, the County Executive has functionally served as Commissioner. Acting under the authority of Section 1701 of the Charter, he then appointed an individual to serve as Director of the Division on the Status of Women.

Pursuant to Section 1701 of the Charter, the County Executive will be required to appoint a Commissioner of Public Advocacy from among the three division directors in the Office of Public Advocacy (either the Director of the Office for the Disabled, the Director of Equal Employment Opportunity, or the Director of the Division on the Status of Women). That appointment will be subject to confirmation by your Honorable Body. Upon confirmation, a division director will also hold the title of Commissioner of Public Advocacy and will be compensated for only the position of director, while simultaneously holding both titles.

Accordingly, in light of the above, it is our opinion that the County Executive has properly and legally appointed an individual to the position of Director of the Division on the Status of Women under his Charter authority, powers and duties.

I trust that this information is helpful to you and alleviates any concerns you may have had. If you have any further questions, please do not hesitate to contact me directly.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By _____
Martin A. Polowy
Assistant County Attorney

cc: Mark C. Poloncarz, Esq., Erie County Executive