

From: Musarra, Arthur
Sent: Wednesday, June 20, 2018 4:53 PM
To: Whipple, Steven
Subject: FW: ECWA removal of a board member

From: abo.sm.info [mailto:info@abo.ny.gov]
Sent: Wednesday, June 20, 2018 4:33 PM
To: Musarra, Arthur
Subject: ECWA removal of a board member

We received your inquiry regarding the removal of certain Erie County Water Authority members of the board. Specifically, you ask, [c]an a County Legislature take action, via a resolution approved by a majority of legislators, to remove a Water Authority Commissioner, duly appointed under §1053 of the Public Authorities Law, and what steps are necessary to do so?

First, the Authorities Budget Office is not authorized to provide legal advice. Therefore we recommend you seek separate counsel prior to making a final determination. However, based on your inquiry, we are providing an interpretation of the law and pathway to help the Erie County Legislature find a best practice to address the inquiry.

We have reviewed the laws and prior matters relating to local authority board member removal. It is the position of the Authorities Budget Office (ABO) that based on the facts of the matter in discussion, the law guiding removal would be Public Authorities Law (PAL) § 2827. This section governs the removal of authority members. We do not see that PAL § 1053 is in conflict with PAL § 2827. Rather we read them to be complementary and provide the legislature with the roadmap for removal that it seeks here today.

Pursuant to the original 1950 Erie County Water Authority (ECWA) enabling statute (PAL §§ 1050-1073 et seq.), board members “may be removed from office for the same reasons and in the same manner as may be provided by law for the removal of officers of the county.” See PAL § 1053. First, we find this language to be permissible, in that it does not mandate, but allows for removal on the aforementioned grounds. The ABO looked into the Erie County Charter and Code and find no applicable law that governs the removal of such local officers as contemplated by the ECWA enabling statute. The ABO did not find other sections of law in conflict with any provisions of the enabling statute, including the removal provisions. Based upon this reading alone, it is the position of the ABO that with the proper due process usually given to employment matters the county legislature as the appointing authority, by resolution, could vote on ECWA board member removal.

Public Authorities Law § 2827 expressly sets forth the removal process of local authority board members whose appointments are made intra-county as required by the statute. It is not superseded in any way by the removal provisions of PAL § 1053 and it further clarifies the grounds for removal including, a breach of fiduciary responsibility, which was added in 2009. See, Chapter 506 of the Laws of 2009; aka Public Authorities Reform Act (PARA). This section of the PAL clarifies that the local appointing authority, in this case the county legislature, is also the entity responsible for removal. There may be some confusion relating to references to the word “chapter” within § 2827 as relating only to the chapter law amendments, e.g., Chapter 506 of the Laws of 2009, however, it is the position of the ABO that in this instance, the words “chapter” relate to the entire Public Authorities Law as being one chapter among the several chapters of the Consolidated Laws of the State of New York.

Therefore, it is the view of the ABO that PAL § 2827 is expressly on-point to answer the question posed above. The steps should be that the county legislature first draft a resolution seeking the removal of the board member. The resolution should outline his failure to fulfill the fiduciary responsibilities he swore to undertake, based upon the report of the ABO. The county legislature then should provide such board member with a copy of the detailed resolution with an opportunity to be heard, at least ten (10) days prior to a final action. This time is expressed in the law to permit the board member to present a defense if he so chooses. A public hearing on this resolution is sufficient. Finally, once the resolution procedurally reaches the legislature, a vote on the resolution should be taken and should the vote carry, the board member position would immediately be considered vacant.

It is worthy to note that the Governor does not have any power to remove these board members. There are certain officers of the County that are only removeable by the Governor (e.g., sheriff, county executive, coroner, treasurer), however, ECWA members are not contemplated in those sections of law. Moreover, the remainder of powers to remove by the Governor relate only to gubernatorial appointments. See Public Officers Law §§ 32-35. Here the appointments are authorized by the County Legislature.

LAWS:

ECWA 1950 enabling legislation on removal of board members:

PAL § 1053 Members of the authority may be removed from office for the same reasons and in the same manner as may be provided by law for the removal of officers of the county. Chp. 804 of 1950

Erie County Charter and Code is silent on removal.

PAL § 2827. Removal of authority members. Except as otherwise provided in this chapter, every member of every authority or commission heretofore or hereafter continued or created by this chapter, except ex-officio members, that is, members whose membership results by virtue of their incumbency of a public office, shall be removable by the public officer or public body which is empowered by this chapter to appoint such authority or commission member, for inefficiency, breach of fiduciary duty, neglect of duty or misconduct in office, provided, however, that such member shall be given a copy of the charges against him and an opportunity of being heard in person, or by counsel, in his or her defense upon not less than ten days' notice. Underscore added by Chp. 506 of 2009