Via Email Only
Hon. April N.M. Baskin, Chairwoman
Erie County Legislature
Old Erie County Hall
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Opinion as to Form Local Law Intro No 10-1 – 2019

Dear Chairwoman Baskin:

In accordance with the obligations of the Erie County Attorney set forth in subsection 3, Section 204 of Article 2 of the Erie County Charter, this legal opinion concerns Local Law Intro No. 10-1-2019 (10-1).

Preemption:

Under New York state law, preemption occurs when a local law directly conflicts with a state statute, or where a state statute expressly states that local laws on a given subject matter are preempted. Preemption can also occur where the State Legislature has assumed full regulatory responsibility in a field related to the proposed local law.

Here, New York State County Law (NYSCL) Section 215(4) restricts the leasing of county real property to a term not exceeding five years. However, the New York State Legislature intended that a county’s home rule authority should supersede the general framework of county government laid out by NYSCL. This intent is evidenced by NYSCL Section 2(b) which describes how NYSCL must be applied and states in pertinent part: “The provisions of this chapter in so far as they are...in conflict with any local law heretofore or hereafter adopted by a county...shall not be applicable to the county...”. Since the State Legislature has granted counties specific authority to enact local legislation which directly conflicts with the provisions of NYSCL, 10-1 does not present a preemption issue of concern.
Grammar

The stated purpose of 10-1 is to authorize Erie County to enter into a lease of county owned land with Montante Solar for a period greater than five (5) years. We find the grammar and usage of 10-1 to be sufficient in order to achieve the stated purpose.

Ambiguities

While every hypothetical circumstance or eventuality cannot be addressed in the scope of this opinion, 10-1 does not present any facial ambiguities that would frustrate its implementation and enforcement.

Conclusion

We find that Local Law Intro. 10-1-2019 is sufficient as to form.

Very truly yours,

MICHAEL A. SIRAGUSA
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