



ERIE COUNTY LEGISLATURE

HON. JOSEPH C. LORIGO
10TH DISTRICT LEGISLATOR
MINORITY LEADER

January 10, 2019

Michael Siragusa, Esq
Erie County Attorney's Office
95 Franklin Street – 16th Floor
Buffalo, New York 14202

Dear Mr. Siragusa,

As you are aware, a Notice of Claim has been filed against Erie County and Mark Poloncarz, personally, for "...continuous false and defamatory statements..." (Erie County Transmittal of New of Claims, Comm. 24D-1 (2018), p. 60, Landa v. Poloncarz, rec'd. Nov. 26, 2018). The claim refers to statements posted on both Executive Poloncarz's "webpage" and a series of Twitter posts made in August of 2018. My concern does not lie with the validity of the potential claims against Mr. Poloncarz, but the use of the County Attorney's office to defend statements made on the personal social media pages of elected officials. As I am sure you would agree, taxpayer resources should not be used to defend public statements made by Mark Poloncarz personally, and not in his official capacity as Erie County Executive. This same standard should apply to any elected official: liability resulting from personal statements and actions should be borne by the individual, not Erie County taxpayers.

As elected officials, it is vital that we separate our official public statements from those we make as private citizens. The County Executive has previously taken the public position that his Twitter account, "@markpoloncarz," is "my personal Twitter page. It is not an official county page... I can do with it as I please" (@markpoloncarz tweet on 11/28/18, at 8:56 AM). I have no complaints with Mr. Poloncarz choosing to use the Twitter handle @markpoloncarz as a personal account; however, it is important to differentiate official comments as County Executive from personal opinions, statements, or solicitations as Mark Poloncarz. Quite frequently, Mr. Poloncarz shares official public information, uses county resources and gives personal opinions, statements, and solicitations using the same social media account—even in the same day. That is problematic for a number of reasons.

We all agree social media can make government more accessible, more transparent and more accountableⁱ. As elected officials, we must hold ourselves to a higher standard with our usage of social media. It is true that nearly everything we say online can be seen as some sort of "official" statement, even if that is not our intention. However, under no circumstances is it appropriate that the same social media account be used to promote official government information while almost simultaneously soliciting donations and attendance at political fundraisers for select candidates. It is misleading to the public to use one's high profile position as a government official to push partisan political views, while at the same time providing official information using the exact same account. This is especially confusing when non-official tweets, posts, or statements are issued during county business hours or immediately following a tweet or post containing official county information.



ERIE COUNTY LEGISLATURE

HON. JOSEPH C. LORIGO
10TH DISTRICT LEGISLATOR
MINORITY LEADER

Clarification is needed. If an account is used in this manner, it is nearly impossible for someone to discern which statements and events are official notices of the county and which are not. It also comes dangerously close to appearing as undue influence over Erie County employees and their families. This is not just a discussion we are having here in Erie County; it is happening elsewhere throughout the country. Recently, the Ulster County Sheriff came under fire for Facebook posts he deemed personal, but many thought were official statements of his office. As a result, the Ulster County Legislature worked with county officials to develop a social media policy for elected officials to followⁱ.

The law has not kept up with emerging technology, nor is there much legal guidance on the issueⁱⁱⁱ. I respectfully ask your office for clarification about social media accounts of Erie County elected officials, and whether Erie County taxpayers bear the burden of liability for statements made thereon. Are these social media accounts personal or are they governmental? If they are personal, then should the County Attorney's office and Erie County taxpayers be expected to cover any defense from liability relating to statements made thereon? If they are governmental, is it proper for the accounts to be used to make political posts or solicit political donations? We need a baseline for what is personal and what is governmental. We must also define what conduct is acceptable in these online spaces so that we can prevent what might become a more consequential problem in the future. We need clarity, and every elected official must have the same procedures to follow^{iv}. I ask that you prepare an official written policy for all Erie County office holders to follow. The line between a personal account and an official government account can be very thin. Several court challenges across the country have questioned what those lines actually are. A formal county policy would be very beneficial to all current and future officials, as well as the residents who would benefit from knowing what information they are receiving, whether it be political or official government statements.

I would appreciate a written response submitted to the Legislature as soon as possible and would be happy to work with you on addressing this issue further.

Sincerely,


Joseph C. Lorigo
Erie County Legislature Minority Leader

ⁱ Frank, Michael (2017). *Elected officials and social media use: should there be rules?*

<https://hawksites.newpaltz.edu/currents/2017/11/15/elected-officials-and-social-media-use-should-there-be-rules/>

ⁱⁱ Doxsey, Patricia (2018). *Ulster County Legislature chairman eyes social media policy*. https://www.dailyfreeman.com/news/ulster-county-legislature-chairman-eyes-social-media-policy/article_f09f873a-ee7e-5907-8329-25e6b712524b.html

ⁱⁱⁱ Dughi, Paul (2018). *When public officials use social media to do business, do they have the right to block constituents?*

<https://medium.com/digital-vault/when-public-officials-use-social-media-to-do-business-do-they-have-the-right-to-block-7f36ffb31a0d>

^{iv} Chiara, Adam, Professor of Communications, University of Hartford (2018). *Public officials' social media accounts- are they business or pleasure?* <https://thehill.com/opinion/technology/371131-public-officials-social-media-accounts-are-they-business-or-pleasure>