



STEFAN I. MYCHAJLIW
ERIE COUNTY COMPTROLLER

February 23, 2021

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

Dear County Attorney Siragusa,

It is my understanding that you had a conversation with Comptroller Mychajliw on February 21, 2020, in which you discussed his concerns regarding the creation of a position in the Department of Social Services.

As you know, his primary objection is that the position was not properly created and thus lacks funding. As such, the individual hired for the position would not be paid for work performed. In December, the Legislature considered the County Executive's requests for spending on needed and/or wanted items. At the time of the Legislature's approval of these requests, the position in question was not deemed to be needed or wanted. It appears now that the County Executive wants to add the position in question. However, to do so, the position must be properly created.

Comm. 3E-9, approved by the Legislature on February 18, 2021, grants a variable minimum, amounting to a \$22,387 pay raise over what the position would normally pay, for a position that does not exist in the budget. Although the resolution authorizes the Division of Budget and Management to adjust the budgeted amount to a Job Group 15, Step 5, the position is not in the budget to be adjusted. In order to grant the raise, the position must first actually exist.

As background, there was a Special Assistant to the Commissioner of Social Services, created in 2013, which was vacated on May 23, 2020, when the incumbent accepted a position elsewhere. On June 4, 2020, as part of his deficit reduction plan, the County Executive asked that the position be deleted. The Legislature approved the plan on June 18, 2020.

The Special Assistant position was neither proposed to be restored, nor re-created, as part of the 2021 budget process. However, the creation of the position was initiated by the Deputy Commissioner of Social Services and ultimately approved by the Commissioner of Social Services, the Commissioner of Personnel and the Budget Director. Despite not existing in the 2021 budget, the position was created on December 29, 2020.

The position was created under the purported authority granted by Comm. 6E-22 (2020). That resolution waives certain requirements implemented to protect tax dollars and ensure fairness, such as the competitive bidding and purchasing policies and procedures, in order to address COVID-19 issues.

The item also allows the County Executive to create positions and hire to fill such positions, without the usual further approval by the Legislature, in order to combat COVID-19. Further, the resolution created Fund 252, funding it with \$5,000,000 in 2019 surplus funds. That is also the fund where \$150 million in CARES Act funds were placed.

During her presentation at the caucus meeting prior to the session at which a variable minimum for this position was approved, the Commissioner of Social Services, when asked, provided a vague description of the purpose and duties for this position. The description was not specific to COVID-19. It was also shared that the position would be funded 47% by the county, with 53% coming from state and federal sources. Therefore, Comm. 6E-22 (2020) is not the proper authority to create such a position. Further evidence that the position is not proper under Comm. 6E-22 is that the position is listed on the F77 detail report as being funded by Fund 110, commonly known as the General Fund, and not Fund 252.

Before the position can be funded it must be created properly. Without addressing the need for the position or advocating for a particular approach to fund the position, options to properly fund include:

- Dedicate the position to battling COVID-19 and pay the individual through fund 252, so long as the authority to so fund the position exists; or
- Use fund balance to fund the position through Fund 110. At this point in time, being only February, it is too early to determine that there is a surplus. As such, securing a super-majority to utilize fund balance to fund this position would allow the individual hired to be paid for his or her services.

Given that it appears that this position has not been properly created in the budgetary or legislative process, I may be forced to withhold or recover payments made to the person hired for this position until it is properly funded. This precedence for taking such action was started by former Comptroller Mark C. Poloncarz.

I strongly suggest that the position not be filled until it is created properly. In the alternative, I request that if an individual is hired, that individual be made aware of the questions surrounding the position and the possibility of not receiving payment for his or her services. If the Legislature and Administration does not remedy the improper process of filling the position, we will seek outside counsel to litigate the matter, and will not fund the position until a legal resolution is made.

Thank you for your attention to this matter.

Sincerely,



Gregory G. Gach
Deputy Comptroller
Erie County Comptroller's Office

cc: Honorable Members - Erie County Legislature
Commissioner Timothy Hogues, Erie County Personnel Department