



ERIE COUNTY WATER AUTHORITY
MEMORANDUM

April 30, 2018

To: Leslie Ortiz-Fogg, Assistant County Attorney
Erie County Department of Law

From: Margaret A. Murphy, Associate Attorney

cc: Commissioner Jerome Schad
Terrence McCracken, Deputy Director of Administration
Jacqueline Mattina, Deputy Associate Attorney

Subject: ECWA Annual Financial Disclosure Statements

In response to your email, dated April 27, 2018, I would like to extend to you and Chairman Schwartz the appreciation of the members, officers, and applicable employees of the Erie County Water Authority (the "Authority") for the 30-day extension to file the 2017 Annual Financial Disclosure Statement with the Erie County Board of Ethics, and for not requiring the submission of the 2016 financial statements.

However, as I indicated to you on Friday, we need to resolve whether the disclosure statement "must relate to the relationship between the filer and the County," or must relate to the relationship between the filer and the Authority.

**THE RELATIONSHIP BETWEEN THE COUNTY OF ERIE
AND THE ERIE COUNTY WATER AUTHORITY**

As you know, the Authority is a local public authority and was created by the State Legislature "as a body corporate and politic constituting a public benefit corporation. Pub. Auth. Law § 1053(1). The Authority, therefore, is a legal entity separate and apart from the municipal corporation known as the County of Erie.

As a public benefit corporation, the Authority carries out "its powers, purposes and duties . . . in all respect for the benefit of the people of the county of Erie and the state of New York, for the improvement of their health, welfare and prosperity" Pub. Auth. Law § 1053(4). The Authority, like the County, exercises "an essential governmental function" for the residents of Erie County. *Id.*

Under the Authority's enabling statute, the County Legislature may, "by resolution, from time to time appropriate sums of money to defray the preliminary expenses of the authority incurred in the exercise of the powers conferred upon it by" its enabling legislation. Pub. Auth. Law § 1053(5). At the time the Authority was created, the County Board of Supervisors had appropriated sums to defray the start-up expenses of the Authority. However, the Authority repaid this debt to the County in 1953, from the proceeds of bonds issued by the Authority.

The Authority has the statutory duty to provide the County Legislature and the State Comptroller with "a detailed report setting forth the operations and the fiscal transactions of the authority during the preceding fiscal year, the financial condition of such authority and a statement of all receipts and expenditures during such year." Pub. Auth. Law § 1070. In turn, the State Comptroller and the County Comptroller may, from time to time, examine the Authority's accounts and books, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to the Authority's financial standing. Pub. Auth. Law § 1055.

Given the limited relationship between the County and the Authority, it would be inconsistent with the goals of Article 18 of the General Municipal Law, if the financial disclosure statement for applicable Authority members, officers and employees related to their potential financial conflicts with the County of Erie, since these individuals have no relationship or control over the operation of County government. More importantly, the County and its Board of Ethics should primarily be concerned with the Authority's fiscal management for the sake of County residents. Financial disclosure statements, therefore, should be used to examine the potential financial conflicts for those exercising power over the Authority's fiscal affairs and management.

LEGAL AND ETHICAL OBLIGATIONS OF AUTHORITY MEMBERS, OFFICER AND EMPLOYEES

The Public Authorities Law sets forth strong prohibitions relating to financial conflicts. For example, Public Authorities Law § 1068 sets forth criminal sanctions for Authority's members, officers, agents, servants, and employees engaged in certain prohibited activities:

It shall be a misdemeanor for any members of the authority, or any officer, agent, servant or employee thereof, employed or appointed by them to be in any way or manner interested directly or indirectly in the furnishing of work, materials, supplies or labor, or in any contract

thereof which the authority is empowered by this act to make.

Although this statutory provision is specific to the Erie County Water Authority, similar language appears in other legislation applicable to other public authorities.

Public Authorities Law § 2825, relating to members of all public authorities, states a member appointed to a public authority's governing board must be "independent." Pub. Auth. Law § 2825 (2).

[A]n independent member is one who:

- (a) is not, and in the past two years has not been, employed by the public authority or an affiliate in an executive capacity;
- (b) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than fifteen thousand dollars for goods and services provided to the public authority or received any other form of financial assistance valued at more than fifteen thousand dollars from the public authority;
- (c) is not a relative of an executive officer or employee in an executive position of the public authority or an affiliate; and
- (d) is not, and in the past two years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the public authority or an affiliate.

Pub. Auth. Law § 2825(2). The Public Authorities Law sets forth ethical standards for individuals associated with, or working for, public authorities. The State Legislature intended these standards to be overseen and policed by the statutory-designated boards of ethics, which have the authority to review financial disclosure statements, signed under oath, by members, officers and employees of public authorities.

Public Authorities Law § 2825 (3) directs:

Board members, officers, and employees of a local public authority shall file annual financial disclosure statements with the county board of ethics for the county in which the local public authority has its primary office pursuant to article eighteen of the general municipal law.

As a local public authority, the Authority and its board members, officers, and employees would be covered by § 2825(3). Consequently, commissioners, officers (including the Authority's Secretary) and certain employees must file annual financial disclosure statements with the Erie County Board of Ethics.

In enacting the above-referenced provisions of the Public Authorities Law, the State Legislature intended the Authority's members, officers and applicable employees to report potential financial conflicts affecting their employer, the Erie County Water Authority, to the Erie County Board of Ethics. For this reason, the Authority requested the form designed for County employees be changed, not in substance, but in form, so Authority filers would not be confused as to their disclosure obligations under state law relating to their activities conflicting with the fiscal affairs and management of the Authority.

I understand the next BOE meeting is scheduled for Monday, May 13, 2018. I would be available if the BOE would like to discuss this matter further with me, as the Authority's attorney in this matter. Please let me know if you would like me to be available for that meeting.

If you have any questions, please do not hesitate to contact me.