

INTRODUCER'S MEMORANDUM TO RECOMMENDATION NO. 18

Sponsored by Commission Member: Frank J. Jacobson, as member of the Budget, Operations & Miscellaneous Committee

The intent and purpose of this recommendation is to (A) require notice to the Legislature prior to a proposed transfer of part or all of the unencumbered appropriation balance between classifications of expenditures within the same administrative unit, and (B) provide for the disapproval by the Legislature of any such proposed transfer. Article 25, Section 2511 of the Charter currently restricts transfers to \$10,000 or less without approval of the Legislature. The Budget, Operations & Miscellaneous Committee has recommended increasing that limit to \$50,000. However, it is the purview of the Legislature to provide for the expenditure of County funds. As such, the Legislature should be provided with prior notice of any proposed transfers of unencumbered appropriation balances, and should be provided with an opportunity to reject any such proposed transfers.

Recommendation

Amend Article 25, Section 2511, Paragraph 3 of the Charter as follows:

The County Executive may at any time during the fiscal year transfer part or all of the unencumbered appropriation balance between classifications of expenditures within the same administrative unit, provided that prior approval by resolution of the County Legislature shall be required if the proposed transfer (1) would result in an increase exceeding ten-thousand dollars (\$10,000), or such larger amount as may be prescribed by local law, during the fiscal year in any one line item in the budget as adopted, or (2) would affect any salary rate or salary total. Prior to transferring part or all of the unencumbered appropriation balance between classifications of expenditures within the same administrative unit in an amount equal to, or less than, the foregoing limit, the County Executive shall provide written notice to the County Legislature of such proposed transfer; thereupon, the County Legislature shall have 10 business days to reject the proposed transfer; if the County Legislature does not timely reject the proposed transfer, then the proposed transfer shall be deemed approved. If the County Executive requests in writing, the County Legislature by resolution effective immediately may transfer part or all of any unencumbered appropriation balance from one County administrative unit to another. But no transfer shall be made from appropriations for debt service, and no appropriation may be reduced below any amount required by law to be appropriated. On or before the 15th day of the following month the County Executive shall provide the County Legislature a monthly report of all transfers made pursuant to this Section.

Introducer's Memorandum to Recommendation Intro No 19

Sponsored by Commission Member William Schmid & Scott Kroll

The intent and purpose of this recommendation is to remove personal pronouns from the Erie County Charter in order to be inclusive of all potential individuals in Erie County government. Rather than include currently used personal pronouns, and also to avoid the necessity of anticipating future usage of not included pronouns, using descriptive nouns serves the purpose of being inclusive. The usage of nouns also removes potential ambiguity that the use of pronouns may cause.

Amend- Article 2, Section 202.1 of the Charter as follows:

Section 202.1. Qualifications and eligibility of County legislators. At the time of nomination or appointment and throughout the term of office, each County legislator shall be a duly qualified elector of the legislative district from which ~~he or she~~ the County legislator is elected. A County legislator shall not hold any other salaried elective public office during ~~his or her~~ the County legislator's tenure. Where a vacancy in an appointive County office takes place and the right to fill said vacancy is vested in the County Executive, subject to confirmation by the County Legislature, or the power of appointment is vested in the County Legislature, a person, otherwise qualified, who is a member of the County Legislature at the time the vacancy occurs may be appointed to fill the vacancy provided ~~he or she~~ the County legislator shall have resigned prior to such appointment.

Amend- Article 2, Section 202.1 of the Charter as follows:

Section 205. Procedure for adoption of local laws. Every local law adopted by the County Legislature shall be certified by the Clerk thereof after its adoption by such body and shall be presented to the County Executive for approval by him or her. No local law shall be approved by the County Executive until a public hearing thereon has been held before him or her. This hearing shall be held on public notice of at least five days, such notice to be given by the County Executive within ten days after the local law shall have been presented to him or her, and the hearing shall be held within twenty days after such presentation. If the County Executive approves the local law, ~~he or she~~ the County Executive shall sign it and return it to the Clerk of the County Legislature. If ~~he or she~~ the County Executive

disapproves it ~~he or she~~ the County Executive shall return it to the Clerk with ~~his or her~~ the County Executive's objections stated in writing, and the Clerk shall present the law with such objections to the County Legislature at its next regular meeting. Such objections shall be entered in the Legislature's record of proceedings. The County Legislature within thirty days thereafter may reconsider the local law. If after the reconsideration such local law is repassed by a vote of at least two thirds of the total voting power of the County Legislature, it shall be deemed adopted, notwithstanding the objections of the County Executive. Only one vote shall be had upon such reconsideration. The vote shall be taken by ayes and noes, and the names of the members present and their votes shall be entered in the record of proceedings. If within thirty days after a local law shall have been presented to him or her the County Executive shall neither approve it nor return it to the Clerk with ~~his or her~~ the County Executive's objections, the local law shall be deemed to be adopted in like manner as if ~~he or she~~ the County Executive had signed it. At any time prior to the approval of a local law or to its return by the County Executive, the County Legislature may recall the same and reconsider its action thereon.

Amend- Article 3, Section 301 of the Charter as follows:

Section 301. The County Executive; election; term; qualifications. The executive branch of County government shall be administered by the County Executive who shall be elected from the County at large. ~~His or her~~ The County Executive's term of office shall begin with the first day of January next following ~~his or her~~ the County Executive's election and shall be for four years, except that the term of the County Executive elected in nineteen hundred sixty shall be for three years. At the time of ~~his or her~~ the County Executive's election and throughout ~~his or her~~ the County Executive's term of office ~~he or she~~ the County Executive shall be a qualified elector of the County. ~~He or she~~ The County Executive shall devote ~~his or her~~ the County Executive's whole time to the duties of ~~his or her~~ the County Executive's office and shall hold no other public office, except as provided in section three hundred seven hereof.

Amend- Article 3, Section 303, paragraph 3 of the Charter as follows:

3. Supervise and direct the internal organization and reorganization of each department or other administrative unit the head of which ~~he or she~~ the County Executive has power to appoint.

Amend- Article 3, Section 306 of the Charter as follows:

Section 306. Division of Purchase; Purchasing Act repealed. There shall be in the office of the County Executive a Division of Purchase, headed by a Purchasing Director who shall be appointed by and serve at the pleasure of the County Executive. Such director shall possess at least five years of practical experience in the area of purchasing, and/or shall possess at least five years professional training in the area of purchasing, or shall possess a combination of said requirements totaling at least five years. The Purchasing Director shall, in accordance with requirements as to advertising and competitive bidding, make all purchases and sales of materials, supplies and equipment and contract for the rental or servicing of equipment for the County, except as otherwise provided in this Charter or the Administrative Code. ~~He or she~~ The Purchasing Director shall not contract for or furnish any services, equipment or other articles except upon receipt of authorized requisitions and certifications as to the availability of funds. The Erie County Purchasing Act, being chapter one hundred sixty seven of the laws of nineteen hundred seventeen as amended, is hereby repealed as of January first, nineteen hundred sixty one. Amended by Local Law No. 5 1980.

Amend- Article 5, Section 502 of the Charter as follows:

Section 502. Powers and duties of the Commissioner. Except as otherwise provided in this Charter, the Commissioner of Health shall have all the powers and perform all the duties conferred or imposed upon county health commissioners and/or county boards of health by law. ~~He or she~~ The Commissioner of Health shall perform such additional and related duties as the County Executive may prescribe.

The Commissioner shall supervise and be responsible for, and shall appoint and have charge of the County medical examiners and their staff, which County medical examiners

shall be physicians duly licensed to practice in the State of New York. The medical examiners shall have such powers and duties as are or may be prescribed by any state law, county law, special act, or local law, including any duties previously assigned to the Medical Director as regards inquiries into deaths occurring without medical attendance. The Chief Medical Examiner shall be keeper of the morgue.

Amend- Article 6, Section 601 of the Charter as follows:

Section 601. Department of Law; County Attorney. There shall be a Department of Law headed by the County Attorney, who shall be appointed by the County Executive subject to confirmation by the County Legislature. ~~He or she~~ **The County Attorney** shall be a member in good standing of the bar of the State of New York.

Amend- Article 6, Section 602 of the Charter as follows:

Section 602. Powers and duties. The County Attorney shall be the legal advisor for the County and, on its behalf in County matters, of its officers and administrative units. ~~He or she~~ **The County Attorney** shall, in all County legal matters of a civil nature, advise all County officers and employees and, where in the interest of the County, prepare all necessary papers and written instruments in connection therewith, prosecute or defend all actions or proceedings of a civil nature brought by or against the County; prepare resolutions, ordinances, legalizing acts and local laws to be presented for action by the County Legislature, together with notices and other items in connection therewith; and perform such additional and related duties as may be prescribed by law, by the County Executive or by resolution of the County Legislature.

Amend- Article 9, Section 902 of the Charter as follows:

Section 902. Powers and duties. The Commissioner of Personnel shall have, with reference to the civil service of the County, the powers and duties of a county civil service commissioner as provided by the Civil Service Law, and, ~~he or she~~ **the Commissioner of Personnel** shall be subject to supervision and control by the State Civil Service

Commission as are county civil service commissions. Provided, however, that the State Civil Service Commission shall have exclusive jurisdiction to prepare and rate examinations and establish eligibility lists for all positions under the jurisdiction of the County Personnel Commissioner. The Commissioner shall perform such additional and related duties as the County Executive may prescribe.

Amend- Article 10, Section 1001 of the Charter as follows:

Section 1001. Department of Environment and Planning; Commissioner; qualifications. There shall be a Department of Environment and Planning headed by a Commissioner. ~~He or she~~ **The Commissioner** shall be appointed by the County Executive, subject to confirmation by the County Legislature. ~~He or she~~ **The Commissioner** shall possess not less than a baccalaureate degree in an appropriate subject field and suitable experience in private or public administration and environmental resource programs or regional, county or municipal planning.

Amend- Article 10, Section 1002 of the Charter as follows:

Section 1002. Powers and duties of Commissioner. The Commissioner of Environment and Planning shall have the following powers and duties:

1. ~~He or she~~ **The Commissioner** shall administer the planning, environmental compliance, drainage, flood control, solid waste management, sewerage planning, construction and management functions vested in the executive branch of the County government, provided, however, that this provision shall not be deemed to restrict the powers or duties of any administrative body appointed, designated, or established in accordance with article five a of the County law and the Erie County Charter and Administrative Code.
2. ~~He or she~~ **The Commissioner** shall head the Department of Environment and Planning, supervise and direct its officers and employees, and make such assignments of powers and duties among them as ~~he or she~~ **the Commissioner** may consider advisable.

3. ~~He or she~~ The Commissioner may promulgate, administer, enforce and amend a county environmental quality code, pursuant to section nine hundred three of this charter.
4. ~~He or she~~ The Commissioner may, if authorized to do so by appropriate federal or state authorities, administer or enforce federal or state laws, rules, regulations, orders or programs in relation to the control, enhancement and preservation of environmental resources.
5. ~~He or she~~ The Commissioner shall advertise and call for bids on the construction of each sewer project of the County and such other projects as may be assigned to this department by the County Legislature, open such bids publicly, tabulate them and submit recommendations with respect thereto to the County Legislature and County Executive.
6. ~~He or she~~ The Commissioner shall have such additional powers and duties as may be prescribed by the County Executive.
7. ~~He or she~~ The Commissioner shall have all powers necessary or proper to the exercise of any of the duties or functions of the Commissioner of the Department of Environment and Planning.

Amend- Article 10, Section 1003 of the Charter as follows:

Section 1003. County environmental quality code. To the extent applicable to the control and enhancement of the quality, use or enjoyment of air and water resources, the authority conferred upon a board of health by the Public Health Law to formulate, promulgate, adopt, publish and enforce rules, regulations, orders and directions for the security of life and health to be known as a sanitary code may be exercised by the Commissioner of Environment and Planning in formulating, promulgating, adopting, publishing and enforcing an environmental quality code. The Commissioner may also promulgate such other and additional rules and regulations as ~~he or she~~ the Commissioner shall consider appropriate to enhance the quality, use and enjoyment of air, water and other resources within the County, in furtherance of public health, safety, and welfare. This shall not be deemed to limit the authority of the Commissioner of Health or the Board of Health to promulgate such additional regulations for the security of life and health as may be necessary. Before adopting any provision or amendment of the County environmental quality code, the

Commissioner shall conduct a public hearing, pursuant to the procedures set forth in section 9.06(a) of the Erie County Administrative Code. Following such public hearing, if the Commissioner's decision is to adopt said proposed code or amendment, ~~he or she~~ the Commissioner shall file a copy of the said preliminary decision with the Clerk of the Legislature. If the County Legislature shall so direct, pursuant to section 9.06(a) of the Erie County administrative code, the Commissioner shall conduct a second public hearing.

Nothing in this section shall be construed to mean that the Commissioner must promulgate or enforce such rules, regulations, orders and directions except as ~~he or she~~ the Commissioner has the necessary staff and funds to do so.

Amend- Article 11, Section 1001 of the Charter as follows:

Section 1101. Department of Public Works; Commissioner; Qualifications. There shall be a Department of Public Works headed by a Commissioner. ~~He or she~~ The Commissioner shall be appointed by the County Executive, subject to confirmation by the County Legislature and shall be a professional engineer licensed and registered by the State of New York.

Amend- Article 13, Section 1301 of the Charter as follows:

Section 1301. Department of Mental Health; Commissioner. There shall be a Department of Mental Health, the head of which shall be the Commissioner of Mental Health. ~~He or she~~ The Commissioner shall be appointed by the County Executive subject to confirmation by the County Legislature. The Commissioner shall meet those qualifications fixed by the State Office of Mental Health and in existence at the time of ~~his or her~~ the Commissioner's appointment.

Amend- Article 13, Section 1302 of the Charter as follows:

Section 1302. Powers and duties. Except as otherwise provided in this Charter, the Commissioner of Mental Health shall have all the powers and perform all the duties

conferred or imposed upon directors of mental health and/or community health boards by law. Within appropriations made available there for, the Commissioner shall perform all duties with respect to child mental health services. The Commissioner or ~~his or her~~ the Commissioner's designee shall serve as the Director of Community Services prescribed by Mental Hygiene Law §41.09. ~~He or she~~ The Commissioner shall perform such additional and related duties as the County Executive may prescribe.

Amend- Article 14, Section 1401 of the Charter as follows:

Section 1401. Department established; Commissioner of Homeland Security and Emergency Services. There shall be a Department of Homeland Security and Emergency Services, the head of which shall be the Commissioner of Homeland Security and Emergency Services. ~~He or she~~ The Commissioner shall be appointed by the County Executive subject to confirmation by the County Legislature to serve at the pleasure of the County Executive.

Amend- Article 15, Section 1501 of the Charter as follows:

Section 1501. Department of Central Police Services; Commissioner. There shall be a Department of Central Police Services, the head of which shall be the Commissioner of Central Police Services. ~~He or she~~ The Commissioner shall be appointed by the County Executive, subject to confirmation by the County Legislature, from a list of six qualified candidates, one of which must be female, and an additional one of which must be from an under-represented minority group, provided by the Central Police Services Board of Trustees. The Commissioner shall serve at the pleasure of the County Executive.

Amend- Article 18, Section 1801 of the Charter as follows:

Section 1801. Election; Comptroller's Act repealed. There shall be a County Comptroller who shall be elected from the County at large. ~~His or her~~ The County Comptroller's term of office shall begin with the first day of January next following ~~his or her~~ the County Comptroller's election and shall be for four years. At the time of ~~his or her~~ the County

Comptroller's election and throughout ~~his or her the County Comptroller's~~ term of office ~~he or she the Comptroller~~ shall be a qualified elector of the County. ~~He or she The Comptroller~~ shall devote ~~his or her the County Comptroller's~~ whole time to the duties of ~~his or her the County Comptroller's~~ office and shall hold no other public office. The Erie County Comptroller's Act, being chapter four hundred twenty three of the laws of nineteen hundred thirty-nine as amended, is hereby repealed, as of January first, nineteen hundred sixty-one.

Amend- Article 19, Section 1901 of the Charter as follows:

Section 1901. Election. There shall be a County Clerk who shall be elected from the County at large. ~~His or her The County Clerk's~~ term of office shall begin with the first day of January next following ~~his or her the County Clerk's~~ election, and shall be for four years except as otherwise provided in this Charter. At the time of ~~his or her the County Clerk's~~ election and throughout ~~his or her the County Clerk's~~ term of office ~~he or she the Clerk~~ shall be a qualified elector of the County. ~~He or she the Clerk~~ shall devote ~~his or her the County Clerk's~~ whole time to the duties of ~~his or her the County Clerk's~~ office and shall hold no other public office.

Amend- Article 19, Section 1902 of the Charter as follows:

Section 1902. Powers and duties. Except wherein consistent with this Charter, the County Clerk shall have and exercise all powers and duties now or hereafter conferred or imposed upon him or her by any applicable law. ~~He or she the Clerk~~ shall perform such additional and related duties as may be prescribed by local law.

Amend- Article 20, Section 2001 of the Charter as follows:

Section 2001. Election. There shall be a District Attorney who shall be elected from the County at large. ~~His or her The District Attorney's~~ term of office shall begin with the first day of January next following ~~his or her the District Attorney's~~ election, and shall be for four years except as otherwise provided in this Charter. At the time of ~~his or her the District~~

Attorney's election and throughout ~~his or her~~ the District Attorney's term of office ~~he or she~~ the District Attorney shall be a qualified elector of the County. ~~He or she~~ The District Attorney shall devote ~~his or her~~ the District Attorney's whole time to the duties of ~~his or her~~ the District Attorney's office and shall hold no other public office.

Amend- Article 20, Section 2002 of the Charter as follows:

Section 2002. Powers and duties. The District Attorney shall have and exercise all powers and duties now or hereafter conferred or imposed upon him by any applicable law. ~~He or she~~ ~~The District Attorney~~ shall perform such additional and related duties as may be prescribed by local law.

Amend- Article 21, Section 2101 of the Charter as follows:

Section 2101. Election. There shall be a Sheriff who shall be elected from the County at large. ~~His or her~~ The Sheriff's term of office shall begin with the first day of January next following ~~his or her~~ the Sheriff's election and shall be for four years except as otherwise provided in this Charter. At the time of ~~his or her~~ the Sheriff's election and throughout ~~his or her~~ the Sheriff's term of office ~~he or she~~ the Sheriff shall be a qualified elector of the County. ~~He or she~~ the Sheriff shall devote ~~his or her~~ the Sheriff's whole time to the duties of ~~his or her~~ the Sheriff's office and shall hold no other public office.

Amend- Article 21, Section 2102 of the Charter as follows:

Section 2102. Powers and duties. The Sheriff shall have and exercise all powers and duties now or hereafter conferred or imposed upon him by any applicable law. ~~He or she~~ The Sheriff shall perform such additional and related duties as may be prescribed by local law.

Amend- Article 25, Section 2507 of the Charter as follows:

Section 2507. Budget controls.

1. No County officer, employee, department or other administrative unit or subdivision thereof, or other spending agency shall, during a fiscal year, expend or contract to expend any money or incur any liability, or enter into any contract which, by its terms, involves the expenditure of money for any of the purposes for which provision is made in the budget in excess of the amounts appropriated for such fiscal year or for any other purpose, except as otherwise provided in this code or the local finance law. If one or more of the independently elected officials (Clerk, Comptroller, District Attorney, Sheriff) becomes aware of a deficit or impending deficit in ~~his or her~~ **the elected official's** department, ~~he or she~~ **the elected official** shall notify the Legislature immediately so that, subject to section 2510 of this Charter, remedial action can be taken. The unexpended balance of each appropriation, less the commitments outstanding at the close of the fiscal year for which it was made, shall lapse at the close of such fiscal year; provided that nothing herein contained shall be construed to require the lapsing of appropriations which may be or are required to be made for an indefinite period or which include state refunds, allocations or grants applicable to said appropriations pursuant to any other provisions of law; and provided further that nothing herein shall be construed to prevent the making of appropriations or contracts for the construction of permanent public improvements or works not to be completed during the fiscal year, or the acquisition of property therefor, or the establishment of bond or capital accounts, sinking funds or reserve funds, and each such appropriation, account or fund shall continue in force until the purpose for which it was made shall have been accomplished or shall have been abandoned by a two thirds vote of the County Legislature. Any contract, verbal or written, made in violation of this section shall be null and void.

Amend- Article 25, Section 2508 of the Charter as follows:

Section 2508. Adoption of budget.

1. The County Legislature after one or more public hearings thereon, may strike items of appropriation from the tentative budget or reduce items therein, excepting appropriations required by law or for debt service. The County Legislature after one

or more hearings, may add items to or increase items in such budget, provided that such additions or increases are stated separately and distinctly. Decreases shall not require executive approval.

The report of the Budget Committee to the County Legislature concerning amendments to the County Executive's tentative budget shall be presented to the Legislature and laid on the table at least forty eight hours prior to the annual meeting for budget adoption as prescribed in this section.

Budget amendments proposed subsequent to the tabling of the Budget Committee report, or less than forty eight hours prior to the annual meeting, shall be considered separately with each line item voted on individually on the floor of the legislature.

2. If the budget is passed by the County Legislature with no additions or increases, such budget shall be deemed to have been adopted without any further action by the County Executive; if, however, the budget as passed by the County Legislature contains any such additions or increases, the same shall be presented by the Clerk of the Legislature to the County Executive not later than the second business day after the sixth of December, for ~~his or her~~ the County Executive's consideration of such additions or increases. If the County Executive approves all additions and increases, ~~he or she~~ the County Executive shall affix ~~his or her~~ the County Executive's signature to a statement thereof and return the budget and such statement to the Clerk of the Legislature. The budget, including the additions and increases as part thereof, shall then be deemed adopted.
3. The County Executive may object to any one or more of such added or increased items, and in such case shall append to the budget a statement of the added or increased items to which ~~he or she~~ the County Executive objects with the reasons for ~~his or her~~ the County Executive's objections, and shall return the budget with ~~his or her~~ the County Executive's objections to the Clerk of the County Legislature who shall present the same to the County Legislature on or before the seventh business day after the sixth of December. The County Legislature shall thereupon enter the objections upon its journal and proceed to reconsider the additions and increases so objected to. If upon such reconsideration two thirds of all members of the County Legislature vote to approve such additions and increases, or any of them, the budget with any additions and increases so approved, together with any additions and increases not so objected to by the County Executive, shall be deemed adopted.

4. If a budget with additions or increases is not returned by the County Executive to the Clerk of the Legislature with ~~his or her~~ the County Executive's objections on or before the seventh business day after the sixth of December, it shall be deemed adopted.
5. If a budget has not been adopted, as herein provided, on or before the tenth business day after the sixth December in each year, then the tentative budget as submitted by the County Executive, plus all additions and increases to which ~~he or she~~ the County Executive has failed to object, shall be the budget for the ensuing fiscal year.
6. Four copies of the budget as adopted shall be certified by the County Executive and by the Clerk of the County Legislature. One such copy shall be filed in the office of the County Executive, and one each in the offices of the County Comptroller, the Commissioner of Finance and the Clerk of the County Legislature. The budget as so certified shall be printed or otherwise reproduced and copies shall be made available.

Amend- Article 26, Section 2601 of the Charter as follows:

Section 2601. Administrative unit defined; administrative and advisory boards.

"Administrative unit" shall mean any department, executive division, institution, office or other agency of County government except a bureau, division, section or other subordinate part of any of the foregoing.

The Board of Trustees of the Buffalo and Erie County Public Library and the Board of Trustees of the Erie County Technical Institute shall continue to be administrative boards heading the respective administrative units. Every other board, all appointive members of which are appointed by the County Executive, shall be an advisory board. An advisory board shall have no administrative or appointive powers but, when requested by the County Executive, shall assist him or her in the recruitment of candidates to fill a vacant position as head of the respective administrative unit.

Except as otherwise provided in this Charter, advisory boards shall consist of such numbers and the members thereof shall be appointed for such terms as may be provided in the Administrative Code. In the absence of any such provision, the number of members shall be not less than five nor more than fifteen as determined by the County Legislature and appointments shall be for five year staggered terms. Initial appointments shall be for

such periods as will result, as nearly as practicable, in the same number of term expirations each year. If a vacancy occurs other than by the expiration of a term, appointment to fill such vacancy shall be for the unexpired portion of such term.

Before approving or vetoing any local law or ordinance specifying functions affected thereby of any administrative unit in which an advisory board has been appointed, the County Executive shall refer such local law or ordinance to such advisory board for consideration and recommendation.

It shall be the duty of each advisory board to study conditions in its respective field, with particular reference to the policies and programs in Erie County, and to report its findings and recommendations to the County Executive, who shall forward the same together with any comments ~~he or she~~ the County Executive may choose to make, to the County Legislature.

Introducer's Memorandum to Recommendation Intro No 20

Sponsored by Commission Member: William Schmid, as Chair and on behalf of the Executive Committee.

Department of Mental Health

The intent and purpose of this recommendation is to remove unnecessary language (1302) and add qualifications regarding the commissioner (1301). This recommendation by the Department of Health was reviewed by the County Attorney's Office who provided the following analysis: There is no legal impediment to specifically qualify the Commissioner's required provision of child mental health services to "appropriations made available there for." Additionally, there is no legal impediment to referencing the required qualification review. Section 41.05 of the New York State Mental Hygiene Law requires that, to be eligible for state aid, a county must establish a local governmental unit for the provision of local service, with a director of community services as its chief executive officer. Here the establishment of an Erie County Department of Mental Health and the appointment of its commissioner satisfy those respective requirements. Part 102 of Title 14 of the Code, Rules and Regulations of the State of New York (14 NYCRR 102) specifically delineates standards regarding the qualifications of a director of community services and further directs the Inter-Office Coordinating Council to promulgate procedures for the review of a candidate's qualifications against those standards articulated in 14 NYCRR 102.

Recommendation

Amend Article 13, Sections 1301 and 1302 of the Charter as follows:

Section 1301. Department of Mental Health: Commissioner. There shall be a Department of Mental Health, the head of which shall be the Commissioner of Mental Health. He or she shall be appointed by the County Executive

subject to confirmation by the County Legislature. The Commissioner shall meet ~~the these~~ qualifications required of ~~directors of community service~~ fixed by the State Office of Mental Health and in existence at the time of his or her appointment. ~~The credentials of a candidate for appointment to the position of Commission shall be submitted to the New York State Inter-Office Coordinating Council ("IOCC") for review pursuant to the procedures promulgated by the IOCC at the time of such submission.~~

Section 1302. Powers and duties. Except as otherwise provided in this Charter, the Commissioner of Mental Health shall have all the powers and perform all the duties conferred or imposed upon directors of mental health and/or community health boards by law. ~~With appropriations made available there for~~ The Commissioner shall perform all duties with respect to child mental health services. The Commissioner or his or her designee shall serve as the Director of Community Services prescribed by Mental Hygiene Law §41.09. He or she shall perform such additional and related duties as the County Executive may prescribe.

Introducer's Memorandum to Recommendation Intro No 21

Sponsored by Commission Member: William Schmid, as Chair and on behalf of the Executive Committee.

Department of Health

The intent and purpose of this recommendation is to modify language in section 505 to resolve conflict and be updated in the following ways:

- 1) In the Charter, the Public Health Lab Director is a CSEA position, but Section 505 gives the Commissioner power to appoint. Modifying this language would resolve a conflict with the plain reading and Labor agreements.
- 2) Change Public Health Council as its full name is Public Health and Health Planning Council.

This language has been reviewed by County Attorney's office who provided the following analysis:

- 1) Amend the Charter to remove appointing authority from the Department of Health Commissioner relative to the positions of Director of the Public Health Lab and Director of the Division of Services to Persons with Special Needs.
- 2) There is no legal impediment to this change.

Recommendations

Amend Article 5, Section 505 of the Charter as follows:

Section 505. County Laboratory District; County Laboratory; Director. The County, including the cities, towns, villages and special districts situated therein shall continue to be a county laboratory district. There shall be in the Department an Erie County Laboratory headed by a Director. The Commissioner of Health shall appoint as Laboratory Director a person who shall possess such qualifications as may be prescribed by the Public Health

and **Health Planning** Council of the State of New York for a clinical laboratory director. Such appointments shall be for the term or balance thereof of the Commissioner making such appointment.

The Director shall exercise all the powers and duties heretofore or hereafter conferred or imposed upon him by the County Charter, by the Administrative Code, by order or direction of the Commissioner of Health and by any applicable act of the Legislature not inconsistent with the County Charter or the Administrative Code. Such powers and duties shall include, but shall not be limited to, any power or duty conferred or imposed upon a county laboratory board and the director of a county laboratory district by the Public Health Law or other applicable law.

Introducer's Memorandum to Recommendation Intro No 22

Sponsored by Commission Member: William Schmid, as Chair and on behalf of the Executive Committee.

Department of Health

The intent and purpose of this recommendation is to modify language in multiple sections in 506. These modifications include changing language signifying the Department of Health is led by a Director, not Deputy Commissioner, make changes that are consistent with the Department, removing the word adults as this division only serves birth to five, change the spelling of insure to ensure (as it's currently incorrect) and finally remove medical needs as this division only handles development. The County Attorney reviewed this recommendation and found no legal impediment to these changes.

Recommendations

Amend Article 5, Section 506 of the Charter as follows:

Section 506. Division of Services to Persons with Special Needs; ~~Deputy Commissioner~~ Director. There shall be in the Department a Division of Services to Persons with Special Needs, headed by a ~~Deputy Commissioner~~ Director. The ~~Deputy Commissioner~~ Director shall be appointed by the Commissioner and serve at the Commissioner's pleasure. The ~~Deputy Commissioner~~ Director shall ensure the continuance of beneficial programs and implement additional services in the County for ~~adults and~~ youths with special developmental and ~~medical~~ needs.

Introducer's Memorandum to Recommendation Intro No 23

Sponsored by Commission Member: William Schmid, as Chair and on behalf of the Executive Committee.

Department of Personnel

The intent and purpose of this recommendation is to modify the term commissioner to read commission as NYS Civil Service Law Section 15(I)(b) provides that "A personnel officer (EC Commissioner of Personnel) shall have all the powers and duties of a municipal civil service commission." The reference goes to the powers and duties of the commission as a whole and not simply an individual commissioner. The County Attorney's office reviewed this and suggested the recommendations below.

Recommendations

Section 901. Department of Personnel; Commissioner: **divisions**. There shall be a Department of Personnel headed by a Commissioner, who shall be appointed by the County Executive subject to confirmation by the County Legislature **for a term of six years. Within such departments there shall be a Division of Personnel Services and a Division of Civil Service Administration and Enforcement.**

Section 902. Powers and duties.

Except as otherwise provided in this Charter, the Personnel Commissioner shall:

- (a) The Commissioner of Personnel shall have,** with reference to the civil service of the County, the powers and duties of **a-county** municipal civil service commissioner as provided by the Civil Service Law, and he or she shall be subject to supervision and control by the State Civil Service Commission as are county civil service commissions **as are county personnel officers. Provided, however, that the State Civil Service Commission shall have exclusive jurisdiction to prepare and**

~~rate examinations and establish eligibility list for all positions under the jurisdictions of the County Personnel Commissioner.~~

~~(b) The Commissioner shall perform such additional and related duties as the County Executive may prescribe.~~ Enforce all countywide Policies and Procedures for County employees.

(c) Foster and develop programs for the improvement of employee effectiveness, including programs for training and development, safety, health and counseling, with a focus on opportunities for promotion of minorities, women, veterans and individuals with disabilities.

(d) Perform such other and related duties as shall be required or delegated to him by the county executive or county legislature.

Section 903. Division of Personnel Services.

The Division of Personnel Services shall be responsible for the presentation, implementation and management of employee benefits for all County employees in accordance with County policy and the appropriate collective bargaining agreement, if applicable.

Section 904. Division of Civil Service Administration.

The Division of Civil Service Administration shall be responsible for administering and enforcing the provisions of Civil Service Law within Erie County.

Introducer's Memorandum to Recommendation Intro No 24

Sponsored by Commission Member: Jesse Simmons, as Chair and on behalf of the Legislature, Other Elected Officials & Commissions Committee

The intent and purpose of this recommendation is to amend Article 26, Section 2606 as its preempted by state law and should be replaced to correctly state that the Governor fills all vacancies in the offices of County Clerk, District Attorney or Sheriff pursuant to statute. The County Attorney's Office reviewed this and recommended change as it would eliminate conflict between state law and the Charter and end confusion caused by retaining the preempted language. "State law preempts local law with respect to the offices of County Clerk, District Attorney, and Sheriff, because those officers perform state functions according to statute despite being elected and serving at the county level. Pursuant to New York County Law§ 400(7) and the Public Officers Law, the Governor fills a vacancy in each of these elective offices by appointment. Accordingly, the County Legislature may not appoint anyone to fill a vacancy in any of these elec-tive offices as Section 2606 of the Charter provides.

Recommendation

Amend Article 26, Section 2606 of the Erie Charter as follows:

Section 2606. Filling vacancy in elective office of County Clerk, District Attorney or Sheriff. Pursuant to law, a Avacancy, ~~otherwise than by expiration of term of removal by the Governor,~~ in the elective office of County Clerk, District Attorney or Sheriff shall be filled by the Governor by appointment, and the appointment shall continue until and including the thirty-first day of December succeeding the first annual election at which the vacancy can be filled by election. ~~pursuant to law by the County Legislature, of a qualified elector of the County having the same political affiliation as the person last elected to such office. A vacancy occurring in such office as the result of removal of the incumbent by the Governor, of a qualified elector of the County having the same political affiliation as the person last elected to such office. The person appointed by either the County Legislature or the~~

~~Governor shall hold office by virtue of such appointment until the commencement of the political year next succeeding the first annual election after the happening of the vacancy at which election a County Clerk, District Attorney, or Sheriff, as the case may be, shall be elected for the balance of the term, if any.~~