

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

The intent and purpose of this is to replace gendered wording with non-gendered/nonbinary wording.

Recommendation

The Erie County Charter shall amend throughout as follows:

All references to "He" or "She" shall be stricken and replaced with " They, Them and Their"

All references to "Him" and "Her" shall be stricken and replaced with " They, Them and Their"

All references to " His" and "Her" shall be stricken and replaced with " They, Them and Their"

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 ~~insure~~ **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 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 elective 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 vacancy, ~~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.~~