

*Monroe County
Clerk of the Legislature*

**Jack Moffitt
Clerk**



**David Grant
Deputy Clerk**

MEMORANDUM

TO: Legislators, Directors, Staff and Media

FROM: Jack Moffitt, Clerk of the Legislature

DATE: December 10, 2020

RE: Read & Print - File No. 20-0432

The attached Read and Print is being distributed for your information.

20-0432 **Objections to Changes to the Monroe County Budget Made via Motion No. 123 of 2020 and Motion No. 124 of 2020 - As a Matter of Urgency - County Executive Adam J. Bello**

Attachments



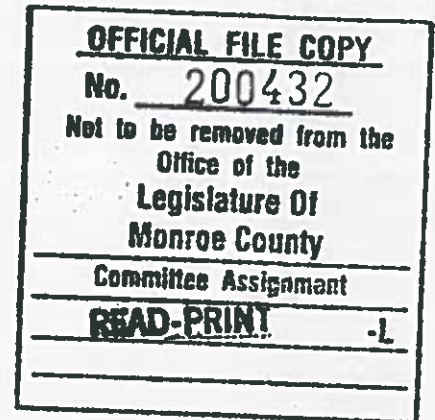
Office of the County Executive

Monroe County, New York

Adam J. Bello
County Executive

December 10, 2020

Mr. Jack Moffitt
Clerk of the Legislature
Monroe County Legislature
407 County Office Building
Rochester, New York 14614



Dear Mr. Moffitt:

I received your letter certifying that the Legislature approved certain changes to the 2021 Monroe County budget at its meeting on December 8, 2020. Pursuant to § C4-4(C) of the Monroe County Charter, I am hereby notifying you of my objections to the changes to the budget and returning the budget changes to you.

The amendment purporting to change the list of authorized positions for the Board of Elections is unlawful. Section 3-300 of the New York State Election Law provides that it is the duty of the Board of Elections, not the County Legislature, to set the number of BOE employees, assign their duties, and establish their titles and salaries. New York's highest court, the Court of Appeals, has confirmed that Election Law § 3-300 vests local Boards of Elections "with complete and exclusive control of their personnel and the performance of their duties." *County of Erie v. CSEA Local 815*, 19 N.Y.3d 1070, 1071 (2012) (quoting *County of Chautauqua v. Chautauqua Co. Employees Unit 6300*, 181 A.D.2d 1052 (4th Dep't 1992)). Based on this exclusive control, courts have rejected claims that a County Legislature has the authority to set the number of positions or salaries for the Board of Elections. *Mohr v. Giambra*, 7 Misc.3d 723 (Sup. Ct. Erie Co. 2005), *affirmed* 27 A.D.3d 1185 (4th Dep't 2006). In short, the County Legislature is tasked with appropriating funds for the Board of Elections, but has no role with respect to the assignment of its personnel. A copy of an opinion from counsel to the New York State Board of Elections confirming the flaws in this amendment is enclosed.


This year more than ever we have seen the importance of the work done by our Board of Elections. The passage of an eleventh-hour amendment, introduced with no notice to the Election Commissioners and subject only to a truncated debate, does not do justice to the Board's efforts. It is reckless and irresponsible for the Legislature to interfere with the staffing needs identified by the Election Commissioners, and such interference threatens the bipartisan and independent nature of the Board of Elections.

Mr. Jack Moffitt
Clerk of the Legislature
December 10, 2020

I also object to the amendment creating a \$2.5 million contingency fund within the County Legislature's budget. First, this amendment is not necessary to respond to the pandemic. The County is capable of making adjustments to the budget throughout the year to respond to changing circumstances, as demonstrated this year, and I will work with the Legislature to do so as needed. Second, I do not think the creation of such a large fund without a specific purpose is consistent with sound budgeting practice or provides the transparency to which taxpayers are entitled.

For these reasons, pursuant to § C4-4(C) of the Monroe County Charter, I object to both changes to the 2021 Monroe County Budget, Motion No. 123 and Motion No. 124 of 2020.

Sincerely,



Adam J. Bello
Monroe County Executive

Enc.

Bringewatt, John P

From: Quail, Brian (ELECTIONS) <Brian.Quail@elections.ny.gov>
Sent: Wednesday, December 9, 2020 2:45 PM
To: Bringewatt, John P
Subject: RE: Monroe County Budget Amendment

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The New York State Constitution and the Election Law provide for an independent, bi-partisan board of elections. Exercises of managerial direction and discretion with respect to personnel rest exclusively with the board of elections. Any other construct abrogates the bipartisan and independent nature of the agency.

Construing § 3-300 of the Election Law applicable to county boards of Elections, the Court of Appeals observed with respect to that section, for which § 3-100 that: "[b]y enacting [section 3-300], the Legislature furthered the constitutional mandate of bipartisan participation in the functions of boards of elections and vested [them] with complete and exclusive control of their personnel and the performance of their duties in that highly sensitive governmental area" Matter of County of Erie v Civil Service Employees Association Local 815, 19 NY3d 1070 [2012] quoting County of Chautauqua v Chautauqua County Employees' Unit 6300 of Local 807 of Civ. Serv. Employees' Assn., Local 1000, AFSCME, AFL-CIO [4th Dept 1992] [citation omitted].

In Mohr v. Giambra, 7 Misc.3d 723 [2005], Erie County Supreme Court rejected the contention that the county legislature had personnel line item control over the Erie County Board of Election:
"Broad public policy concerns and a clear reading of the applicable statutory law and New York State Constitution, article II, § 8[2] compel this court to uphold the unfettered authority of the Board of Elections to fix the number of its employees and establish their salaries within the amounts appropriated by the County. Therefore, petitioners' application is granted and respondents' motions are denied for the reasons that follow."

"To put the argument in simplest terms, the county respondents claim that County Law § 205 is the controlling authority in this dispute, rather than Election Law § 3-300, as urged by petitioners. Thus, the county respondents contend that the county legislature has the authority to control both the number of election employees and their individual salaries. To adopt the position of the county respondents would render part of section 3-300 of the Election Law meaningless, an interpretation that must be avoided [citations omitted] and one which this court refuses to entertain."
Id at 724.

In sum, the county legislature cannot impose on the board of elections a staffing structure or even specific salaries for specific positions. Within the amount appropriated for staff, the board has exclusive authority to set titles and salaries.

From: Bringewatt, John P <JohnBringewatt@monroecounty.gov>
Sent: Wednesday, December 9, 2020 2:36 PM
To: Quail, Brian (ELECTIONS) <Brian.Quail@elections.ny.gov>
Subject: Monroe County Budget Amendment

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Brian,

Here is a copy of the budget amendment passed by the Monroe County Legislature last night concerning BOE staffing.

Thanks,
John

John P. Bringewatt
Monroe County Attorney
Monroe County Law Department
307 County Office Building
39 W. Main Street
Rochester, NY 14614
Tel: 585-753-1402

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