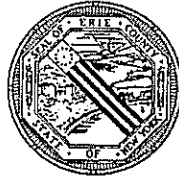


SUSPENSION



COUNTY OF ERIE

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February 14, 2018

Via Email Only

Hon. Peter J. Savage, III, Chairman
Erie County Legislature
Old Erie County Hall
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Opinion as to Form Local Law Intro No 1-1-2018

Dear Chairman Savage:

In accordance with the obligations of the Erie County Attorney set forth in subsection 3, Section 204 of Article 2 of the Erie County Charter, this legal opinion concerns proposed Local Law Intro No. 1-1-2018, relating to the repeal of the Erie County Code of Ethics and the adoption of an updated Erie County Code of Ethics under consideration by the Erie County Legislature ("ECL")

For the reasons set forth more fully below, we believe that Local Law Intro No. 1-1-2018 is of proper form.

Standard

Subsection 3, Section 204 of Article 2 of the Erie County Charter provides:

[T]he County Attorney shall, no later than 14 days after such a public hearing or resolution, render to the Legislature an opinion as to whether the proposed local law or ordinance is of proper form, including but not limited to, [1] whether a proposed local law or ordinance is preempted by state or federal law; [2] whether proposed local law or ordinance is written in a grammatically sound manner as to achieve its intent; and [3] whether proposed local law or ordinance contains ambiguities which may frustrate its implementation and/or enforcement as intended.

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We address these elements as follows.

I. Adoption of Updated Code of Ethics (Local Law No. 1-1-2018)

Local Law No. 1-1-2018 proposes the adoption of a new Erie County Code of Ethics and the repeal of the existing Erie County Code of Ethics. For the reasons set forth below, it is our opinion that the law is not preempted by state or federal law; is written in a grammatically sound manner as to achieve its intent; and does not contain ambiguities which may frustrate its implementation and/or enforcement as intended.

Broadly, Local Law No. 1-1-2018 has four elements (a) guidance for the continued operation of the Board of Ethics; (b) compelled financial disclosures from “every elected official, employee, and each political party official” (Sec. 4); (c) disclosure of interest in county business from “any elected official, officer or employee or political party official” (Sec. 5); and (d) general ethical prohibitions applying to “elected official[s], county officer[s] [and] employee[s]” (Sec. 6).

a. Legislative Authority and Preemption

Constitutionality

On its face, Local Law 1-1-2018 is consistent with the United States Constitution. Financial disclosure laws are upheld so long as they are “designed to further a substantial governmental interest and do...not land very wide of any reasonable mark in making its classifications.” *See Eisenbud v. Suffolk Cty.*, 841 F.2d 42, 46 (2d Cir. 1988) (affirming constitutionality of compelled financial disclosures from county attorneys). Laws compelling disclosure from government employees are routinely upheld. *See id.*; *see also Barry v. City of New York*, 712 F.2d 1554, 1556 (2d Cir. 1983) (affirming constitutionality of compelled financial disclosure from “most elected and appointed officials, candidates for City office, and all civil service employees with an annual salary equal to or greater than \$30,000.”) The same is true of compelled financial disclosures from party leaders. *See Igneri v. Moore*, 898 F.2d 870, 878 (2d Cir. 1990) (affirming constitutionality of compelled financial disclosures from “party chairmen”).

On its face, Local Law 1-1-2018 is not materially distinguishable from the laws that were affirmed in the case law cited above. As such, we conclude that Local Law 1-1-2018 is constitutional.

Authority

We conclude that the ECL has express authority to enact Local Law 1-1-2018. In General Municipal Law §806, the New York State Legislature delegates authority to local governments to enact a code of ethics. Similarly, General Municipal Law §812 allows the legislature to specify the format of annual financial disclosure reports submitted pursuant to a local ethics law.

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Preemption

As the New York State Legislature expressly delegates authority to local governments to enact ethics laws, there is no risk of field preemption. *Belle v. Town Bd. of Town of Onondaga*, 61 A.D.2d 352, 356, 402 N.Y.S.2d 677, 679 (4th Dep't 1978) (“[T]he State has clearly expressed an intention not to occupy the field of ethical standards for officers and employees of local governments.”) Thus, preemption could only arise from a direct conflict with New York law. *See DJL Rest. Corp. v. City of New York*, 96 N.Y.2d 91, 95, 749 N.E.2d 186, 190 (2001).

On the face of Local Law 1-1-2018, there is no evident conflict with ethics laws enacted by the New York State Legislature. *See gen* Art. 4 of the Public Officers Law. As such, Local Law 1-1-2018 is not preempted by New York State law.

b. Written to accomplish its intent

The purpose of Local Law 1-1-2018 is to “maintain the highest standards of integrity in public service” (Sec. 2). This purpose is accomplished through reporting standards. We conclude that the grammar and usage embodied in Local Law 5-2-2017 is sufficient to achieve the intended disclosures and ethical ends.

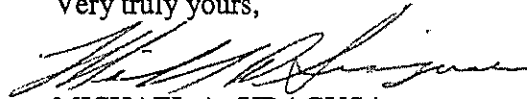
c. Ambiguities

Local Law 1-1-2018 resolves potential ambiguities in its prohibition by defining terms contained within the prohibition (Sec.3). While every hypothetical circumstance or eventuality cannot be addressed in the scope of this opinion, we conclude that Local 1-1-2018 does not present any *facial* ambiguities that would frustrate implementation or enforcement of its prohibition.

II. Conclusion

We conclude that Local Law 1-1-2018 is sufficient as to form.

Very truly yours,



MICHAEL A. SIRAGUSA
Erie County Attorney