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MEMORANDUM:

TO: Donna Bolner, Majority Leader, Dutchess County Legislature
Rebecca Edwards, Minority Leader, Dutchess County Legislature

FROM: Christian R. Cullen, CRC Chief Assistant County Attorney

DATE: June 28, 2021

FILE NO: G-1813

RE: Dutchess County Independent Reapportionment Commission issue regarding ineligibility and appointments "no longer having force and effect"

ISSUES:

I. What is the authority for dissolution of the Commission?

SHORT ANSWER: The text of Local Law Number 5 read as a whole.

II. Is an elected school board member an "elected official?"

SHORT ANSWER: Yes.

RATIONALE:

I. A) What is the proper remedy if one or more ineligible members are appointed to the Commission?

Dutchess County Local Law Number 5 of 2020, provides at Section 2(f)(3) that the Dutchess County Department of Law provides legal advice to the Commission. As the official legal advisor to the Commission, the County Attorney's legal interpretation of Local Law Number 5 of 2020's text is entitled to significant weight.

It is a fundamental rule of statutory construction that a legislative act is to be construed as a whole. People v. Mobil Oil Corp., 48 N.Y.2d 192 (1979); Jacobs v. Marine Midland Bank, N.A., 124 Misc.2d 162 (Supreme Court, Orange County, 1984); St. Vincent's Hosp. and Medical Center of New York v. Tax Com'n of City of New York, 119 Misc.2d 606, (Supreme Court, New York County, 1983).

Statutory language, however strong, must yield to what appears to be legislative intent and that is not to be found in the words of a particular section alone but by comparing it with other parts or provisions of the general scheme of which it is part. Onondaga County Sav. Bank v. Love, 166 Misc. 697(Supreme Court, Onondaga County, 1939); Federal Land Bank of Springfield v. Pickard, 169 Misc. 753 (Supreme Court, Jefferson County, 1939); Jeran Realty Corp. v. State, 194 Misc. 492 (State of New York Court of Claims, 1949).

There is a common scheme throughout Local Law Number 5 of 2020 requiring re-doing the selection process for non-compliance with the Local Law's requirements, particularly with deadlines. Section 2.012(d)(2), (3), and (4) provide that if eligible members are not appointed by specific deadlines, the entire seven members' appointments "will no longer have force and effect" and the selection process must be started over again. Section 2.012(f)(8) provides that if two or more public hearings are not held within five months of publication of the census, "the Commission shall be disbanded" and the selection process started over again. If the Commission does not submit its plan to the Board of Election within six months of publication of the census, "the Commission shall be disbanded" and the selection process started over again.

Initial ***eligible*** appointments were required to have been made no later than February 1, 2021 "with two members appointed by the Legislature's majority leader and two members by the

Legislature's minority member." [Dutchess County Local Law Number 5 of 2020, Section 2.012(d)(1)]

These four members were then required to select an additional three more eligible members no later than February 15, 2021.

In the event that all seven members were not appointed by February 15, 2021 deadline, "the appointment of the initial four members and additional members appointed by the four ***members will no longer have force and effect, and these members will no longer be eligible to serve on the Commission.***" [Dutchess County Local Law Number 5 of 2020, Section 2.012(d)(2)]

The selection process must then start all over again.

I. B) Does the Local Law require that these initial appointments be ***eligible*** or is it the intent of the Local Law that ineligible members be appointed? To answer, a review of the Local Law as a whole must be undertaken.

Section 2.012(d)(3) provides that upon failure to appoint a Commission by March 15 "The majority and minority leaders will then make new ***eligible*** [emphasis added] appointments..."

Section 2.012(d)(4) provides that upon failure to appoint a Commission by April 15 "The majority and minority leaders will then make new ***eligible*** [emphasis added] appointments..."

Would these statutory deadlines be met by simply appointing members regardless of eligibility? No. Appointing ineligible members does not satisfy this requirement. The law does not intend an absurd result. Appointees must have been eligible to be in compliance with the Local Law. The Legislature does not intend an absurd result to ensue from the legislation enacted. Allstate Ins. Co. v. Libow, 106 A.D.2d 110 (Second Dept., 1984), affirmed 65 N.Y.2d 807 (1985).

Members who were eligible at the time of their appointment may argue that they were in compliance with the Local Law and should be able to continue in office, however, the problem is not with the eligible members, it's that they were appointed by a tainted or corrupted process. The second three members were appointed by an initial four which was comprised of at least one ineligible member. That is why the tainted selection process must be re-done.

II. What is an "elected official?"

Is an elected School Board Member an elected official?

Section 2.012(a) of Local Law Number 5 of 2020 requires that "A member shall not currently be ***nor have been for the three years preceding*** formation of the Commission ***an elected official....A member shall maintain eligibility while serving on the Commission.***" All applicants for the Commission appointment were required to sign a certification that they were not elected officials and were otherwise eligible.

The word "official," as defined by Black's Law Dictionary, is "an officer; a person invested with the authority of an office."

A member of a local school board for a local school board district is a public officer. 1970 N.Y. Op. Atty. Gen. No. 13, 1970 WL 197698.

The word "elected," as defined by Black's Law Dictionary, "carries with it the idea of a vote, generally popular, sometimes more restricted, and cannot be held the synonym of any other mode of filling a position."

Therefore, a school board member who is voted into office must be considered an "elected official," unless the Local Law provided a list of "elected officials" which did not include an elected school board member, which it does not.

cc:

Greg Pulver, Chair, Dutchess County Legislature

Marcus J. Molinaro, Dutchess County Executive