

Audit Committee

Regular Meeting Minutes

DATE & TIME: April 30, 2014 – 4:30 PM
LOCATION: Karen L. Binder Library, Sixth Floor, County Office Building
PRESIDING OFFICER: Richard Parete, Chairman
LEGISLATIVE STAFF: Fawn Tantillo
PRESENT: Legislators Richard A. Parete, Tracey A. Bartels, Richard A. Gerentine, Kenneth J. Ronk, Jr., non-voting members Comptroller Elliot Auerbach, and Deputy County Executive Kenneth Crannell (designee of County Executive Michael P. Hein)
ABSENT: Legislator Jeanette Provenzano
QUORUM PRESENT: Yes
OTHER ATTENDEES: Legislative Clerk Victoria Fabella, Legislative Counsel Cappy Weiner and Erica Guerin, Purchasing Expeditor Carol Armstrong, , County Attorney Bea Havranek, Deputy Comptroller Joe Eriole

- Chairman R. Parete called the meeting to order at 4:30 PM

County Attorney Havranek discussed the process for selecting an Auditor outlined in the charter and asked the committee to review the legal opinion she provided on March 25, 2014 (Attached to these minutes). She asked them to review the information on page 5 outlining her Conclusions and wanted them to be aware of the process laid out in the County Charter. She spoke of the importance of following this process in order to avoid any challenges by any firm who might feel they were aggrieved.

Committee Chairman Richard Parete remarked that County Executive Michael Hein had vetoed the last Auditor selection the Audit Committee made and the Legislature approved. He asked Deputy Executive Crannell if Executive Hein could come for a few minutes to address his concerns with the committee directly.

Deputy Executive Crannell did not think the Executive was available but assured the committee that the County Executive did not want to be involved in the selection of the Auditor. He told the committee the Executive's only concern was a potential conflict of the same firm doing both the Legislative Budget Analysis and the Audit. He said the Executive's office did not see a conflict with any other firm on the list.

Legislator Ronk said he continues to respectfully agree to disagree on this issue and doesn't see any conflict. Clearly there are other legal opinions stating there is no conflict. (Attached to these minutes) The firm itself, using standards of the AICPA (American Institute of Certified Public Accountants) submitted documents stating there is no conflict in the same firm doing both a Budget Analysis and an Audit.

MOTION NO. 1**Approving the Minutes of April 8, 2014****Text of Motion:**

Resolved to Approve the Minutes of April 8, 2014

Motion Made By:

Deputy Executive Crannell

Motion Seconded By:

Legislator Bartels

Discussion:**Voting In Favor:**

Legislators R. Parete, Bartels, Gerentine and Ronk

Voting Against:

None

No. of Votes in Favor:

4

No. of Votes Against**0****Disposition:**

Carried

MOTION NO. 2**Enter Executive Session****Text of Motion:**

Moved to enter Executive Session for the purpose of interviewing firms who responded to the RFP for an Independent Auditor

Motion Made By:

Deputy Executive Crannell

Motion Seconded By:

Comptroller Auerbach

Discussion:**No. of Votes in Favor:****Voting In Favor:**

Legislators R. Parete, Bartels, Gerentine and Ronk

Voting Against:

None

No. of Votes in Favor:

4

No. of Votes Against**0****Disposition:**

Carried

The Audit Committee entered executive session at approximately 4:35.

MOTION NO. 2**Exit Executive Session****Text of Motion:**

Moved to exit executive session.

Motion Made By:

Deputy Executive Crannell

Motion Seconded By:

Legislator Ronk

Discussion:**No. of Votes in Favor:****Voting In Favor:**

Legislators R. Parete, Bartels, Gerentine and Ronk

Voting Against:

None

No. of Votes in Favor:

4

No. of Votes Against**0****Disposition:**

Carried

The Audit Committee exited executive session at approximately 6:54.

Committee Chairman Richard Parete announced that no action was taken in executive session and the next meeting of the Audit Committee will be on Monday May 5 at 4:30 in the Karen L. Binder Library.

New Business: None

Old Business: None

There being no further business before the Committee, a motion was made by Legislator Ronk, seconded by Legislator Bartels and carried to adjourn the meeting at 6:57 PM.

Dated the 7 Day of May, 2014
Fawn A. Tantillo, Senior Legislative Employee
Minutes Approved On:

ULSTER COUNTY ATTORNEY

BEATRICE HAVRANEK
County Attorney

CLINTON G. JOHNSON
First Assistant County Attorney



MICHAEL P. HEIN
County Executive

Assistant County Attorneys

SUSAN K. PLONSKI
ROLAND A. BLOOMER
KRISTIN A. GUMAER
MARC D. RIDER
ROBERT J. FISHER

MEMORANDUM

TO: Cappy Weiner, Esq.
Attorney to the Ulster County Legislature

FROM: Beatrice Havranek, Esq.
Ulster County Attorney *BH*

DATE: March 25, 2014

RE: Opinion regarding the powers and duties of the Ulster County Audit Committee,
the Ulster County Legislature, and the Ulster County Executive

I have been provided with a copy of your undated opinion, a copy of which is annexed hereto, regarding the authority of the Ulster County Audit Committee (hereinafter referred to as "the Audit Committee"). In your conclusion, you state that you have reviewed the "Legal Memos of counsel". Per our recent discussion, it is my understanding that this is a reference to my Opinion to Ulster County Executive Michael P. Hein, dated January 3, 2014, entitled "Executive Veto of Resolution", a copy of which is also annexed hereto.

You state in the conclusion of your Opinion, that *"It is the exclusive jurisdiction and choice of the Audit Committee to choose a firm to audit the books and records of the County. The choice of firm should be done through a RFP after consulting with Purchasing as to the form of the RFP. The Legislature is required to fund such choice under the Charter. The County Executive is not involved in the aforementioned process."*

As we discussed on March 18, 2014, I must respectfully disagree with your analysis and opinion for the reasons set forth below and herein.

It is my legal opinion that the Audit Committee does not have exclusive jurisdiction to choose the firm to audit the books and records of the County. This would be contrary to the Ulster County Charter (hereinafter referred to as "the Charter"). Further, the choice should and cannot be made by merely consulting with the Department of Purchasing as to the form of the Request for Proposal ("RFP"). The RFP process, pursuant to the County's own procurement procedures as required by State law, involve a much greater step-by-step process of review and analysis. The Charter absolutely requires involvement of the Ulster County Executive (hereinafter referred to as "the Executive"), as well as the Ulster County Legislature (hereinafter referred to as "the Legislature") in this process. Approval of both branches of Ulster County Government is required under the Charter.

The Charter requires the Legislature to appropriate funds for the independent auditor. It does not require it to fund the choice of the Audit Committee.

As I further advised you during that discussion, I am the *"sole legal advisor"* to the County. (See Section C-70 of the Charter.) As such, and in light of the fact that your Opinion was circulated to members of the Legislature, I shall be forwarding a copy of my Opinion herein to the Clerk of the Legislature as well as to the members of Legislature.

FACTS

The original Ulster County Charter did not contain a provision for an Audit Committee. The language in the original Charter provided for an independent auditor under the powers and duties of the Legislature. Section C-11-P in the original Charter gave the Legislature the authority *"To provide for the annual audit of the books and records of the County by independent auditors."*

The issue was presented to the Ulster County Charter Revision Commission (hereinafter "the Revision Commission") in 2011-2012. There then existed some controversy as to who had the power to conduct the annual audit and/or choose the independent auditor. The Ulster County Comptroller (hereinafter referred to as "the Comptroller"), in memos to the Revision Commission and during several meetings with the Revision Commission, requested modifications to the above referenced section; and he also addressed the idea of an Audit Committee. The issue involved a significant amount of discussion and review by the Revision Commission at numerous meetings. At the Revision Commission's request, a local certified public accountant also addressed the issue at one of those meetings and answered questions posed by the members of the Revision Commission. Eventually, after several drafts and re-drafts, the Charter was revised to add the Audit Committee and Section C-11-P was modified to read: *"To appropriate funds for the annual audit of the books and records of the County by independent auditors"*.

Section C-11.1 of the Charter established the formation of an Audit Committee. This section provides for an Audit Committee consisting of seven members. The Chairman of the Legislature or his/her designee serves as Chairman of the Committee and the Chairman appoints two members. The Minority Leader of the Legislature also appoints two members; and the County Executive and Comptroller serve as non-voting members. Section C-11.1(A) of the Charter provides that Audit Committee shall:

- "1. Select the independent auditor to perform the annual audit of the books and records of the County;*
- 2. Select the independent auditor in a fashion consistent with the County's existing procurement policy, and the Audit Committee shall consult with the Director of Purchasing in this respect; and*
- 3. Report the independent auditor's findings to the Legislature, County Executive and the County Comptroller."*

On December 10, 2013, the Legislature, at its monthly meeting, adopted Resolution No. 297, entitled "Approving Execution of a Contract in Excess of \$50,000 Entered Into by The County - Legislature." Thereafter, the resolution was presented to the Executive pursuant to Section C-12(A) of the Charter which provides for *"executive approval; veto and veto override."* On December 20, 2013, the Executive vetoed the resolution pursuant to Section C-12(B) of the Charter together with

his objections stated in writing. The Legislature did not over-ride that veto; and the time permitted to do so in the Charter has elapsed.

The contract that was at issue resulted from a Request For Proposals for the purpose of choosing and contracting with an independent auditor to review the books and records of the County.

All of the responses to the Request for Proposals have been rejected; and the Audit Committee has issued another Request for Proposals. Responses are due on March 27, 2014.

ISSUES PRESENTED

In your Opinion, you present the following issues/questions:

1. *Did the creation of the revised Charter grant the Audit Committee the exclusive right and power to choose and authorize the Accounting Firm?*
2. *Is Legislative approval required to approve payment to the Audit Firm?*
3. *Is the County Executive required to approve the choice of the Audit Committee?*

My analysis and my response to those questions are set forth below.

LEGAL ANALYSIS

Any one section of the Charter cannot be read in a vacuum. It is important to note that in the case of the Audit Committee, as well as all other portions of the Charter, the process and procedures must be consistent with other sections of the Charter, the Ulster County Administrative Code (hereinafter referred to as "the Administrative Code") and any other federal, state or local laws, rules, regulations, resolutions and procedures.

Section C -11.1(A) of the Charter requires the committee to select the independent auditor to perform the annual audit of the books and records of the County *in a fashion consistent with the County's existing procurement policy* and report the independent auditor's findings to the Legislature, County Executive and Comptroller.

Section C-11 of the Charter (Powers and Duties of Legislature) enumerates the powers and duties of the Ulster County Legislature. Section C-11(O) of the Charter provides that the Legislature shall approve the execution of all contracts in excess of \$50,000 entered into by the County. Section A-16.1(B)(2)(c) of the Ulster County Administrative Code provides that the Director of Purchasing shall review and approve contracts so reviewed as being approved by the County Legislature in the amount of \$50,000 or more and present same to the County Executive for approval. Although it is anticipated that the contract for the independent auditor will be in excess of \$50,000, the Section C-25(M) similarly provides that County Executive's authority for all contracts under the sum of \$50,000. Pursuant to the Charter and the Administrative Code, the Director of Purchasing then has the authority to execute the contracts. [See Section C-74(B)(2) of the Charter and Section A16-1(2) of the Ulster County Administrative Code.]

It is important to note that consistent with the Charter, Section VII of the Ulster County Purchasing Department Procurement Manual, entitled "Contract Approval", sets forth the policy for contract approval; and it requires the same process as outlined in the Charter and Administrative Code. Thus, the contract for the independent auditor, in order to be consistent with the County's procurement policy, as well as the Charter and the Administrative Code, is subject to the County's

contract process, the same of which requires review and approval by the Legislative Branch and the Executive Branch of Ulster County government.

Article 5-A of General Municipal Law governs public contracts. Section 104-b of General Municipal Law provides that goods and services which are not required by law to be procured by political subdivisions pursuant to competitive bidding, such as contracts for professional services, must be procured in a manner so as to assure the prudent and economical use of public moneys in the best interests of the taxpayers of the political subdivision, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against favoritism, improvidence, extravagance, fraud and corruption. To further these objectives, General Municipal Law Section 104-b(1) requires that municipal entities, including counties, adopt procedures governing all procurement of goods and services which are not required to be made pursuant to the competitive bidding requirements of Section 103 of General Municipal Law. The County of Ulster has adopted such procedures, in compliance with the law, and they are contained in the Ulster County Purchasing Department Procurement Manual.

The Ulster County Purchasing Department Procurement Manual provides a step-by-step, detailed procedure regarding Requests for Proposals (RFP). It includes, among other things, development of the proposal, evaluation of the responses, criteria for evaluation, and award of the RFP to be processed with a contract through the Ulster County Attorney's Office. Thus, contrary to the conclusion in your Opinion, the Audit Committee cannot limit its interaction with the Ulster Department of Purchasing by merely "*consulting with Purchasing as to the form of the RFP*", as this would be contrary to the County's own procurement procedures and State law as well as the Charter as a whole. This includes the specific language in the Charter under the Audit Committee that requires the Audit Committee to make its selection "*in a fashion consistent with the County's existing procurement policy*".

It is important to note that there is no language whatsoever contained in the Audit Committee Section of the Charter, nor anywhere else in the Charter that waives the authority of the Legislature and the Executive to approve the contract that will result from the selection of the independent auditor. Such language cannot be read onto the Charter "by implication or otherwise". (See Spencer v. Cristo, 70 A.D.3d 1297 [3rd Dept 2010].)

Further, the approval of a contract requires both legislative and executive approval. As clearly stated in the Charter, "*Except as otherwise provided by this Charter, every local law, legalizing action or resolution adopted by the County Legislature, except legislative branch appointments not otherwise subject to County Executive approval and resolutions establishing rules and regulations or other matters pertaining solely to the conduct of the Legislature...*" must be submitted to the County Executive for approval or disapproval. (See Section C-12 of the Charter.)

The argument you have made, that "*the choice of the Auditor is still exclusive to the Legislature as part of their legislative function*" [sic], is further flawed as the independent auditor does not merely audit matters pertaining solely to the conduct of the Legislature. The role of the independent auditor is to audit not only legislative functions, but the functions and activities of the Executive Branch and all of the other units of government including but not limited to those of the other elective offices such as the Comptroller, the Ulster County Clerk, the Ulster County Sheriff and the Ulster County District Attorney.

Appropriations are the functions of the County Legislature which require approval of the County Executive as part of the financial procedures contained in the Charter. (See Article IV of the Charter.) An appropriation represents a "*legalizing act, or resolution*" adopted by the County Legislature thereby requiring submission to the County Executive for approval or disapproval. (See Sections C-11(A) and C-12 of the Charter.) Appropriations may be discretionary so long as they are not mandated or there is a legal duty to provide funds. Section C-11 not only provides for the powers of the County Legislature, but also the "duties" of the County Legislature, one of which is "*To appropriate funds for the annual audit of the books and records of the County by independent auditors*". (See Section C-11(P) of the Ulster County Charter.) The purpose of this section of the Charter is obvious, to wit: to insure the appropriation of funds for this particular function.

CONCLUSION

Thus, based upon the foregoing analysis, my legal research and my unique familiarity with the Charter, the following represents my legal Opinion in regards to the issues presented in your Opinion.

Issue No. 1

It is my opinion that the revised Charter did not grant the Audit Committee the exclusive right and power to choose and authorize the Accounting Firm. The Charter, taken as a whole, together with the Ulster County Department of Purchasing Procurement Procedures, merely gives the Audit Committee the authority of an RFP review committee. Thus, the Audit Committee, reviews the responses, may interview the applicants, may negotiate or clarify certain services, and then selects the successful firm for approval by the Legislature and the County Executive via a resolution awarding the contract. This is not only consistent with the Charter, but it is also required pursuant to the County's own procurement procedures and State law.

Issue No. 2

Legislative approval is required to approve payment to the Audit Firm. The appropriation for the audit firm is contained in the Legislature's budget. As with any other expenditure that it is responsible for within its budget, the Legislature must determine whether or not the services were provided and if found acceptable, the Legislature or someone with authority on behalf of the Legislature, must process the claim for payment by forwarding it to the Commissioner of Finance as the chief fiscal officer of the County. Subsequent to the Commissioner of Finance's review and approval, the claim is presented for auditing to the Comptroller, who is the chief auditing officer for the County. Not only is this consistent with the Charter and the standard operating procedures of the County, but is an integral part of the internal controls of the County necessary to safeguard the finances of the County and protect the taxpayers of Ulster County.

Issue No. 3

The County Executive may approve or disapprove the choice of the Audit Committee. As set forth above, the choice of the Audit Committee must be first be presented to the Legislature for its approval. Upon adoption of the resolution approving the auditor and the contract for services, it must be presented to the Executive for approval or disapproval. The approval requires both legislative and executive approval. It is a legalizing act of the Legislature; and, as such, must be presented to the Executive via a resolution of the Legislature.

Finally, as set forth in my previous Opinion to the County Executive, Section C-1 of the Charter (Title and Purpose) provides that the purpose of the Charter is to assure accountability of the County's government to its people; separate the legislative and executive functions and responsibilities in County government; and also achieve increased efficiency, economy, equity, effectiveness and responsibility in the operation of the County government. Any interpretation of the Charter that precludes the Legislature and Executive from exercising their powers and authority as to the approval or disapproval of contracts or any other legalizing acts or resolutions of the Legislature, not only contradicts those powers and duties, but also contradicts the stated purpose of the Ulster County Charter.

BH/gb

encs.

cc: Clerk of the Legislature

Members of the Ulster County Legislature

Hon. Michael P. Hein, County Executive

opinion.weiner.audit.committee.031314

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An Overview

History

On August 8th 2013 the County of Ulster published a Request for Proposal (RFP) for Audit services. The purpose of the RFP was to "obtain proposals to select a qualified independent accountant ... to provide an annual audit of the financial accounts and records of the County of Ulster.

The RFP was a product of the Audit Committee, a committee created by the Ulster County Charter. The Charter provides in pertinent part "There shall be an Audit Committee consisting of seven members: The Chairman of the Legislature or his or her designee will serve on and chair the committee and will appoint two additional members, at least one of whom must be a County Legislator; the Minority Leader will appoint two members, at least one of whom must be a County Legislator; the County Executive or designee; the Comptroller or designee. The County Executive and Comptroller will be non-voting members. It shall take the affirmative action of three of the five voting members to act.

A) The Audit Committee shall:

- 1) Select the independent auditor to perform the annual audit of the books and records of the county;
- 2) Select the independent auditor in a fashion consistent with the county's existing procurement policy, and the Audit Committee shall consult with the Director of Purchasing in this respect; and
- 3) Report the independent auditor's findings to the Legislature, County Executive and County Comptroller

Further, the Legislature itself is empowered under the Charter to (Section A-11 Powers of the Legislature) "To conduct studies and investigations in furtherance of its legislative function and in connection therewith, to obtain and employ professional and technical advice," was granted.

Further, the Legislature has the exclusive authority "To appropriate funds for the annual audit of the books and records of the County by independent auditor."

It does not appear necessary to burden the committee with an extensive and detailed history of the prior issues of the Audit Committee's last choice. In short, the Audit Committee chose an accounting firm to audit the books and records of the County. The same firm had previously been chosen to perform a budget analysis. The County's Comptroller and County Executive expressed the opinion that it was inappropriate for the same accounting firm to do both tasks.

In December of 2013 the Ulster County Legislature approved the choice of the Audit Committee. The County Executive vetoed the approval of the Ulster County Legislature. To date, a new choice of

accounting firm has not been made. The Chairman of the Legislature appointed a new Audit Committee. The new Audit Committee has authorized a new RFP to be published ASAP.

Question Presented

- 1) Did the creation of the revised Charter grant the Audit Committee the exclusive right and power to choose and authorize the Accounting Firm?
- 2) Is Legislative approval required to approve payment to the Audit Firm?
- 3) Is the County Executive required to approve the choice of the Audit Committee?

Analysis

It appears clear the above referenced issues are complicated. There do not appear to be simple hard and fast black letter answers to the questions presented. A reading of the Charter itself, however, including, but not limited to its definitions, do make clear the ultimate resolutions of the above questions.

1) The creation of the Audit Committee allows it exclusive jurisdiction to "select the independent auditor." Absolutely no restrictions are placed upon that choice. While the Charter allows input from both the Comptroller and Executive – they are not voting members of the committee.

2) Is Legislative approval required for the payment of the audit firm selected by the Audit Committee? Generally the Legislature is granted the power to make appropriations under the power and duties of the Legislature. The exact wording of the criteria of the Audit Committee does not require legislative approval. It does not appear the Legislature is empowered to "veto" the choice of the Audit Committee.

Similarly, the County Executive is not empowered to veto the choice of the Audit Committee. While the Executive does have the power to veto much legislation, this "Legislation" is the exclusive function of the Audit Committee. Certainly the County Executive can argue "If it's submitted to me, I can veto it." It does not appear the choice of the Audit Committee should have been submitted to the County Executive.

In fact, one could argue that even if the legislature does have the power to make an appropriation in this situation, the choice of Auditor is still exclusive to the Legislature as part of their legislative function. Pursuant to the Charter the Legislature is empowered to conduct studies and investigations in furtherance of its legislative functions and to employ professionals in connection with that function. That is strictly a legislative function - allowing the County Executive to become involved in that process violates, both in spirit and function, the separation of powers.

Conclusion

After careful study of the facts and history of the above questions including a thorough review of the Ulster County Charter, memorandums to the Audit Committee, the Legal Memos of counsel as well as the veto message of the County Executive, I have reached the following conclusions.

It is the exclusive jurisdiction and choice of the Audit Committee to choose a firm to audit the books and records of the County. The choice of firm should be done through a RFP after consulting with Purchasing as to the form of the RFP. The Legislature is required to fund such choice under the Charter. The County Executive is not involved in the aforementioned process.

Respectfully submitted,
Cappy B. Wiener

ULSTER COUNTY ATTORNEY

BEATRICE HAVRANEK
County Attorney

CLINTON G. JOHNSON
First Assistant County Attorney



MICHAEL P. HEIN
County Executive

Assistant County Attorneys

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ROLAND A. BLOOMER
KRISTIN A. GUMAER
MARC D. RIDER
ROBERT J. FISHER

MEMORANDUM

TO: Hon. Michael P. Hein
Office of the Ulster County Executive

FROM: Beatrice Havranek, Esq. *BH*
Ulster County Attorney's Office

DATE: January 3, 2014

RE: Opinion
Executive Veto of Resolution

I have been asked to provide an opinion on whether the Ulster County Charter authorizes the County Executive to veto a resolution pertaining to a contract with an auditing firm selected by the Audit Committee pursuant to section C-11.1 of the Charter. I have also read the memorandum of Legislative Counsel, Erika K. F. Guerin, Esq., dated December 23, 2013; and I do not concur with her analysis or her conclusion that the County Executive has "absolutely no review over the Legislature's auditor."

It is my opinion that the Ulster County Charter clearly authorizes the County Executive to veto a resolution pertaining to the contract of said auditing firm. As more fully set forth below, this authority is found in sections C-11, C-11.1, C-12, C-25 of the Charter as well as in sections of the Ulster County Administrative Code.

FACTS:

On December 10, 2013, the Ulster County Legislature, at its monthly meeting, adopted Resolution No. 297, entitled "Approving Execution of a Contract in Excess of \$50,000 Entered Into by The County – Legislature." Thereafter, the resolution was presented to the Ulster County Executive, pursuant to Section C-12(A) of the Charter which provides for "executive approval; veto and veto override." On December 20, 2013, the Ulster County Executive vetoed the resolution pursuant to Section C-12(B) of the Charter together with his objections stated in writing. A copy of the foregoing is annexed herein.

Contrary to Ms. Guerin's statement in her memorandum, the resolution did not authorize the Chairman of the Legislature to enter into a contract with the auditor. It merely approved the contract. Further, there is nothing in the resolution that provided for the Chairman to "enter into a contract." Pursuant to the Ulster County Charter and Ulster County Administrative Code, with the exception of intermunicipal agreements and real property matters, it is the Director of Purchasing who executes contracts. (See Section C-74(2) of the Ulster County Charter and Section A-16.1(B)(2) of the Ulster County Administrative Code.)

THE CHARTER AND ADMINISTRATIVE CODE

Contract Approval

The Ulster County Charter was enacted by the people of the County of Ulster pursuant to the authority given to them by the New York State Constitution, Home Rule Law, and other state laws. It created two separate branches of government, to wit: The Legislative Branch and the Executive Branch. The Charter delegates the powers and responsibilities of each branch of government.

Section C-11 of the Charter (Powers and Duties of Legislature) enumerates the powers and duties of the Ulster County Legislature. Section C-11(O) of the Charter provides that the Legislature shall approve the execution of all contracts in excess of \$50,000 entered into by the County. Section A-16.1(B)(2)(c) of the Administrative Code provides that the Director of Purchasing shall review and approve contracts so reviewed as being approved by the County Legislature in the amount of \$50,000 or more and present same to the County Executive for approval. Upon approval by the County Executive, the Director of Purchasing then has the authority to execute the contracts.

Section C-11(P) of the Ulster County Charter provides for the Legislature to appropriate funds for the annual audit of the books and records of the County by independent auditors. This section of the Charter was modified as proposed by the Ulster County Charter Revision Commission. Taken, together, these sections of the Charter and Administrative Code allow the Legislature to make an appropriation for, and approve through resolution the contract for the independent auditor.

Audit Committee

Section C-11.1 of the Charter (Audit Committee) established the formation of an Audit Committee. This section was also an amendment to the Ulster County Charter proposed by the Ulster County Charter Revision Commission. This section provides for an Audit Committee consisting of seven members. The Chairman of the Legislature or his/her designee serves as Chairman of the Committee and the Chairman appoints two members. The Minority Leader of the Legislature also appoints two members; and the County Executive and County Comptroller serve as non-voting members.

Section C -11.1(A) of the Charter requires the committee to select the independent auditor to perform the annual audit of the books and records of the County in a fashion consistent with the County's existing procurement policy and report the independent auditor's findings to the Legislature, County Executive and Comptroller. The Revision Committee sought to include more transparency and "checks and balances" in all revisions it proposed for the Charter, including this one.

If the County Legislature was precluded from approving the contract and the County Executive was not allowed to approve/veto this contract, then the Chairman of the Legislature would have complete autonomy to select the "independent auditor" through his/her selections on the Audit Committee. Further, the Chairman would have complete autonomy to approve a contract in any amount in excess of \$50,000. Consequently, there would be no "checks and balances" as intended in the Charter as originally written, modified and ultimately approved by the voters.

The Veto

Section C-25(N) of the Charter (Powers and Duties of County Executive) as well as Section C-12 of the Charter empowers the Executive to approve or disapprove every proposed local law and

resolution of the County. The only exception to this authority is contained in C-12(A) which provides that the power does not extend to "legislative branch appointments not otherwise subject to County Executive approval and resolutions establishing rules and regulations or other matters pertaining solely to the conduct of the Legislature." Section C-11.1 (Auditing Committee) does not fit either of these exceptions, nor was it ever enumerated as an exception. To do so would, also be contrary to the language set forth throughout the Charter and Administrative Code as set forth above and elsewhere in the Charter. The independent auditor audits the books and records of the entire County. By its very purpose and intent, it is not a legislative branch appointment nor does it pertain to the rules and regulations or other matters pertaining solely to the conduct of the Legislature. The purpose of the audit is to report on the fiscal and other affairs of each and every part of the government of the County. This includes the Legislative and Executives Branches and the elected offices of the Comptroller, the County Clerk, the District Attorney and the Office of the Sheriff.

The Purpose of the Charter

Finally, Section C-1 of the Charter (Title and Purpose) provides that the purpose of the Charter is to assure accountability of the County's government to its people; separate the legislative and executive functions and responsibilities in County government; and also achieve increased efficiency, economy, equity, effectiveness and responsibility in the operation of the County government. Interpreting the Charter as forbidding Executive veto of a resolution pertaining to the execution of a contract, especially a contract that has an impact on each and every part of the government of the County, would be contradictory to the stated purpose of the Ulster County Charter.

CONCLUSION:

Contrary to the assertions of Legislative Counsel, the veto of the Ulster County Executive is not contrary to open and transparent government. The purpose of this executive form of government is to provide for the "checks and balances" of the two separate branches of government. Accordingly, Resolution No. 297, which was properly adopted by the Ulster County Legislature, was properly vetoed by the Ulster County Executive. Unless the veto is properly overridden, then it must stand as vetoed. These are the measures that provide for the open and transparent government that was intended by the framers of the Charter and approved by the voters of Ulster County.

BH:gr

enclosure

opinion.executive veto – audit committee.010314

Resolution No. 297 December 10, 2013

**Approving The Execution Of A Contract In Excess Of \$50,000.00
Entered Into By The County – Legislature**

Referred to: The Ways and Means Committee (Chairman Gerentine and Legislators Gregorius, Maio, Maloney, Provenzano, Rodriguez and Ronk)

Chairman of the Ways and Means Committee, Richard A. Gerentine, and Deputy Chairman Donald J. Gregorius offer the following:

WHEREAS, pursuant to Section C-11(O) of the Ulster County Charter and Section A2-5(15) of the Administrative Code, the Ulster County Legislature shall have the power to approve the execution of certain contracts and amendments in the amount of \$50,000.00 or in excess of \$50,000.00 entered into by the County; and

WHEREAS, a contract for execution by the County with O'Connor Davies, LLP has been submitted for approval by the Ulster County Legislature, which is described below:

Legislation	O'Connor Davies LLP	Agreement to provide outside auditing services to Ulster County for 2014. The Agreement includes an option for the Legislature to renew for 2015 and 2016.	1000 - County Date 12/20/13	REP No: UC13-54	1/1/14 - 12/31/15	\$63,500.00
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; now, therefore, be it

RESOLVED, the Ulster County Legislature has examined the contract, and hereby approves the contract in the form as filed with the Clerk of the Ulster County Legislature or as modified with the approval of the County Attorney and Legislative Counsel,

and moves its adoption.

ADOPTED BY THE FOLLOWING VOTE:

AYES: 13 NOES: 7
(Noes: Legislators Bartels, Briggs, Donaldson, Gregorius, Loughran, Provenzano, and Rodriguez)
(Absent: Legislators Aiello, John Parete, and Wishnick)

Passed Committee: Ways and Means on December 10, 2013

FINANCIAL IMPACT:
\$63,500.00 - 2013 APPROPRIATION DOLLARS

Resolution No. 297 December 10, 2013

**Approving The Execution Of A Contract In Excess Of \$50,000.00
Entered Into By The County - Legislature**

STATE OF NEW YORK

ss:

COUNTY OF ULSTER

This is to certify that I, the undersigned Clerk of the Legislature of the County of Ulster have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 10th Day of December, 2013, and that the same is a true and correct transcript of said resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the County of Ulster this 10th Day of December in the year Two Thousand and Thirteen.

Victoria A. Fabella

Victoria A. Fabella, Clerk
Ulster County Legislature

Submitted to the County Executive this
11th Day of December, 2013.

Victoria A. Fabella

Victoria A. Fabella, Clerk
Ulster County Legislature

VETO
Approved by the County Executive this
11th Day of December, 2013.

Michael P. Hein
Michael P. Hein, County Executive
Ulster County Executive

12/20/13
Date

ULSTER COUNTY



OFFICE OF THE COUNTY EXECUTIVE

VETO MESSAGE

TO: Victoria Fabella
Clerk of the Ulster County Legislature

FROM: Michael P. Hein
Ulster County Executive

DATE: December 20, 2013

RE: Resolution No. 297 Dated December 10, 2013

Pursuant to Ulster County Charter Section C-12, I am returning Resolution No. 297, Dated December 19, 2013 with my veto.

Resolution No. 297 contains the Legislature's approval of a contract for services in connection with the County's annual financial audit which is required by the Charter to be performed by an independent auditor.

The same auditing firm was previously awarded by the Legislature the contract (Contract# C12-00226) for the 2013 budget analysis. Therefore, by performing the official audit of the County's 2013 books and records, the same firm will have analyzed the proposed budget, made estimates and recommendations concerning it, provided opinions as to its financial soundness; and then audited the books and records of the County which necessarily must be based on the 2013 Budget. As part of the annual financial audit the firm will be required to evaluate budget estimates and projections, some of which may have been changed due to its role as budget analyst. This means the firm will be evaluating its own work product which is contrary to the most basic tenets of sound internal controls.

My Administration is committed to delivering the highest standards of professional conduct as we serve the great people of Ulster County. The aforementioned dual role has the unfortunate potential to foster a conflict of interest and lends itself to the appearance of impropriety. Furthermore, accounting standards require independence in mind as well as in appearance. Government Auditing Standards, as published by the U.S. General Accounting Office, clearly state "*Audit Organizations should not audit their own work or provide nonaudit services in situations where the nonaudit services are significant/material to the subject matter of the audits.*" Performing the budget analysis, a nonaudit service, and then subsequently auditing the County's books and records at year end is contrary to this unambiguous professional accounting directive.

Engaging different firms to perform the budget analysis and annual financial audit helps promote integrity in the process, improves government transparency and avoids the appearance of impropriety or potential conflict of interest. If the same firm is selected to perform these dual functions it would be the first time under our new charter form of government that the County Legislature awarded contracts for both the budget analysis and the annual financial audit to the same firm.

I have great respect for the Ulster County Audit Committee's responsibility to select an official auditor, and as such, I do not make this decision lightly. It is important to note, there is no suggestion that the accounting firm named in the contract does not have the ability to conduct a thorough, professional audit, and it is only because of its prior engagement to conduct the budget analysis that I have vetoed Resolution No. 297. The role of the County Executive must be one which aligns with the best interest of the citizens of Ulster County to foster and advocate good government and avoid even the appearance of impropriety.

The 2014 Ulster County Budget was adopted in a unanimous bipartisan vote of the County Legislature and contains the largest decrease in government spending in the history of the County while simultaneously continuing to provide essential services to our residents. A transformational budget such as this, as well as the people of Ulster County, deserves a truly independent audit, free of even the appearance of conflict, to ensure that now, and in the future, government accountability remains at the highest possible level which is why it is essential a precedent is not set concerning the 2013 Budget, and we continue to uphold the highest standards.