

Erie County Ethics Board
November Meeting Minutes
January 6, 2020 8 a.m. 16th Floor Budget Conference Room

MEMBERS: Steven Schwartz, Chair
Chris Trapp, Vice-Chair
Rebecca Town, Secretary
Brian Downey
Ellen Kennedy

STAFF: Leslie Ortiz-Fogg, Counsel
Vianne Uthman, Administrative Staff

EXCUSED:

OTHERS PRESENT: Ross Kostecky, Legislature Office (recording)

1. Meeting call to order at 8:14 am.
2. Election of Officers for 2020
 - i. Chair: Trapp nominated Schwartz to remain as Chair of the Board.
 - ii. Vice-Chair: Schwartz nominated Trapp to continue on as Vice-Chair, seconded by Downey.
 - iii. Secretary: Kennedy nominated Town to continue as Secretary, seconded by Trapp and Schwartz.
 - iv. Unanimous vote in favor of above nominees
3. November 2019 meeting minutes reviewed and approved on motion of Trapp seconded by Kennedy and Downey. *
4. Expired terms: Rebecca Town, 12/31/2019; request made by County Executive to renew her term. She remains on the Board until replaced.
5. Website / Email Updates: The website was updated to include last months minutes.
 - i. Request for opinions/actions:
 - i. A request was made from municipality within Erie County, that has a code of ethics but is without a local Board of Ethics, for an advisory opinion. (not followed up)

{ “We represent a village within Erie County that does not have its own ethics board and wishes to request an advisory opinion from the County Ethics Board regarding an issue arising under the village’s ethics code pursuant to General Municipal Law (GML) Section 808(2). However, based on the below, it is not clear to me that the County Ethics Board entertains such requests or issues such opinions, and I am therefore seeking clarification on that point.

“GML Section 808(2) expressly authorizes a county board of ethics to render advisory opinions to “officers and employees of municipalities wholly or partly within the county with respect to any code of ethics adopted” pursuant to GML Section 807 (unless such municipality has enacted its own ethics board), and Section 10(e) the Erie County Code of Ethics (Local Law No. 2 of 2018) generally provides that the County Ethics Board ‘shall have all the powers and duties ascribed to a Board of Ethics by article 18 of the General Municipal Law.’

“However, the balance of the Erie County Ethics Law appears to contemplate only issuing such advisory opinions with respect to the County Ethics Code, and Section 5 of the Board’s Rules and Regulations even more clearly appears to expressly limit the jurisdiction of the board

to issues arising under the County Ethics Code and to requests for advisory opinions from County officials. “ }

1. The municipality has a Code of Ethics but no Board of Ethics. Our general conclusion is that if a municipality, as opposed to an individual, makes a request for a review, the language in the State law applies regardless of the County law which means that we can issue advisory opinions for municipal corporations that do not have their own Ethics Boards. The request has since been withdrawn.
- ii. Complaint received 11/11/19 regarding administration at Nursing Home. Complainant referred to NYS Department of Health on 11/12/19.
- iii. On 12/7/19 a complaint regarding Depew Police Department was received and forwarded to Depew PD on 12/12/19. The complainant was notified.
- iv. Complaint on 12/30/19 by individual against local union regarding an arbitration award. Schwartz will respond and recommend they contact a labor attorney as the issue falls outside the purview of the Board.
- v. A request received from a county attorney seeking advice on accepting an appointment to be the attorney for a town zoning board of appeals. Time does not overlap with county responsibilities. Ortiz-Fogg will respond with approval contingent on the approval of the attorney's supervisor and assuming that there is no relationship between the position and the attorney's official duties with Erie County.
- ii. Website updated with minutes and the agenda.
- iii. FOIL Requests: NONE
- iv. Other communications: Schwartz and Trapp will be meeting with new Erie County Legislators regarding Ethics Laws and ethical issues on January 16, 2020 at 1:00. An invitation was extended to all legislators and their staff.

6. Old Business:

- i. Morton vs. Erie County (Board of Ethics) Lower Court dismissal of the Morton Federal claims upheld on appeal. The Federal Court action has been dismissed and upheld on appeal. Federal Court refused to accept jurisdiction over state claims.
- ii. Information requested from Political Parties to determine who needs to file disclosures have not been received by the Board. Downey will continue to follow up.
- iii. (Schwartz/Trapp) Response to request for opinion regarding representation of County Clerk by County Attorney--response from County Attorney on 11/13/2019 forwarded to complainant with note below:

Not only did Michael Kearns, Erie County Clerk, request that the County Attorney bring this action on his behalf, but the Erie County Legislature passed a Resolution requesting same and the County Attorney was directed by Mark Poloncarz, Erie County Executive, to bring the action as well. (Additionally, the action was not successful.)

- iv. Proposed Calendar for 2020 meetings accepted
 - a. February 3, 2020
 - b. March 9
 - c. April 6.
 - d. May 4
 - e. June 1
 - f. July 6
 - g. *August 3
 - h. September 14

- i. October 5
- j. November 2
- k. *December 7

(*frequently cancelled due to lack of business)

5. New Business:

- i. The Board reviewed the 2018 Financial Disclosure Form for revisions for 2019 Form.
- ii. Any member who identifies a conflict of interest during the meeting will raise the conflict at the point in the agenda the pertinent issue is addressed and recuse themselves if necessary.
- iii. Next meeting scheduled for Monday, February 3, 2020 at 8 a.m.
- iv. Schwartz will prepare draft of Annual Report to the Legislature and County Executive

6. No Public Comments

7. Motion to adjourn (Moved by Trapp and seconded by Kennedy). Motion passed.