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COUNTY OF ERIE

JEREMY C. TOTH
COUNTY ATTORNEY

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

DEPARTMENT OF LAW

October 23, 2026

Hon. John C. Garcia
Sheriff of Erie County
10 Delaware Avenue
Buffalo, New York 14202

Re: Request to Initiate Legal Proceeding

Dear Sheriff Garcia:

Thank you for your letter dated October 14, 2026, in which you request that I, as Erie County Attorney, "prepare to take legal action" in connection with disputed New York State Department of Corrections and Community Supervision reimbursement for certain, purportedly state-ready, incarcerated individuals.

It has long been held that the Erie County Attorney lacks authoritative discretion to unilaterally initiate civil actions or proceedings. Absent a specific statutory duty, a directive via resolution of the Erie County Legislature, or the direction of the Erie County Executive, I am unable to comply with your request. Prescriptive authority upholding this notion can be found in the Erie County Charter, New York State County Law, and decisional law interpreting their application.

The Erie County Charter Section 602 (the "Charter") provides that: "The County Attorney shall… prosecute or defend all actions or proceedings of a civil nature brought by or against the County… and perform such additional and related duties as may be prescribed by law, by the County Executive or by resolution of the County Legislature."

New York State County Law Section 501 ("501") provides that: "The county attorney shall prosecute and defend all civil actions and proceedings brought by or against the county…"

Importantly, the NYS Supreme Court Appellate Division, Third Department, when interpreting the application of the substantively identical language of 501 when compared with the Charter, distinguished between the act of prosecuting a civil action and the authority to

initiate one. The Court found that: "The statute makes it quite clear that it is the county and the board of supervisors who are empowered to bring civil actions and proceedings; the county attorney's authority is limited to prosecuting them." (County of Sullivan v. Town of Thompson, 99 A.D.2d 574 (3rd Dept. 1984)). In dismissing a claim made by the County, that same court concluded:

> Initiating an independent lawsuit is an offensive maneuver, one that requires affirmative authorization if it is to have authenticity. None being found, the action was properly dismissed.

Similarly, in 2013, the Fourth Department held that absent a resolution from the Erie County legislature, the Erie County Executive was empowered to initiate a lawsuit to recover funds from a third party. (County of Erie v. M/A Com. Inc., 104 A.D.3d 1233 (4th Dept. 2013)).

> Inasmuch as this action seeks to recover over $4 million dollars of the County's funds that were allegedly improperly paid under the M/A–Com contract as a result of defendant's alleged fraud, we conclude that the County Executive's duties as Chief Executive Officer and Chief Budget Officer of the County clearly embrace the subject matter of this action and empower him to authorize the County Attorney to commence the litigation

See also County of Niagara v. Town of Royalton, 48 A.D.3d 1072 (4th Dept. 2008); County of Rockland v. Town of Clarkstown, 167 Misc.2d 367 (Sup. Ct. 1996).

Therefore, it is my opinion and has been this office's long-standing interpretation of this matter, that I am not authorized to initiate a civil action or proceeding at my personal discretion or at the request of a department or office of the County.

Further, since the Charter language requires the Erie County Attorney to perform additional duties as directed by the County Executive together with additional duties as directed by the Erie County Legislature, the authority to direct the initiation of a civil action or proceeding in Erie County is conferred to both the Erie County Legislature and the Erie County Executive.

Please note I have not looked into the merits of your claim against New York State and make no judgment as to their strength or weakness.

Very truly yours,

JEREMY C. TOTH
Erie County Attorney

JCT/dld