

# ULSTER COUNTY EXECUTIVE

244 Fair St., P.O. Box 1800, Kingston, New York 12402

Telephone: 845-340-3800

Fax: 845-334-5724

**MICHAEL P. HEIN**  
*County Executive*



**ROBERT SUDLOW**  
*Deputy County Executive*

**ADELE B. REITER**  
*Chief of Staff*

**KENNETH CRANNELL**  
*Deputy County Executive*

## VETO MESSAGE

RECEIVED

DEC 23 2015

ULSTER COUNTY LEGISLATURE

**TO:** Victoria Fabella, Clerk of the Ulster County Legislature  
**FROM:** Michael P. Hein, Ulster County Executive   
**DATE:** December 23, 2015  
**RE:** Resolution No. 446 of 2015 (Amending The Electric Vehicle Charging Station Policy to Require a Fee For Use)

Pursuant to Ulster County Charter Section C-12, I am respectfully returning and vetoing Resolution No. 446 (Amending the Electric Vehicle Charging Station Policy to Require a Fee For Use), dated December 15, 2015 for the following reasons.

The County Attorney, pursuant to both state law and the Ulster County Charter, is the sole legal advisor to the County. She rendered two legal Opinions on this issue, the first to the Ulster County Comptroller on October 5, 2015 and the second to the Ulster County Legislature on November 5, 2015. It was and continues to be the Opinion of Ulster County Attorney, Beatrice Havranek, Esq., that providing no fee electric vehicle charging stations to the public is **not a violation** of Section VIII (1) of the New York State Constitution more commonly known as the “prohibition against gift giving”.

As the County Attorney advised, the Court of Appeals, as well as lower courts, have held that projects receiving public funding that serve a public purpose, do not violate the State Constitution’s “prohibition against gift giving” even if the funding provides an incidental benefit to a private individual.<sup>1</sup> An incidental benefit is not enough to invalidate a project which has for its primary object a public purpose. The general rule that incidental benefit to private interests does not invalidate a proposed expenditure has been applied in upholding local expenditures against the constitutional objection.<sup>2</sup>

<sup>1</sup> Murphy v. Erie County, 28 N.Y.2d 80 (1971 ); Lake George Steamboat Co., Inc. v. Blais, 30 N.Y.2d 48 (1972).

<sup>2</sup> Denihan Enterprises, Inc. v. O’Dwyer, 302 N.Y. 451 (1951).

It is her Opinion the electric vehicle charging station's current de minimis average sixty-two cents (\$.62) cost per charge is an incidental benefit to the user of the electric vehicle charging stations in light of the public purposes served; (1) tourism/economic development benefits, and (2) environmental benefits. The electric vehicle charging stations in the County's public parking spaces represent an extremely low cost investment by the County as they were funded through grants. The electricity costs to the County for the first three month period was less than one hundred dollars (\$100.00).

This program has already proven to promote tourism within the County, thereby resulting in economic benefits to the County. Its effect on the air quality within the County is proven as well as it is an environmental benefit no matter how it is measured. It is a cutting edge program that allows the County to responsibly "think globally by acting locally." The New York State Energy Research and Development Authority's recent report entitled "Electric Vehicle Tourism in New York State", further confirms the important tourism benefits as well as the benefits to the environment these types of programs provide. This report documents conclusively the benefits and opportunities that electric vehicle tourism presents; and it is important that the County ensure its continued and expanded use by our visitors. A copy of that report is attached.

The County Attorney is not alone in her position that the current program of not charging for the use of the electricity at the County's public charging stations does not violate the New York State Constitution. Multiple public entities and municipalities in New York State have come to the same conclusion. For instance Metro North, the City of Rochester, the State University at Albany, the City of Schenectady, and others offer no fee electric vehicle charging stations with more to come.

Currently, the public has access to and has accessed electricity for electronic and other devices within and upon County property without paying a fee. The most obvious use is in Legislative Chambers in the Ulster County Office Building, where electricity is used for laptops, phones, and recording equipment by the press and the public. The Legislature has also provided to the public free of charge copies of calendars that it has produced as well as the annual County directory. All of these represent similar instances of promoting a public purpose with an incidental benefit to members of the public using County funds. Like the electric vehicle charging station costs, the County Attorney has determined that these types of activities, using public funds, do not violate the State Constitution because they promote a public purpose while providing an incidental benefit to the private user.

While I am cognizant that the Legislators who voted in favor of this resolution may have relied on the opposing opinions they received from the Ulster County Comptroller and Legislative Counsel that no fee electric vehicle charging stations is a violation of the State Constitution, I respectfully believe that such reliance was misplaced.

The fact remains that I firmly believe no fee electric vehicle charging stations should remain available for Ulster County citizens and visitors alike for a multitude of public purposes.

It is valuable for tourism and business development as well as helping to build an infrastructure for environmental sustainability.

In addition, I would like to share with the Legislature a very positive recent development in regards to this issue that may well address multiple perspectives. I am pleased to announce that the Ulster County Chamber of Commerce, in recognition of the tourism and economic value to local businesses, residents and visitors of no fee electric vehicle charging stations in the County, is prepared to invest, as a donation, the sum of one thousand dollars (\$1,000.00) annually to keep the charging stations free of charge.

Accordingly, for all of the foregoing reasons, I have vetoed Resolution No. 446 of 2015. I look forward to partnering with the Ulster County Legislature to insure that Ulster County remains the most environmentally friendly county in the State of New York.

**Amending The Electric Vehicle Charging Station Policy To Require A Fee For Use**

Referred to: The Energy and Environment Committee (Chairman Loughran and Legislators R. Parete, Rodriguez, Ronk and Wawro), The Public Works and Capital Projects Committee (Chairman Fabiano and Legislators Archer, Greene, Loughran, Roberts), and The Ways and Means Committee (Chairman Gerentine and Legislators Allen, Belfiglio, Briggs, Gregorius, Maio, Maloney and R. Parete)

Legislator John R Parete offers the following:

WHEREAS, pursuant to Resolution No. 332 dated September 15, 2015, the Ulster County Legislature determined that it was responsible to establish a policy regulating the use of Ulster County electric vehicle charging stations; and

WHEREAS, at the time the “Ulster County Electric Vehicle Charging Station Policy” was adopted, the decision to offer the electric free of charge to all non-commercial vehicles was being vetted; and

WHEREAS, it has been determined by Legislative Counsel and the Ulster County Comptroller that the manner in which electric is currently being offered is unconstitutional and corrective action should be taken; and

WHEREAS, the Ulster County Legislature has a responsibility to protect the County from acting in violation of the New York Constitution, and to limit liability regarding potential litigation pursuant to Section 51 of the General Municipal Law; now, therefore, be it

RESOLVED, that it shall be the policy of Ulster County to charge a fee-for-service in regards to use of Ulster County charging stations that is appropriate for the investment including, but not limited to, system and equipment service and maintenance, the cost of electricity, and liability to the county for damages to personal property; and, be it further

RESOLVED, that the Ulster County Legislature hereby amends the “Ulster County Electric Vehicle Charging Station Policy” to add an additional section addressing fees for electric use, as attached hereto as Exhibit A,

and moves its adoption.

ADOPTED BY THE FOLLOWING VOTE:

AYES: 12                      NOES: 11

(Noes: Legislators Allen, Archer, Bartels, Briggs, Donaldson, Greene, Gregorius, Loughran, Provenzano, Rodriguez, and Wishnick)



## EXHIBIT A

### Ulster County Electric Vehicle Charging Station Policy

#### I. DEFINITIONS

As used in this policy, the following terms shall have the meanings indicated:

“Electric Vehicle” means any vehicle that operates, either partially or exclusively, on electrical energy from an off-board source, that is stored on-board for motive purposes. “Electric Vehicle” includes:

- a. Any “battery electric vehicle”, defined as any vehicle that operates exclusively on electrical energy from an off-board source that is stored in the vehicle’s batteries, and produces zero tailpipe emissions or pollution when stationary or operating;
- b. Any “plug-in hybrid electric vehicle (PHEV)”, defined as an electric vehicle that:
  - a. Contains an internal combustion engine and also allows power to be delivered to drive wheels by an electric motor;
  - b. Charges its battery primarily by connecting to the grid or other off-board electrical source;
  - c. May additionally be able to sustain batter charge using an on-board internal-combustion-driven generator; and
  - d. Has the ability to travel powered by electricity;
- c. Any “neighborhood electric vehicle”, defined as a self-propelled, electrically powered four-wheeled motor vehicle whose speed attainable in one mile is more than 20 miles per hour and not more than 25 miles per hour and conforms to federal regulations set forth in 49 CFR Section 571.500; and
- d. Any “medium-speed electric vehicle”, defined as a self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one mile is more than 25 miles per hour but not more than 35 miles per hour and otherwise meets or exceeds the federal regulations set forth in 49 CFR Section 571.500.

## **Ulster County Electric Vehicle Charging Station Policy**

“Electric Vehicle Charging Station” means a designated area that is served by battery charging station equipment that has as its primary purpose the transfer of electric energy (by conductive or inductive means) to a battery or other energy storage device in an electric vehicle, and that is publicly owned and publicly available on Ulster County Real Property.

“Electric Vehicle Parking Space” means any marked parking space that identifies the use to be exclusively for the parking of an electric vehicle.

“Non-Electric Vehicle” means any motor vehicle that does not meet the definition of “electric vehicle”.

### **II. REGULATING THE USE OF DESIGNATED ELECTRIC VEHICLE CHARGING STATION PARKING SPACES**

A. No person shall stop, stand, or park a vehicle, other than an electric vehicle, within any space marked or signed as reserved for “electric vehicle charging” for more than two hours.

B. Any fees charged to park in a non-designated electric vehicle charging spot located in a County-owned parking lot shall also apply to each electric vehicle charging parking spot.

C. Electric vehicles may be parked in any space designated for public parking, subject to the restrictions that would apply to any other vehicle that would park in the space.

### **III. FEE FOR ELECTRIC ENERGY USE**

The County of Ulster shall charge a reasonable fee-for-service for use of electric. The County Executive under his/her authority in the Ulster County Charter shall develop and implement procedure to carry out this policy.

### **IV. PENALTY**

Unauthorized vehicles found in violation of this policy may be towed at the discretion of the County of Ulster. Any costs associated with towing an unauthorized vehicle shall be at the owner’s expense.

## **Ulster County Electric Vehicle Charging Station Policy**

### **V. REPORTING**

On or before March 1<sup>st</sup> of each year, a usage report, prepared by the Coordinator of the Ulster County Department of the Environment, in conjunction with any other department of the County that the Coordinator of the Department of Environment may deem necessary, shall be filed with the County Executive and the Ulster County Legislative Standing Committee assigned with oversight of the Department of the Environment and any other Committee as determined by the Clerk of the Legislature.

This report shall include, but not be limited to, the number of users of the Ulster County electric charging stations, the amount of time each electric vehicle spent charging, the cost associated with the electric use, and the revenue generated from fees collected. These reports will be utilized to review the Ulster County Electric Vehicle Charging Station Policy annually. The Ulster County Legislature may implement charging use time limits if deemed necessary, or as recommended by the Ulster County Legislative Standing Committee assigned with oversight of the Department of the Environment.

# ULSTER COUNTY ATTORNEY

BEATRICE HAVRANEK  
*County Attorney*

CLINTON G. JOHNSON  
*First Assistant County Attorney*



MICHAEL P. HEIN  
*County Executive*

*Assistant County Attorneys*

JONATHAN T. ENGEL  
KRISTIN A. GUMAER  
TRACY STEEVES  
MARISA J. HANSEN  
ROBERT J. FISHER

*Disaster Assistance Coordinator*  
ROBIN PERUSO

## MEMORANDUM

**TO:** Hon. Elliot Auerbach, Comptroller

**FROM:** Beatrice Havranek, Esq.  
Office of the County Attorney *BH*

**DATE:** October 5, 2015

**RE:** Opinion – Electric Charging Station

### ISSUE

This opinion is in response to your draft opinion to the Chairman of the Legislature, dated September 16, 2015, in regards to the above referenced matter. You raise the issue, but come to no conclusion, as to whether or not the fact that Ulster County does not charge a user fee for vehicle electric charging stations, violates the prohibition gift-giving clause of the State Constitution. It is my opinion, as set forth fully below, that it does not.

### FACTS

#### I. The Electric Charging Station

This past spring, Ulster County (the "County") began the installation of nine electric vehicle charging stations at public county facilities. The County now has the most municipally hosted charging locations of any municipality in the state. The charging station equipment and software was funded through the Governor's ChargeNY initiative. The grant provided funding which covered the cost of the charging stations, the mounting pier, software and subscription to Chargepoint network. Funding was ten thousand five hundred fifty dollars (\$10,550.00) per station for a total of ninety four thousand nine hundred fifty dollars (\$94,950.00).

Chargepoint network allows extensive monitoring of the charging time, the amount of time vehicles occupy the station (including non-charging time), total energy consumed, rate at which energy is consumed, and zip code of driver. The County's charging stations have been on the Chargepoint network since mid-July of 2015. As of October 5, 2015, the County has

provided a total of 736 kilo watt hours to charging vehicles at its 135 charging sessions since that time. This is a total of ninety-five dollars and sixty-eight cents (\$95.68) of electricity costs and an average cost to the County of sixty-two cents (\$0.62) per charging session.

This project provides the infrastructure necessary to yield multiple levels of environmental and economic benefit. It provides infrastructure necessary for the electric vehicles currently authorized for purchase by the Ulster County Legislature (the "County Legislature") for the County's own fleet. The project further supports the Sustainable Green Fleet policy and local law recently enacted by the County.<sup>1</sup> It further supports County employees by providing workplace charging, provides a robust network of charging stations for area residents, and provides an attractive network of charging stations to attract regional electric vehicle drivers to the County.

Regional electric vehicle owners who have used Ulster County's charging stations have included drivers from Buffalo, Rockland County, Westchester County, New Jersey, Connecticut, Vermont, Pennsylvania and West Hollywood, California. The electric vehicle community actively seeks locations which they charge on longer road trips as well as destination locations for excursions. The County has been contacted by various drivers who have used our stations and plan to use our stations in both capacities. Electronic vehicle drivers shop, eat, recreate and otherwise spend money while their cars are charging. Copies of Facebook posts and comments taken from local newspaper articles which demonstrate this are annexed hereto and made a part hereof as Exhibit "A." Aside from the recognized environmental benefits, tourism and economic development has been the beneficiaries of this program. The program has had a net effect of promoting the County.

In addition, according to *CHARGED Electric Vehicles Magazine*, 63% of public electric vehicle charging stations are offered for free. A copy of the map depicting just a portion of the Hudson Valley and Catskill Mountain region is annexed hereto as Exhibit "B" and indicates areas where charging stations are available.

Public entities and municipalities also offer no fee charging including Metro North, the City of Rochester, and the State University at Albany. In fact, the stations installed by the City of Rochester in their municipal parking garages were funded by the same ChargeNY program as our stations.

## II. Other Recent Issues

### a. The Chamber of Commerce Breakfast

On November 21, 2014, I rendered an Opinion to Deputy Ulster County Comptroller Joseph Eriole, a copy of which is annexed hereto and made a part hereof as Exhibit "C". The subject of that Opinion was the issue as to whether or not the Ulster County Comptroller's (the "Comptroller") request for four hundred fifty dollars (\$450.00), representing payment to the Ulster County Chamber of Commerce (the "Chamber") for attendance at a breakfast by local high school students and guests who were not County employees, was permissible. The

---

<sup>1</sup> Proposed Local Law No. 3 of 2015 (A Local Law Establishing a Sustainable Green Fleet Policy)

breakfast took place in June of 2014 and the Comptroller sought an opinion after the Ulster County Commissioner of Finance (the "Commissioner") raised an issue as to this request. Deputy Comptroller Eriole advised that "this is for the students and their guests who are honored at the breakfast." The only documentation that was provided to me was a request for payment filed with the Commissioner by the Comptroller's office. The Comptroller advised that the basis for this request was that he was honoring local high school students for their economic development/entrepreneurial achievements.

I had requested and was promised additional documentation from both Deputy Comptroller Eriole and the Comptroller that would support the Comptroller's position that this should be paid. Although both the Deputy and the Comptroller advised that they would provide same, it was never delivered to my office.

Subsequently, I rendered a further Opinion dated February 4, 2015, to the Commissioner of Finance Burton Gulnick, Jr., that the requests for payment to the Chamber for these "guests" should be paid for the services in light of the fact that it had already rendered services on June 24, 2014; and the Chamber had an expectation that they would be paid for by the County. A copy of that Opinion is annexed hereto and made a part hereof as Exhibit "D." The issue was reviewed solely as to whether or not the County had a duty to pay the Chamber for the services it rendered. I concluded that the Chamber was due payment for the invoices it submitted under the legal theory of account stated. The Chamber rendered the services in good faith and the belief that it would be paid thereby resulting in a liability to the County to pay for the services. As I clearly stated in the conclusion of that Opinion, I did not modify my previous Opinion of November 24, 2014, to wit: that the County may not pay for tickets/and or meals of the students and their guests at the Chamber breakfast as it contravened Article VIII, Section 1 of the New York State Constitution.

Based upon the limited information provided to me, the Comptroller's program of paying for guests at the Chamber breakfast, it was my opinion that this program had not had a net effect of promoting the County.

b. The Ulster County Legislature's Calendar and Photos

On January 29, 2015, I met with Deputy Comptroller Eriole regarding his request for review of various other matters, including an issue he had with the Ulster County Legislature's (the "Legislature") invoices for calendars and photos that it was being invoiced for. Previously, the Legislature had held a photo contest for the purpose of choosing photo(s) to be used on the cover of the 2015 Ulster County Directory. The winning photo was used on the directory, some of the photos were reproduced and framed, and a calendar was created with photos from that contest. The directory and the calendars were distributed to the public free of charge; and photos that were reproduced were displayed in the Legislative offices. Annexed hereto and made a part hereof as Exhibit "E" are the invoices that Deputy Commissioner Eriole provided to me with his notes. He stated in his notes, among other things, that "We are not authorizing payment til [*sic*] the "policy" on such items is clarified." The invoices are from Color Page in the amount of one thousand three hundred ninety-seven dollars (\$1,397.00) and from Timely signs in the amount of two hundred thirty-four dollars (\$234.00).

I advised Deputy Comptroller Eriole that these Legislative activities had a net effect of promoting the County of Ulster and had a public purpose; and, as such, did not violate the "gift giving clause" of Article VIII, Section 1 of the Constitution. Thus, they should be paid. I offered to write an opinion, but he did not want one, nor did he want any e-mails as well. I presume the matter was resolved as the invoices were approved by the Comptroller's Office and subsequently paid by the County.

c. Public Use of Electric Charging for Electronic and Other Devices

Currently, the public has access to and has accessed electricity for electronic and other devices within and upon County property without paying a fee. The most obvious use is in Legislative Chambers in the Ulster County Office Building, where electricity is used for laptops, phones, and recording equipment by the press and the public.

It is my opinion that this free electrical access is in furtherance of a public purpose and has had a net effect of promoting the County.

#### THE LAW

The New York State Constitution provides that no county, city, town, village or school district may give or loan any money to, or in aid of, an individual, or private corporation or association. See N.Y. Const. Art. VIII, §1. This is commonly known as the "prohibition against gift giving."

The Gift and Loan Clause of New York State Constitution prohibits a municipality from expending money for the benefit of a private individual or concern unless the expenditure is in furtherance of a public purpose and the municipality is contractually or statutorily required to do so. See Landmark West v. City of New York, 9 Misc.3d 564 (Sup. 2005). Based upon the lack of documentation from the Comptroller's Office, which was requested on more than two occasions from both the Deputy and the Comptroller, I concluded that the payments for Chamber breakfasts for private citizens was not in furtherance of a public purpose that benefits the County. In addition, the County was not contractually or statutorily required to assume the cost of private individuals attending the Chamber breakfast. Thus, it did not meet the two pronged test in Landmark, supra, to wit: (1) it was not in furtherance of a public purpose; and (2) the County was not contractually or statutorily required to pay for the students and their guests for attendance at the Chamber breakfast. However, it was my opinion that the Chamber should be paid under the legal theory of account stated.

There were also various opinions of the State Comptroller that address this or similar issues. One that is fairly on point held that a school board would not contravene Article VIII, §1 by using public funds to pay for the meals of retiring school board members, but that payment for the remaining board members, the school district attorney, the school district administrator and the spouses of the retiring board members would be a prohibition against gift giving under the State Constitution.<sup>2</sup> In the Chamber matter, the students and their guests clearly fell under

<sup>2</sup> See Op. State Compt. 83-57.

the latter category. It should also be noted that there was no contractual obligation to pay for the retiring board members' meals.

The Court of Appeals, as well as lower courts, have held that projects receiving public funding that serve a public purpose, do not violate the State Constitution's "prohibition against gift giving" even if the funding provides an incidental benefit to a private individual.<sup>3</sup> An incidental benefit is not enough to invalidate a project which has for its primary object a public purpose. The general rule that incidental benefit to private interests does not invalidate a proposed expenditure has been applied in upholding local expenditures against the constitutional objection.<sup>4</sup>

### CONCLUSION

The electric charging stations in the County's public parking spaces represent an extremely low cost investment by the County that has the ability to promote and has, even in its early stages, promoted tourism within the County. This, in turn, has resulted in economic benefits to the County. Its effect on the air quality within the County is an environmental benefit no matter how it is measured. The cost of each charge is de minimis, to wit: sixty-two cents (\$.62) per charge, and is incidental to the public purpose and the public benefits that have resulted and will result. In fact, the overwhelming response to this program over the short period of time it has been in place has been positive.

I note that you have referenced in your draft, various opinions of the State Comptroller that address free water service or reductions to private individuals or entities, free or nominal cost for equipment (water pumps) to private individuals, and the gift or less than reasonable value sale of real property to a private citizens or entities by municipal entities or school districts. Factually, there can be no reasonable comparison between these activities, which the State Comptroller deemed violations against the Constitutional prohibition of gift giving, when compared to the County's no fee electric charging stations. It would be tantamount to comparing "apples to oranges." Not only is the vast difference between cost a factor, but the instances cited by the State Comptroller clearly do not arise to an incidental benefit to private interest that has a primary public purpose which is permissible and which the County's program meets.

Finally, the County's no fee electric charging stations represent the new and emerging field of public participation in the local, state and federal goals that address the environment while also providing tourism and, in turn, economic benefits to the County of Ulster. It meets the public purpose test. Thus, it is my opinion that the current program of not charging for the use of the electricity generated at the County's public charging stations does not violate N.Y. Const. Art. VIII, §1.

BH:kpc  
Enclosure

cc: Hon. Michael P. Hein, Ulster County Executive (w/enc.)

s/atty/word/Opinion,Comptroller.Electric Charging Stations.092115

<sup>3</sup> Murphy v. Erie County, 28 N.Y.2d 80 (1971 ); Lake George Steamboat Co., Inc. v. Blais, 30 N.Y.2d 48 (1972).

<sup>4</sup> Denihan Enterprises, Inc. v. O'Dwyer, 302 N.Y. 451 (1951).

# ULSTER COUNTY ATTORNEY



BEATRICE HAVRANEK  
County Attorney

CLINTON G. JOHNSON  
First Assistant County Attorney

MICHAEL P. HEIN  
County Executive

Assistant County Attorneys:

JONATHAN T. ENGEL  
KRISTIN A. GUMAER  
TRACY STEEVES  
MARISA J. HANSEN  
ROBERT J. FISHER

Disaster Assistance Coordinator  
ROBIN PERUSO

## MEMORANDUM

**TO:** Members of the Ulster County Legislature

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

**DATE:** November 5, 2015

**RE:** Electric Vehicle Charging Stations

I note that Resolution 448, "Amending the Electric Vehicle Charging Station Policy to Require a Fee Use," is currently on the agenda for the November 17, 2015 Legislative meeting. The third "Whereas" of that resolution states the following: "*Whereas, it has been determined by Legislative Counsel and the Ulster County Comptroller that the manner in which electric is currently being offered is unconstitutional and corrective action should be taken:*". I must respectfully disagree.

I have never been provided with any Opinion whatsoever from Legislative Counsel; and if one does exist, it would stand to reason that the County Attorney should be provided with a copy of it. However, on September 16, 2015, the Ulster County Comptroller provided me and the County Executive's office with his "draft" opinion to the Chairman of the Legislature regarding the issue as to whether or not the fact that Ulster County does not charge a user fee for electric vehicle charging stations, violates the prohibition gift-giving clause of the State Constitution. He asked me to review it and respond to him, which I did on October 5, 2015. A copy of my legal Opinion with its exhibits is enclosed herein.

Yesterday, the Comptroller informed me that after receiving my October 5, 2015 legal Opinion he revised his "draft" opinion to the Chairman of the Legislature, which is now dated October 8, 2015, that he delivered to the Chairman of the Ulster County Legislature, and posted it on the website. Yesterday, at my request, he provided me with a copy. Having read it and researched his comments therein, it is still my legal opinion that the County is not in violation of the State Constitution or any other law by not charging a fee for the use of these electric vehicle charging stations.

The Comptroller does not claim that his opinion is a legal opinion, nor can it be a "legal" opinion. He states that he has had verbal "conversations" with the City Attorney of Watertown, New York and the Comptroller for Ogdensburg, New York who "chose not to pursue

municipally owned electric car charging stations as to avoid any potential conflict with the state constitution.” There is absolutely no potential constitutional conflict with municipalities owning municipal charging stations. He also states that he has read some newspaper articles as well, but provides no legal documentary evidence whatsoever that would support his research or his erroneous conclusion that the “free nature of the electric car charging program...is likely in violation of the New York State Constitution’s Gift and loan provision....”

Specifically, the Courts have held that if a program promotes a public purpose of the municipality, then an incidental benefit to a private individual or entity does not violate the State Constitution and is not illegal. As my Opinion notes, the current program is in furtherance of and promotes a public purpose, to wit: tourism and economic development as well as providing environmental benefits. The facts, as they relate to the County’s program, reveal that it has attracted those benefits in just the short amount of time it has been in service and the cost has been de minimis to the County -- less than \$100.00 for the three month period from July to October. There are other municipalities that provide charging stations that do not charge a user fee. I have listed just some of them in my enclosed legal Opinion. I also urge you to read the New York State Energy Research and Development Authority’s recent report entitled “Electric Vehicle Tourism in New York State” which addresses the tourism benefits as well as the benefits to the environment these types of programs provide.

More importantly, I believe that you should be aware of some other pertinent facts and issues which are relevant to this matter and to which I have responded. The following are addressed more fully in my attached October 5, 2015 legal Opinion to the Comptroller.

1. **Late last year, the Ulster County Comptroller sought approval from the Ulster County Commissioner of Finance to have the County pay for breakfasts for 25 students and their guests at a June 2014 Ulster County Chamber of Commerce Breakfast.** The Comptroller never presented any information to me, although he had ample opportunity to do so, that this benefit to private individuals promoted a public purpose of the County. **Thus, it was my legal Opinion that this particular activity should not have been a County charge.** Unfortunately, the Comptroller had already promised the Chamber that the County would pay it \$450.00 for these attendees; and thus, the County, long after the breakfast took place, had a duty to settle the claim and pay the Chamber based upon the promise made by the Comptroller.
2. **In January of 2015, then Deputy Comptroller Joseph Eriole requested a review and verbal opinion as to whether or not the Ulster County Legislature's invoices for printing and the reproduction of calendars and photos was a legitimate charge against the County.** He noted, in writing, that the Comptroller's Office was not authorizing payment. The calendar, photos, and the County directory resulted from a "photo contest" and the calendars and directories were distributed to the public free of charge. My response, as more fully set forth in my enclosed legal Opinion, was that since these items were in furtherance of and promoted a public purpose of the County, they were legitimate County charges and the invoices for printing, framing and reproduction should be paid. **Like the electric vehicle charging station access, the**

**benefits enjoyed by the private entities and individuals was incidental; and therefore it was permissible and not in violation of the State Constitution.**

**3. The County has and continues to offer public access to County electricity for laptops, devices, cell phones, and other electronic devices within and upon County property and no fee is charged. As I stated in my Opinion, this free electrical access is in furtherance of a public purpose and has had a net effect of promoting the County. The most obvious use is in Legislative Chambers in the Ulster County Office Building. Like the electric vehicle charging station access, the benefits enjoyed by private entities and individuals was incidental; and therefore it was permissible and not in violation of the State Constitution.**

I urge you to read my enclosed legal Opinion. Should you wish to discuss this matter or have any questions, as always, I am available, so please feel free to call me or stop in at the office.

Enclosure

cc: Hon. Michael P. Hein, Ulster County Executive (w/enc.)  
Cappy Weiner, Esq., Legislative Counsel (w/enc.)  
Erica K.F. Guerin, Esq., Legislative Counsel (w/enc.)  
Christopher Ragucci, Esq., Legislative Counsel (w/enc.)  
Victoria A. Fabella, Clerk of the Legislature (w/enc.)  
Kenneth Crannell, Deputy County Executive (w/enc.)  
Amanda LaValle, Coordinator, Ulster County Dept. of the Environment (w/enc.)