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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.)