

ULSTER COUNTY EXECUTIVE

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VETO MESSAGE

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.¹ 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.²

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

² 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.