

## **Erie County Fiscal Stability Authority**

Resolution No. 08-51

### **DECLINING TO APPROVE OR REJECT PROPOSED PAYMENTS TO CURRENT ACTIVE MEMBERS OF AFSCME LOCAL 1095**

#### **I. The Erie County Fiscal Stability Authority’s Prerogative to Review Monetary Obligations “Binding or Purporting to Bind” Erie County**

WHEREAS, Chapter 182 of the New York Laws of 2005 (the “ECFSA Act”) created the Erie County Fiscal Stability Authority (“ECFSA”), to serve as a corporate governmental agency and instrumentality of the State of New York, and as a public benefit corporation to “oversee [Erie] County’s budget, financial and capital plans; to issue bonds, notes or other obligations to achieve budgetary savings and to finance short-term cash flow or capital needs; and, if necessary, to develop financial plans on behalf of the County if the County is unwilling or unable to take the required steps toward fiscal stability;” and

WHEREAS, the ECFSA first imposed a control period upon the County of Erie (the “County”) by adopting Resolution 06-49 on November 3, 2006; and

WHEREAS, this control period remains in effect, pursuant to Resolution 08-11, adopted by the ECFSA on January 4, 2008; and

WHEREAS, during a control period, the ECFSA “may review and approve or disapprove contracts or other obligations binding or purporting to bind the county or any covered organization,” pursuant to New York Public Authorities Law (“Public Authorities Law”) section 3959(2)(h); and

WHEREAS, incident to and in furtherance of the imposition of the control period, the ECFSA adopted Resolution 07-10 on March 2, 2007; and

WHEREAS, Resolution 07-10 authorized a process for ECFSA approval of contracts, settlements, or other obligations “binding or purport[ing] to bind the County” (the “contract approval process”);

#### **II. The County Legislature Has Adopted No Resolution “Binding or Purporting to Bind” the County to One-time Payments of \$600.00 to Certain Employees**

WHEREAS, the Clerk of the County Legislature, as authorized by the Chair of the County Legislature, has submitted to the ECFSA a request for approval of one-time, \$600.00 payments (the “Proposed Payments”) to each of certain County employees represented by the American Federation of State, County and Municipal Employees (“AFSCME”) Local 1095 (the “AFSCME Employees”); and

WHEREAS, this request arose from the County Legislature's adoption of a resolution, dated March 6, 2008 (the "Employee Payment Resolution"); and

WHEREAS, pursuant to the Employee Payment Resolution, the County Legislature (the "Legislature") resolved that it "determine[d] that it is appropriate to give a one-time payment in the amount of \$600.00 to all current active members of AFSCME Local 1095 bargaining unit who were employed by the County, the Erie County Medical Center Corporation, the Erie County Home, Erie Community College and the Buffalo and Erie County Library System on December 31, 2005;" and

WHEREAS, section 202(f) of the County Charter empowers the Legislature to "fix the compensation of all . . . employees paid from county funds, except members of the judiciary;" and

WHEREAS, by its text, the Employee Payment Resolution did not purport to increase the compensation of the AFSCME Employees by \$600.00 per employee for calendar year 2008; and

WHEREAS, section 2613 of the County Charter provides conditions precedent, without which "[n]o payment shall be authorized or made and no obligation [shall be] incurred against the county;" and

WHEREAS, by its text, the Employee Payment Resolution did not authorize any payment or obligation to be made by the County; and

WHEREAS, the Employee Payment Resolution constitutes a mere statement of the will of the Legislature, that the Proposed Payments to each of the AFSCME Employees would be "appropriate;" and

WHEREAS, such statement of will does not constitute a contract, settlement, or other obligation "binding or purporting to bind" the County;

### **III. The Request for Approval of the Proposed Payments to the AFSCME Employees Did Not Originate from a "Responsible Official," as Defined by the ECFSA.**

WHEREAS, pursuant to the contract approval process described by ECFSA Resolution 07-10, the "County Executive or a 'Responsible Official' . . . must sign any request by the County for ECFSA review of a contract, settlement, or other obligation;" and

WHEREAS, that process defines the Chair of the Legislature as a Responsible Official "with regard to any contract, settlement, or other obligation arising from or relating to the operation of the Department of the Legislature;" and

WHEREAS, the Proposed Payments to each of the AFSCME Employees would not arise from or relate to the "operation" of the Department of the Legislature; and

WHEREAS, the Chair of the Legislature would not constitute a “Responsible Official” who could validly sign a request for ECFSA approval of the Proposed Payments to each of the AFSCME Employees; and

WHEREAS, pursuant to the contract approval process presently in effect, the County Executive would constitute the only person who could validly sign such a request; and

WHEREAS, the County Executive has not signed such a request, nor submitted it to the ECFSA; and

WHEREAS, a condition precedent to ECFSA consideration of the merits of the Proposed Payments to each of the AFSCME Employees consequently remains to be satisfied; and

**IV. Resolutions**

WHEREAS, the merits of the Proposed Payments to each of the AFSCME Employees, as described by the Employee Payment Resolution, are not ripe for consideration by the ECFSA, for the following reasons:

- (1) Neither the Employee Payment Resolution, nor any other resolution adopted by the Legislature, would bind or purport to bind the County to make the Proposed Payments.
- (2) The County Executive has not submitted to the ECFSA his signed request for its consideration of the merits of the Proposed Payments.

NOW, THEREFORE, BE IT RESOLVED that the Proposed Payments to each of the AFSCME Employees do not constitute a binding obligation that Public Authorities Law section 3959(2)(h) would empower the ECFSA to approve or disapprove; and

BE IT FURTHER RESOLVED that the ECFSA declines to take action to approve or disapprove the Proposed Payments, or to consider or comment on their merits, in the absence of a ripe request for approval of those Payments.

Department	Description	Amount
EC Legislature – Settlement of Legal Claim - AFSCME	Labor union settlement	\$816,000

This resolution shall take effect immediately.

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Stanley J. Keysa  
Secretary

Date: April 11, 2008

