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**MEMORANDUM**

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**TO:** DAVID MANCHESTER, CHAIRMAN, CHEMUNG COUNTY LEGISLATURE  
**FROM:** BRYAN MAGGS, ATTORNEY TO THE LEGISLATURE  
**SUBJECT:** FUNDING ANALYSIS FOR CGR CONTRACT  
**DATE:** FEBRUARY 8, 2021

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I am providing this correspondence at your request, in response to the letter written by County Attorney Hussain dated February 5, 2021 regarding proposed resolution 21-085 “Authorizing Agreement with CGR on Behalf of the Chairman of the Chemung County Legislature”.

Attorney Hussain correctly notes that the resolution seeks to employ professional and technical advice to assist the Legislature in its 2021 redistricting endeavor, and its related decision to study of the composition of the County’s Legislature and government compared with similar counties. Attorney Hussain is incorrect that this contract constitutes an attempt to “unilaterally amend the approved 2021 budget without the County Executive’s required approval”. The law permits the Legislature to make this appropriation, and I believe there is funding in the budget for this study per the County Executive’s budget message appended to the 2021 budget (although I cannot ascertain where that funding is located in the budget – possibly the contingency account appropriation).

Charter Section 201 (6) requires the Legislature to “reconsider its representation” and “if necessary re-draw legislative district boundaries”, and present same to the electorate for a vote in the year the census results are announced (the ballot measure also needs to be to the Board of Elections 60 days before the general election).

Chemung County Charter section 203(j) provides as a core power and duty of the Legislative Branch the authority “to make such studies and investigations as it deems to be in the best interests of the County and in connection therewith to obtain and employ professional and technical advice”. The Legislature is forming a committee to undertake the study, and seeking to employ CGR for their professional and technical expertise in this regard. This is consistent with the mandates of NYS Municipal Home Rule Law § 33(5) which permits employment of “technical advisors and assistants within appropriations made therefor”.

Authorizing a contract with CGR for a service that is within the exclusive power and duty of the Legislature is permitted – an important fact that is not disputed by the County Attorney. The County Attorney suggests instead that even if the County has the money for the study somewhere in the budget, the Legislature may not do a study because the money

for this contract is not in the Legislature's budget. He notes that the County Executive will not direct a transfer of any money from other places within the Legislature's budget, nor will he request that the Legislature approve transfer of money from other administrative units into the Legislature's contract account budget line.

County Attorney Hussain cites the *Pataki v NYS Assembly* case as authority for his position that the Legislature may not alter appropriations. The *Pataki* case is not applicable or instructive to our situation. *Pataki* involves the NYS budget system, which under the NYS Constitution, has the Governor submit appropriation bills which the NYS Legislature "may not alter ... except to strike out or reduce items therein". Counties do not operate under this system, as budgeting and appropriation (as well as items like authority to contract, and authority to create and hire positions and set salaries) is controlled by a combination of County Law and Charter.

The Legislature is the appropriating body of the County, and appropriation authority is exclusive to, and may not be ceded from, the County governing board by any Charter provision (MHRL § 33[3][a]). County Law article 7 discusses the default finance system set up by the State for county operations. It makes the Board of Supervisors the appropriating authority, and it makes the chief fiscal officer the administrator of the budget. Chemung County's Charter has designated the County Executive as the administrator of the budget.

I respectfully submit that the County Attorney's reading of section 510 of the Charter is too narrow. That section does not direct that the Legislature may only authorize an appropriation or transfer to pay for an item the Legislature determines to be in the best interest of the County, if the County Executive first requests that the Legislature do it.

Take, for instance, the conclusion of County Attorney Hussain's letter, which threatens legal action against the Legislature if it passes the resolution contracting with CGR (though the purpose of the contract is lawful). The Legislature does not presently have money in its 2021 administrative unit budget to hire a lawyer to defend such an action. The County Attorney's position would prohibit the Legislature from hiring a lawyer and "amending the budget" to pay for it. The last time this very situation happened in 2019, the Legislature passed a resolution authorizing the contract (which wasn't in the budget then either), and authorized a budget transfer from the unappropriated contingency fund balance into the Legislature's contract account to pay for the legal services. The Treasurer hired a lawyer to review whether she had authority to pay that legal bill, and the lawyer opined that the appropriation and contract was legal and need be paid.

Another obvious example would be if the Legislature were to deem it necessary to spend funds on professionals and technical experts in furtherance of a legislative investigation into impropriety, which may be opposed by a County Executive. Legislative studies and investigations are authorized to be commenced by the Legislature under Charter section 203 (j), and if money needs to be appropriated therefor to employ professionals, this section permits the contract(s), and section 203 (a) provides appropriation authority.

Additionally, County Attorney Hussain's letter provided to the Legislative Clerk from the County Executive could very appropriately be read to be in furtherance of his budget administration duties under Charter section 510, of advising the Legislature that

revenues available in the Legislature’s budget will be “insufficient to meet the amounts appropriated” to the Legislature’s contract account. In such circumstance the County Executive issues “*recommendations* he deems necessary to prevent...any deficit”.<sup>1</sup>

The Legislature in such circumstance has the ability under the Charter to, by resolution, reduce appropriations, borrow money, or appropriate by transfer funds from the budget’s unappropriated contingency account into the account needing additional funds, even if another recommendation was made by the County Executive (such as his recommending that the contract not be entered into). The Legislature also has the ability under County Law § 366 entitled “Unanticipated Revenues; Unappropriated Cash Surplus” to, by resolution, appropriate money from “unappropriated unreserved fund balance”, provided there are sufficient reserves (the 2021 budget indicates there are sufficient funds for this \$48,000 contract). The Charter does not dictate otherwise.

It is also notable that under Charter section 509 “If during any fiscal year there are available for appropriation (1) revenues received from sources not anticipated in the budget for that year, or (2) revenues received from anticipated sources but in excess of the budget estimates thereof, the County Legislature may make supplemental appropriations for the year not in excess, however, of such additional revenues”. I do not know if the County has received excess revenue in 2021 over the budget estimates, but I point this out as yet another example of the Charter recognizing the Legislature’s exclusive appropriation authority.

If the Legislature is inclined to approve the resolution for the contract for the required technical services related to re-districting and studying the size of the Legislature and government, I recommend that the resolution state the funding source for the appropriation. Though there are several options (including but not limited to transfer from the 2021 unappropriated contingency account, or borrowing under local finance law), the attached draft resolution has been updated to include a transfer from unappropriated unreserved fund balance, which will not impact any budget items in the 2021 operating budget. A resolution identifying the appropriation source is consistent with the way the Legislature authorizes appropriations, including how the Legislature appropriated the funds needed for the contract for legal counsel in 2019.

The updated draft resolution is attached, and the Clerk of the Legislature has updated this as the version that will be read for consideration at tonight’s meeting.

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<sup>1</sup> Section 510 gives the County Executive power to transfer money within an administrative unit’s budget on his own (which the letter says he won’t do), but he must request in writing a resolution of the Legislature if he desires to move unencumbered appropriations from one administrative unit to another (which the letter also says he won’t be requesting). Regardless, the Legislature as the appropriating body is not duty-bound to do what the County Executive requests be done, and may by resolution construct the solution.

RESOLUTION NO. 21-085

RESOLUTION AUTHORIZING AGREEMENT WITH CGR ON BEHALF OF THE  
CHAIRMAN OF THE CHEMUNG COUNTY LEGISLATURE

By: Manchester

Seconded by:

WHEREAS, the Chairman of the Chemung County Legislature (the ‘Chairman’) has requested authorization to enter into an agreement with CGR for CGR to study the composition and structure of Chemung County’s government compared to similar counties including the size of Legislature, ratio of representation, selection of county officials, estimated costs of various branches of government; and a separate redistricting phase agreement involving analysis of Census data and development of new legislative district maps and descriptions for consideration as amendments to the Chemung County Charter, all to assist the Legislative Redistricting and Efficiency of County Government Operations Advisory Committee in making recommendations to the Chairman at a total cost not to exceed \$48,000, with funding appropriated from the unreserved (unappropriated) fund balance of the general fund to the Legislature contracts account 10-1040-50408; and

WHEREAS, the Budget Committee has recommended the Chemung County Legislature approve this agreement; now, therefore, be it

RESOLVED, that the Chairman of the Legislature is hereby authorized and directed to enter into the aforementioned agreement with CGR, as more particularly described in the Preamble to this Resolution, at a total cost not to exceed of \$48,000 during the period February 1, 2021 through December 31, 2021, the terms and conditions of this agreement to be subject to the review and approval of the Attorney for the Legislature; and, be it further

RESOLVED, that the Chemung County Treasurer is hereby authorized and directed to transfer \$48,000 from the unreserved (unappropriated) fund balance of the general fund to the Legislature contracts account 10-1040-50408; and, be it further

RESOLVED, that this agreement shall not be renewed, the initial term thereof extended, or the agreement amended without the express consent by Resolution of this Legislature.