

Bill No. **1685-04**

No. **34-04-OR**

AN ORDINANCE

An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, providing that when the commencement, prosecution, or defense of litigation, between the Executive Branch and Legislative Branch causes a conflict of interest for the Allegheny County Solicitor, legal fees incurred by the Legislative Branch shall be borne by the Executive Branch and/or paid from the General Fund of Allegheny County.

WHEREAS, Article III, § 7f of the Allegheny County Home Rule Charter provides that the annual appropriation for County Council shall not exceed four-tenths of one percent of the County's annual locally levied tax revenues; an appropriation that does not currently include funds for litigation; and

WHEREAS, Article V, § 3 of the Home Rule Charter provides that the County Solicitor shall be the chief legal officer of the County and serve as the director of the Law Department; and Article 405, §405.03 of the Administrative Code provides that the Solicitor has duties and responsibilities to County Council and the Chief Executive; and

WHEREAS, legal action by the Executive Branch against the Legislative Branch of County Government creates a conflict of interest for the County Solicitor and Law Department, requiring that the Legislative Branch utilize its own legal counsel when participating in or defending such actions;

WHEREAS, legal action against itself is a disservice to County residents, particularly when no real controversy exists, and results in additional cost to taxpayers when additional legal costs are necessary to defend actions commenced by the administration;

WHEREAS, commencing, prosecuting, and defending suits by the County is the responsibility of the County Solicitor; however, when a conflict of interest exists that prevents the Solicitor from fulfilling his responsibilities as they relate to the Legislative Branch, such costs for County Council's participation and/or defense through legal counsel should be borne by the Executive Branch and/or be paid from the General Fund of Allegheny County.

The Council of the County of Allegheny hereby enacts as follows:

SECTION 1.

In the event that any legal action is commenced against the Legislative Branch (i.e. Allegheny County Council) by the Executive Branch (i.e. Chief Executive or Administration) of County

government, any and all legal costs incurred as a result of participation and/or defense of that action shall be borne by the Executive Branch and/or shall be paid from the General Fund of Allegheny County. Legal costs incurred under this section shall neither be attributable to County Council's budget, nor shall be counted towards the four-tenths of one percent cap established for Council pursuant to Article II § 7(f) of the Allegheny County Home Rule Charter.

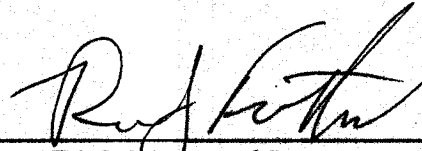
SECTION 2. *If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.*

SECTION 3. *Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.*

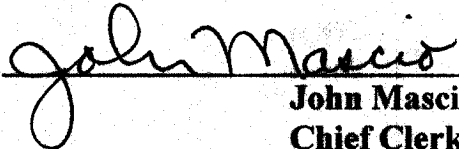
SPONSORED BY THE EXECUTIVE COMMITTEE

Enacted in Council, this 21st day of September 2004

Council Agenda No. 1685-04



Rich Fitzgerald
President of Council

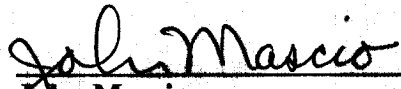
Attest: 
John Mascio
Chief Clerk of Council

Chief Executive Office _____, 2004

Approved: _____
Dan Onorato
Chief Executive

Attest: _____
Donna Beltz
Executive's Secretary

I do hereby certify that the foregoing Ordinance which was vetoed by the Chief Executive on October 1, 2004, was overridden by a two-thirds vote of said Council this 19th day of October, 2004.


John Mascio
Chief Clerk of Council

Bill No. 1722-04

MOTION OF THE COUNCIL OF ALLEGHENY COUNTY

Overriding Chief Executive Dan Onorato's veto of Council Bill No. 1685-04, entitled, "An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, providing that when the commencement, prosecution, or defense of litigation, between the Executive Branch and Legislative Branch causes a conflict of interest for the Allegheny County Solicitor, legal fees incurred by the Legislative Branch shall be borne by the Executive Branch and/or paid from the General Fund of Allegheny County." which was submitted to Council on October 1, 2004.

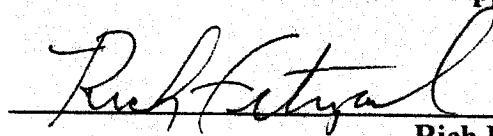
NOW THEREFORE, IT IS MOVED, BY THE COUNCIL OF ALLEGHENY COUNTY,

That the Council of Allegheny County hereby overrides Dan Onorato's veto of Council Bill No. 1685-04, entitled, "An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, providing that when the commencement, prosecution, or defense of litigation, between the Executive Branch and Legislative Branch causes a conflict of interest for the Allegheny County Solicitor, legal fees incurred by the Legislative Branch shall be borne by the Executive Branch and/or paid from the General Fund of Allegheny County." which was submitted to Council on October 1, 2004.

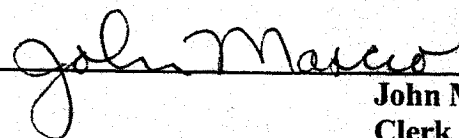
SPONSORED BY COUNCIL MEMBER WAYNE FONTANA

In Council October 19, 2004.

Read and Approved.



Rich Fitzgerald
President of Council

Attest: 

John Mascio
Clerk of Council

MEMORANDUM

TO: JOHN MASCIO, CLERK OF COUNCIL
FROM: JOHN F. CAMBEST, ESQUIRE
RE: ALLEGHENY COUNTY COUNCIL
VETO LETTER OF RESPONSE
DATE: OCTOBER 19, 2004

The October 1, 2004 letter from the Chief Executive notifying Council of his reasons for vetoing Bill No. 1685-04 listed two (2) specific portions of the Home Rule Charter. Rather than paraphrase as the Chief Executive did, the provisions, in their entirety follow.

Article IV, Section 2(N) provides, among Council's powers and duties, the ability to "employ a County Council Clerk and other personnel to serve County Council in the fulfillment of its duties. County Council staff shall be subject to the personnel system. County Council, on a case by case basis, may contract for professional services within the limitations of its annual appropriation as provided in Article III, Section 7(F)."

Article III, Section 7(F) provides that "the appropriation in each annual operating budget for County Councils per meeting stipends, expenses, total staff compensation and office expenses shall not exceed four-tenths of one percent of the County Council's annual locally levied tax revenues as detailed in the most recent audited financial report of the County."

I agree with the statement that a legal dispute with the Chief Executive would constitute the proper case for Council to invoke its rights to obtain the services of an independent

counsel. In fact, there is clearly precedent for doing so. I also agree with the statement that County Council's authority to retain professional services must be exercised with certain restraints. The statement with which I do not agree is that the Charter places the obligation to pay for any professional services sought and provided by Council.

As previously indicated, Article III, Section 7(F) provides that the *appropriation* shall not exceed four-tenths of one percent of the County's annually locally levied tax revenues. Council has complied with that since its inception. Its compliance has never been in question. The specific question of whether Council has complied as it relates to legal counsel is evidenced by the 2004 Budget which includes a \$52,000.00 line item for legal counsel.

The Ordinance in question, however, does not talk about appropriations. It provides that a legal action that is commenced by the Executive Branch against the Legislative Branch be paid for by that Branch. This is not a deviation from the words of the Charter, as "appropriation is defined as 'a legislative bodies act of setting aside a sum of money for a public purpose'". Clearly, Council has complied with the provisions of the Charter by setting aside a sum of money for a public purpose. Bill No. 1685-04 simply takes an additional step to provide that such actions are outside the scope of "per - meeting stipends, expenses, total staff compensation and office expenses" and, as such, should be paid for through other means. The Bill also provides that such costs shall not be attributable to Council's Budget because it is not part of the appropriation that Council makes each year within its Budget.

If you have any further questions please do not hesitate to contact me.

From: Mascio, John
Sent: Friday, October 08, 2004 2:24 PM
To: Jack Cambest (dkclaw@fyi.net)
Subject: Onorato's veto of Bill No. 1685-04
Dear Mr. Cambest,

As you are aware, on Friday, October 1, 2004, Chief Executive Dan Onorato returned to me, with his veto, Council Bill 1685-04 (attached) entitled, "An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, providing that when the commencement, prosecution, or defense of litigation, between the Executive Branch and Legislative Branch causes a conflict of interest for the Allegheny County Solicitor, legal fees incurred by the Legislative Branch shall be borne by the Executive Branch and/or paid from the General Fund of Allegheny County."

Council Member Wayne Fontana requested that you provide this office with a written response to Mr. Onorato's Veto prior to the October 19th Regular Meeting of Council, at which time this veto will be on the agenda.

Thank you for your cooperation.

John Mascio



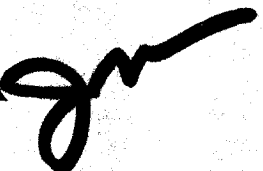
OFFICE OF THE COUNTY COUNCIL

County of Allegheny

ROOM 119 • 436 GRANT STREET • PITTSBURGH, PA 15219
PHONE (412) 350-6490 • FAX (412) 350-6499

MEMORANDUM

TO: All Members of Council

FROM: John Mascio, Chief Clerk 

DATE: October 1, 2004

SUBJECT: Chief Executive Dan Onorato's Veto of Council Bill 1685-04, entitled, "An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, providing that when the commencement, prosecution, or defense of litigation, between the Executive Branch and Legislative Branch causes a conflict of interest for the Allegheny County Solicitor, legal fees incurred by the Legislative Branch shall be borne by the Executive Branch and/or paid from the General Fund of Allegheny County."

This is to inform you that on Friday, October 1, 2004, Chief Executive Dan Onorato returned to me, with his veto, Council Bill 1685-04 referenced above.

Attached is a copy of Mr. Onorato's written objection to the bill.

Article IV, Section 5(b) of the Home Rule Charter provides that County Council may override a Chief Executive veto by an affirmative vote of at least two-thirds of the Seated Members of Council and that the override vote must occur within 30 days of the veto, which means that Sunday, October 31, 2004 would be the last day you could vote to override the veto, otherwise the veto would be sustained.

cc: Joe Catanese

1721-04

OFFICE OF THE CHIEF EXECUTIVE



County of Allegheny

DAN ONORATO
CHIEF EXECUTIVE

101 COURTHOUSE ♦ 436 GRANT STREET
PITTSBURGH, PA 15219
PHONE (412) 350-6500 ♦ FAX (412) 350-6512
October 1, 2004

Honorable President and Members
Allegheny County Council
119 Courthouse
436 Grant Street
Pittsburgh, PA 15219

President and Members of Council:

I hereby return, with my veto, Council Bill 1685-04 that you forwarded to my office for consideration on September 24, 2004. **I have vetoed this Bill because it violates the plain text of the Home Rule Charter of Allegheny County and, therefore, is illegal.**

The Charter gives County Council the right, under appropriate circumstances, to procure professional services, including the services of an independent attorney. In particular, the Charter provides, "County Council, *on a case-by-case basis*, may contract for professional services." Charter, Art. IV, § 2(n)(emphasis added). There is little doubt that a legal dispute with the Chief Executive would constitute the proper "case" for Council to invoke its right under the Charter to obtain the services of an independent counsel.

The Charter, however, is clear that Council's authority to retain professional services, including legal counsel, must be exercised within certain restraints. Specifically, the Charter states that Council's ability to contract for professional services must be exercised "*within the limitations of its annual appropriation as provided in Article III, Section 7(f)*." Charter, Art. IV, § 2(n)(emphasis added). Thus, the clear text of the Charter places the obligation to pay for any professional services sought by and provided to County Council squarely upon Council itself. Council simply cannot shift this Charter-mandated obligation to the Chief Executive by passing an Ordinance so dictating such a shift.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Onorato", written over a horizontal line.

Dan Onorato
Allegheny County Chief Executive

cc: James M. Flynn, Jr.
Michael H. Wojcik, Esquire

OFFICE OF THE
COUNTY COUNCIL
2004 SEP 31 PM 3:23



OFFICE OF THE COUNTY COUNCIL

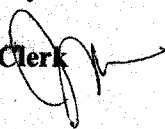
County of Allegheny

ROOM 119 • 436 GRANT STREET • PITTSBURGH, PA 15219

PHONE (412) 350-6490 • FAX (412) 350-6499

MEMORANDUM

TO: Dan Onorato, Chief Executive
Jim Flynn, County Manager
Mike Wojcik, County Solicitor
Mark Flaherty, County Controller

FROM: John Mascio, Chief Clerk 

DATE: October 22, 2004

SUBJECT: Approved Legislation & Motion

I transmit herewith a copy of Ordinance No. 34-04-OR, passed in Council on September 21, 2004, which was vetoed by the Chief Executive on October 1, 2004 and overridden by a unanimous vote of County Council at the Regular Meeting of Council held on October 19, 2004.

Also transmitted is a copy of Bill No. 1722-04, a Motion overriding said veto, which was unanimously approved by Council at the Regular Meeting of Council held on October 19, 2004.