

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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February 6, 2017

TO: Senate Majority Coalition Leader John Flanagan
Assembly Speaker Carl Heastie
Senate Minority Leader Andrea Stewart-Cousins
Assembly Minority Leader Brian Kolb

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
Constituents of Senator Stewart-Cousins (35th Senate District)
& of Assemblyman David Buchwald (93rd Assembly District)

RE: (1) Where are your appointments to the Commission on Government Administration and to the Commission on State-Local Relations, required by Legislative Law Article 5-A?;
(2) When will you be responding to my requests for a meeting for purposes of preventing a repeat of the constitutional, statutory, and legislative rule violations chronicled by the September 2, 2016 verified complaint in CJA's citizen-taxpayer action?

On Friday, February 3, 2017, at a local budget hearing sponsored by the Westchester legislative delegation, I asked Assemblyman Thomas Abinanti whether – as reflected by the Assembly website – he is chair of the Legislature's Commission on Government Administration. He confirmed that he is – and then, in response to my inquiry about the Commission's other members, stated they have not yet been appointed.

Legislative Law Article 5-A (§§82, 83) establishes 13 legislative commissions. Among them are the Commission on Government Administration (§83-c) and the Commission on State-Local Relations (§83-h), each of which was to have ten members, appointed as follows:

“...three members of the senate shall be appointed by the temporary president of the senate; three members of the assembly shall be appointed by the speaker of the assembly; two members of the senate shall be appointed by the minority leader of the senate; and two members of the assembly shall be appointed by the minority leader of the assembly. From among the members so appointed, a chairman and a vice chairman shall be designated by the joint action of the temporary president of the senate and the speaker of the assembly....” (Legislative Law §83-c(1); §83-h(3)).

EX A

Consequently – and with all deference to Assemblyman Abinanti – he cannot lawfully chair the Commission on Government Administration – as Legislative Law §83-c(1) expressly requires that you first appoint all ten members, which – according to Assemblyman Abinanti – you have not yet done.

Please, therefore, immediately rectify your violations of Legislative Law §83-c(1) by making your ten appointments to the Commission on Government Administration and designating its chair and vice-chair from among them. Likewise, please immediately rectify your violations of Legislative Law §83-h(3) pertaining to the Commission on Local-State Relations, which apparently now has neither a chair nor members.

Both Commissions have time-sensitive work to do that is all the more exigent because key standing committees of the Legislature are NOT discharging their oversight responsibilities. This was the subject of my extensive testimony at the Legislature’s January 30th budget hearing on “Local Government Officials/General Government”. The committees I named as derelict with respect to oversight of the Judiciary, of its chief monitor – the Commission on Judicial Conduct – of judicial compensation, of district attorneys, of district attorney compensation, and of state aid to the counties for district attorney salaries – were:

- the Senate Judiciary Committee;
- the Assembly Judiciary Committee;
- the Senate Codes Committee;
- the Assembly Codes Committee;
- the Senate Committee on Local Government; and
- the Assembly Committee on Local Governments.

In addition to these six standing committees are four more I might have also identified, by name:

- the Senate Committee on Crime Victims, Crime, and Correction;
- the Senate Committee on Investigations and Government Operations;
- the Assembly Committee on Governmental Operations; and
- the Assembly Committee on Oversight, Analysis, and Investigation.

Then, of course – and but for the fact that I was testifying before the chairs and ranking members of the Senate Finance Committee and the Assembly Ways and Means Committee who bear greatest culpability for the mountain of constitutional, statutory, and legislative rule violations that have created the HUGE slush fund that is the state budget – I would have also specified those two committees, the largest of the Senate and Assembly, whose nonfeasance and misfeasance with respect to oversight is evident from the budget hearings, as, likewise, from their incompetent, substandard, and intentionally misleading “White Book”, “Blue Book”, “Yellow Book” and “Green Book” purported “analyses” of the budget.

In the event you have not personally viewed the VIDEO of my January 30th testimony at the budget hearing on “Local Government Officials/General Government” and the VIDEO of my testimony the following day at the January 31st budget hearing on “Public Protection”, I ask that you do so IMMEDIATELY, in further support of my January 9th written requests to meet with you, to which I also testified. The VIDEOS and my meeting requests are all posted on CJA’s website, www.judgetwatch.org, accessible *via* the prominent homepage link “2017 Legislative Session”.

Likewise, if you have not yet personally examined the September 2, 2016 verified complaint in CJA’s citizen-taxpayer action and the record thereon – about which I also testified – you must do so IMMEDIATELY. It, too, is readily accessible from CJA’s website, including *via* the prominent homepage link: “CJA’s Citizen-Taxpayer Actions to End NYS’ Corrupt Budget ‘Process’ and Unconstitutional ‘Three Men in a Room’ Governance”.

The first cause of action of the verified complaint, detailing the unconstitutionality of the legislative budget, *as written and as applied*, presents multiple paragraphs relating to the Commission on Government Administration, the Commission on State-Local Relations, and other legislative commissions and standing committees. Chief among these paragraphs are the following:

“28. ...the Legislature’s proposed budget, *on its face*, is not ‘itemized estimates of the financial needs of the legislature’... its section entitled Senate and Assembly Joint Entities’ (...) omits most of the joint commissions that the Legislature is required to establish and fund pursuant to Legislative Law, Article 5-A (§§82, 83). Among these, the Legislative Commission on State-Local Relations and the Legislative Commission on Government Administration. Additionally, the Administrative Regulations Review Commission, required to be established and funded pursuant to Legislative Law, Article 5-B (§§86-88) is omitted.

29. Upon information and belief, the Legislature’s joint entities, mandated by Legislative Law Articles 5-A and 5-B, to the extent they exist, have only appointed chairs, collecting stipends. They have no funding, or virtually none – a fact concealed by the legislative budget’s violation of the Article VII, §1 requirement of ‘itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house’.

30. The consequence of the Legislature’s facial violation of Article VII, §1 by its budget is the unconstitutionality of that budget, *as applied*. Without funding, the joint legislative commissions are not functioning – and cannot function – as Legislative Law Article 5-A and 5-B intended them to^{fn2}. They are sham, just as the Legislature’s standing committees, which, excepting the Senate Finance

^{fn2} Likewise not functioning, for lack of funding, is another commission established by the Legislative Law: the Law Revision Commission, established by Legislative Law Article 4-A.”

Committee and Assembly Ways and Means Committee, have no appreciable funding.

31. As illustrative, neither the Legislative Commission on State-Local Relations, nor the Legislative Commission on Government Administration, nor any of the Legislature's standing committees, such as the Senate Committee on Local Government, the Assembly Committee on Local Governments, the Senate Judiciary Committee, or the Assembly Judiciary Committee have engaged in any oversight of the statutory link between judicial salaries and district attorney salaries, established more than 40 years ago by Judiciary Law §183-a, or of the related provisions of County Law §§700.10 and 700.11 pertaining to district attorney salaries and state aid to the counties for those salaries, or of the outpouring of state dollars to the counties, *via* the budget, for district attorney salary reimbursement that violates these express statutory provisions.

32. Nor are these legislative committees and commissions – or the Senate Finance Committee and Assembly Ways and Means Committee – remotely responsive and responsible, upon being given notice of their duty to protect the counties and the state from the costs of district attorney salary increases having absolutely no basis other than Judiciary Law §183-a and whose consequence is to compound the theft of taxpayer monies resulting from the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 report. The legislative defendants are perfectly willing to countenance and continue a run-away 'gravy train' of district attorney salary increases that are the by-product of the statutorily-violative, fraudulent, and unconstitutional December 24, 2015 report...."

It was last June, in the wake of multiple Senate and Assembly bills aimed at giving the counties \$1,600,000 in additional aid for district attorney salaries for fiscal year 2016-2017 that I first tried to contact the Legislature's Commission on State-Local Relations and Commission on Government Administration, *via* the chairs identified by the Assembly's website as Assemblyman Sean Ryan and Assemblyman Brian Kavanagh, respectively. The experience compelled me to file a June 9, 2016 FOIL/records request with the Senate and Assembly in an effort to ascertain if these two important statutory commissions in fact exist and are operational. A copy of the FOIL/records request and the Senate and Assembly responses are enclosed.

Suffice to say that when I testified at the January 30th and 31st budget hearings in Albany – and on February 3rd, when I testified before Assemblyman J. Gary Pretlow, Assemblyman Steven Otis, and Assemblywoman Sandy Galef at the local budget hearing in Westchester – I brought with me the June 9, 2016 FOIL/records request and the Senate and Assembly responses, as well as many additional FOIL/records requests I had filed for documents relating to other government operations – the responses to which further evidenced the utter nonfeasance of Senate and Assembly committees in discharging basic oversight responsibilities, including where statutorily-contemplated.

Senate Committee on Investigations and Government Operations

Chair: Senator Terrence Murphy

Ranking Member: Senator Brad Hoylman

Assembly Committee on Governmental Operations

Chair: Assemblywoman Crystal Peoples-Stokes

Ranking Member: Assemblyman Mark Johns

Assembly Committee on Oversight, Analysis, and Investigation

Chair: Assemblyman Matthew Titone

Ranking Member: Assemblyman Joseph Errigo

Senate Finance Committee

Chair: Senator Catharine Young

Vice-Chair: Senator Diane Savino

Ranking Member: Senator Liz Krueger

Assembly Ways & Means Committee

Chair: Assemblyman Herman Farrell, Jr.

Ranking Member: Assemblyman Bob Oaks

Assemblyman Thomas Abinanti – chair/Commission on Government Administration

Assemblyman Sean Ryan – former chair/Commission on State-Local Relations

Assemblyman Brian Kavanagh – former chair/Commission on Government Administration

Senator Chris Jacobs – co-chair/Administrative Regulations Review Commission

Assemblywoman Aravella Simotas – co-chair/Administrative Regulations Review Commission

Assemblyman J. Gary Pretlow (member/Codes Committee; Ways & Means Committee)

Assemblyman Steven Otis (member/Committee on Local Governments)

Assemblywoman Sandy Galef (member/Committee on Governmental Operations)

Assemblyman David Buchwald (member/Judiciary Committee;

Committee on Local Governments;

Committee on Governmental Operations)