

Date: January 8, 2021

To: Hon. Benjamin Boykin Sunday Vanderberg
Chairman, Board of Legislators Clerk, Board of Legislators

From: John M. Nonna
County Attorney



Re: Legislation to authorize the County to enter into an agreement to retain the law firm of Tulis & Geiger LLP — Rule 13.1 Request for Immediate Consideration

Attached please find legislation that would, if approved, authorize the County to enter into an agreement to retain, at County expense, the law firm of Tulis & Geiger LLP to serve in an “of counsel” capacity to the County Attorney, as needed, in connection with ACME Bus Corp. v. Westchester County Department of Health, No. 8-20-08208-reg (E.D.N.Y.).

I respectfully request that the Board of Legislators add the attached legislation to the agenda for its January 11, 2021 meeting, pursuant to Rule 13.1 of the Rules of the County Board of Legislators (LWC §960.01)

Please let me know if you have any questions concerning either the legislation or this request. Thank you.

JMN/bdm/nn



George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

January 8, 2021

Westchester County Board of Legislators
800 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

Dear Honorable Members of the Board of Legislators:

Transmitted herewith is an Act which, if adopted by your Honorable Board, would authorize the County of Westchester (the "County") to enter into an agreement (the "Agreement") to retain, at County expense, the law firm of Tulis & Geiger LLP ("T&G") to serve in an "of counsel" capacity to the County Attorney, as needed, (the "Services") in connection with ACME Bus Corp. v. Westchester County Department of Health, No. 8-20-08208-reg (E.D.N.Y.) (the "Case").

The term of the proposed Agreement will commence on January 11, 2021 and continue until the County no longer has an interest in the Case, as the County may determine in its sole discretion, or the County otherwise terminates the Agreement.

Under the proposed Agreement, T&G will be paid a total amount not-to-exceed Thirty Thousand Dollars (\$30,000.00), payable at a rate of Three Hundred and Fifty Dollars (\$350.00) per hour for the services of Mark S. Tulis, Esq. and a rate of Two Hundred and Seventy-Five Dollars (\$275.00) per hour for the services of associates of T&G.

Procurement of the Services would, normally, be conducted in accordance with Section 7 of the Westchester County Procurement Policy and Procedures ("Section 7"). Under Section 7, the County is required to "solicit quotations, statements or other information regarding [the] experience, qualifications and capability to perform the proposed services" of "no fewer than three persons customarily performing such services." However, due to the time-sensitive nature of the Case, and the need to take immediate steps to ensure that the County's interests are protected, there was insufficient time to follow the normal solicitation procedure.

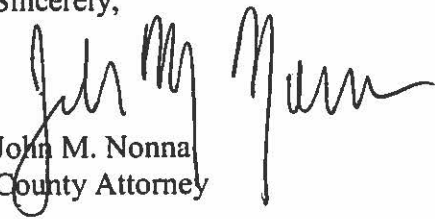
In lieu of that longer process, my office determined that T&G, as a firm expert in bankruptcy law, can competently and readily provide the Services, and that the hourly rates proposed are

reasonable in light of my office's knowledge of the overall marketplace for legal services. Since this means that the County will not be able to rely upon Section 7 as the procurement basis for the proposed Agreement, my office will seek authority from the Board of Acquisition and Contract to exempt this procurement from compliance with the Westchester County Procurement Policy and Procedures, pursuant to Section 3(a)(xxi) thereof.

The Planning Department has advised that with respect to the State Environmental Quality Review Act, this does not constitute an action as defined in section 617.2(b) of 6 NYCRR Part 617. As such, no environmental review is required.

I respectfully recommend your Honorable Board's approval of the attached Act.

Sincerely,



John M. Nonna
County Attorney

JMN/bdm/nn

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER**

Your Committee is in receipt of a communication from the County Attorney recommending the approval of an Act which, if adopted by your Honorable Board, would authorize the County of Westchester (the "County") to enter into an agreement (the "Agreement") to retain, at County expense, the law firm of Tulis & Geiger LLP ("T&G") to serve in an "of counsel" capacity to the County Attorney, as needed, (the "Services") in connection with ACME Bus Corp. v. Westchester County Department of Health, No. 8-20-08208-reg (E.D.N.Y.) (the "Case").

The County Attorney has advised your Committee that the term of the proposed Agreement will commence on January 11, 2021 and continue until the County no longer has an interest in the Case, as the County may determine in its sole discretion, or the County otherwise terminates the Agreement.

The County Attorney has advised your Committee that, under the proposed Agreement, T&G will be paid a total amount not-to-exceed Thirty Thousand Dollars (\$30,000.00), payable at a rate of Three Hundred and Fifty Dollars (\$350.00) per hour for the services of Mark S. Tulis, Esq. and a rate of Two Hundred and Seventy-Five Dollars (\$275.00) per hour for the services of associates of T&G.

The County Attorney has advised your Committee that procurement of the Services would, normally, be conducted in accordance with Section 7 of the Westchester County

Procurement Policy and Procedures (“Section 7”). The County Attorney has advised your Committee that, under Section 7, the County is required to “solicit quotations, statements or other information regarding [the] experience, qualifications and capability to perform the proposed services” of “no fewer than three persons customarily performing such services.” The County Attorney has advised your Committee that, however, due to the time-sensitive nature of the Case, and the need to take immediate steps to ensure that the County’s interests are protected, there was insufficient time to follow the normal solicitation procedure.

The County Attorney has advised your Committee that, in lieu of that longer process, his office determined that T&G, as a firm expert in bankruptcy law, can competently and readily provide the Services, and that the hourly rates proposed are reasonable in light of his office’s knowledge of the overall marketplace for legal services. The County Attorney has advised your Committee that, since this means that the County will not be able to rely upon Section 7 as the procurement basis for the proposed Agreement, his office will seek authority from the Board of Acquisition and Contract to exempt this procurement from compliance with the Westchester County Procurement Policy and Procedures, pursuant to Section 3(a)(xxi) thereof.

The Planning Department has advised that with respect to the State Environmental Quality Review Act, this does not constitute an action as defined in section 617.2(b) of 6 NYCRR Part 617. As such, no environmental review is required. Your Committee concurs with the Planning Department’s conclusion.

Your Committee has been advised that the adoption of the proposed Act requires an

affirmative vote of a majority of the members of your Honorable Board.

After due consideration, your Committee recommends adoption of the proposed Act.

Dated: _____, 2021
White Plains, New York

COMMITTEE ON

TO: Brian Miller, Senior Assistant County Attorney
Department of Law

FROM: David S. Kvinge, AICP, RLA, CFM
Director of Environmental Planning



DATE: January 8, 2021

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR OUTSIDE COUNSEL
FOR ACME BUS CORP. BANKRUPTCY CASE**

PROJECT/ACTION: Retention of a law firm with expertise in bankruptcy law to serve in an "of counsel" capacity to the County Attorney, as needed, in connection with the bankruptcy case known as ACME Bus Corp. v. Westchester County Department of Health.

With respect to the State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617, the Planning Department recommends that no further environmental review is required because the project/action:

- DOES NOT MEET THE DEFINITION OF AN "ACTION" AS DEFINED UNDER SECTION 617.2(b)**
- MAY BE CLASSIFIED AS TYPE II PURSUANT TO SECTION 617.5(c)():**

COMMENTS: None

DSK/cnm

cc: Andrew Ferris, Chief of Staff
Paula Friedman, Assistant to the County Executive
John Nonna, County Attorney
Tami Altschiller, Assistant Chief Deputy County Attorney
Norma Drummond, Commissioner
Claudia Maxwell, Associate Environmental Planner

FISCAL IMPACT STATEMENT

SUBJECT: ACME Bus Corp. Tulis & Geiger

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense NTE \$30,000.00

Total Current Year Revenue \$ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: 101_18_1000_4923

Potential Related Operating Budget Expenses: Annual Amount NTE \$30,000.00

Describe: An act authorizing the County to retain, at County expense, the law firm of Tulis & Geiger LLP to serve in an "of counsel" capacity to the County Attorney, in connection with ACME Bus Corp. v. Westchester County Dept. of Health, No. 8-20-08208-reg (E.D.N.Y.).

Potential Related Operating Budget Revenues: Annual Amount N/A

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: N/A

Next Four Years: N/A

Prepared by: Patricia Haggerty

Title: Sr. Budget Analyst

Department: Budget

Date: January 8, 2021

Reviewed By: 
Budget Director

Date: 1/8/21

ACT NO. 2021 - _____

AN ACT authorizing the County to retain, at County expense, the law firm of Tulis & Geiger LLP to serve in an “of counsel” capacity to the County Attorney, as needed, in connection with ACME Bus Corp. v. Westchester County Department of Health, No. 8-20-08208-reg (E.D.N.Y.).

BE IT ENACTED by the Board of Legislators of the County of Westchester, as follows:

Section 1. The County of Westchester (the “County”) is hereby authorized to enter into an agreement (the “Agreement”) to retain, at County expense, the law firm of Tulis & Geiger LLP (“T&G”) to serve in an “of counsel” capacity to the County Attorney, as needed, (the “Services”) in connection with ACME Bus Corp. v. Westchester County Department of Health, No. 8-20-08208-reg (E.D.N.Y.) (the “Case”).

§2. The Agreement shall be for a term that will commence on January 11, 2021 and continue until the County no longer has an interest in the Case, as the County may determine in its sole discretion, or the County otherwise terminates the Agreement. For the Services, T&G shall be paid a total amount not-to-exceed Thirty Thousand Dollars (\$30,000.00), payable at a rate of Three Hundred and Fifty Dollars (\$350.00) per hour for the services of Mark S. Tulis, Esq. and a rate of Two Hundred and Seventy-Five Dollars (\$275.00) per hour for the services of associates of T&G.

§3. T&G is hereby authorized to take any and all steps that are reasonably necessary to represent the County in matters concerning the Case and the Services, in accordance with the terms to be specified in the Agreement.

§4. The County Executive or his authorized designee is hereby authorized to execute all instruments and take all actions reasonably necessary to carry out the purposes of this Act.

§5. This Act shall take effect immediately.