

GREG D. LUBOW

Attorney at Law

*41 Years of Quality Representation
1977-2018*

6026 MAIN STREET
PO BOX 839
TANNERSVILLE, NY 12485

PHONE: 518-589-5723
FAX: 518-589-6015
E-MAIL: gdlubow@gmail.com

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Greene County Legislature
411 Main Street
Suite 408
Catskill, New York 12414
Attention: Kevin Lewis, Chairman

Re: An open letter to the Greene County Legislature, the residents and taxpayers of Greene County about the proposed new jail.

Dear Chairman Lewis and Legislators:

I have had an opportunity to review your May 3, 2018 letter regarding some thirty-nine (39) laws that you claim would have to be changed in order for Greene County to participate in a “shared or regional” jail. You present these changes as an almost insurmountable barrier to any alternative other than building a new jail for Greene County.

Respectfully, I disagree.

Section 217 of the County Law enacted in 1950 requires every county to maintain a jail. The world of criminal justice and corrections has changed substantially in the past 68 years.

There is no Constitutional obligation to have a jail. The requirement that counties must maintain a jail is strictly a legislative enactment, and as such can be amended. In *McNulty v. Chinlund* 62 AD 2d 682, a 1978 decision from the Appellate Division 3d Department, the Court found that “the function of maintaining County Jails was imposed on each county by the Legislature pursuant to § 217 of the County Law and custody and control of the County jails was conferred upon the Sheriffs by § 500-c of the Corrections Law. **The Legislature, having conferred these powers and duties, has the power to limit, curtail, or abolish them with or without the consent of the Counties or the Sheriffs** (*Matter of County Cayuga v. McHugh* 4 NY 2d 609).

A change to County Law § 217 can be adopted to permit alternatives to maintaining a jail. As you know, in April 2017 Senator Bonacic introduced S5538, a Bill which would permit two (2) counties to share the construction and maintenance of a jail. That Bill would also permit one (1) county to pay for the capital improvement of another county’s jail. Clearly, shared services as an

alternative to construction of a new jail is being thought about in Albany and has been for quite some time. It is a very short step to amend County Law Section 217 and Correction Law 500-c to permit, as an alternative to building a jail, boarding out inmates, or such other combined programs provided the same is reasonable and viable. A 1991 Formal Opinion of the NYS Attorney General (Formal Op 91-F1) concludes that “Article 5-G of the Municipal Law authorizes the establishment of regional jails through municipal cooperation agreements.”

Greene County has been boarding out inmates for decades, now exclusively. There are laws and regulations that permit this. Therefore, the prospect of amending some thirty-nine (39) laws (if needed) to permit Greene County to board out persons in the custody of the Sheriff is not unthinkable nor unworkable. While the legal details would need to be (and can be) worked out, incarcerated persons from Greene County would remain in the “custody” of the Greene County Sheriff even though they are housed outside of the county. This is the way it works now with boarded out inmates.

Boarding out fifty (50) inmates a day at \$75 a day for four hundred (400) days (to include administration and other expenses) comes to \$1,500,000 per year. Current operating expenses of the County Jail are \$3,500,000 a year. Boarding out would save \$2,000,000 per year. A \$51,000,000 bond plus approximately \$14,000,000 in interest totals \$65,000,000 to be paid back over thirty (30) years. (These were the numbers mentioned by Mr. Groden at the meeting last week). This would add \$2,100,000 per year to the annual cost of the new jail. In other words, the total cost of building, operating, and paying for the jail would be more than \$5,500,000 per year against a \$1,500,000 per year boarding out cost. There is a potential savings of \$4,000,000. A year. For 30 years.

With declining crime rates and incoming criminal justice reforms (defense lawyers at arraignment; no bail required for misdemeanors; diversion at arraignment into treatment programs, etc) we can anticipate that the number of defendants going to jail will decrease. For every ten (10) inmates that we keep out of jail, the boarding out cost is reduced by \$300,000 per year. On the other hand, the cost of operating the jail will remain essentially constant at \$5,500,000. Unless of course the number of inmates drops so low that there has to be employee layoffs. Regardless, the \$2,100,000 per year will have to be paid.

There are relatively new jails in Ulster, Delaware, and Schoharie Counties. There will be a new jail in Dutchess. There are jails in Columbia, Orange, Rensselaer and Albany Counties. Each of these jails is within one and a half (1 ½) hours of Catskill (Delaware being the furthest away). I suspect, that all of these jails combined have and will continue to have sufficient capacity to house the fifty plus or minus inmates that might come out of Greene County. It’s worth saving \$4,000,000 a year to investigate the possibility of entering into contracts for the housing of Greene County inmates with each and all of these jails. Remember, those other counties will also begin to see fewer people entering jail.

We won’t know if there are viable alternatives until a proper study is conducted. The RicciGreene study, by a firm that designs and oversees jail construction, did not answer the first question that should have been asked: Do we even need a jail in Greene County. Instead, they told us that the existing jail needs to be replaced, how large it should be (138 beds), and where it

should go. Since jails are supposed to be built near the Courthouse it is puzzling to me how they arrived at locating the jail in Coxsackie.

The incremental increase in the cost of a \$51,000,000 bond (if, as we expect, interest rates go up) and increased construction costs can be absorbed over the next thirty (30) years. \$2,100,000 per year to retire the bond cannot, especially for people on fixed incomes. In fact, the possible increased interest could be offset by savings this year from the reduced cost to the County of boarding out instead of operating the jail.

If we undertake a comprehensive study of alternatives to building a jail (which the State will likely reimburse the County for) perhaps we could come up with a viable proposal to present to the State Legislature and the Governor. Such a study will present various options for the Legislature to consider. For instance, if the 16 cell wing of the jail can be rehabilitated, perhaps that could be designated as secured juvenile detention facility. Such a facility is needed in our region and, with the Raise the Age legislation becoming fully effective next year, 16 and 17 year olds will be dealt with through the Family Courts, instead of the Criminal Courts. For some of those persons, the courts will need a secure facility. This will save Greene County corrections jobs while at the same time provide a source of income to the county for boarding in such juveniles from other counties. This is just one of several alternatives.

Before you condemn the tax payers of Greene County to a \$5,500,000 annual cost for the next 30 years to build and operate a new jail, I urge you and the entire Legislature to table the bond issue and the construction of a new jail until a proper study into possible alternatives to building a jail can be completed. What does the Legislature have to lose? Slightly higher interest payments and construction delayed for a year? What do the taxpayers of Greene County have to lose, each year, for the next 30 years?

Very truly yours,

Greg D. Lubow, Esq./ng

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