

**May 1, 2009**

**Statement released by Superintendent of School Bernard P. Pierorazio on behalf of the Yonkers Board of Education Trustees.**

At meetings held over the past several months, and as long ago as last year, Inspector General Zisman has been advised that many of the services his office offers are being provided by an independent claims audit firm, an independent internal audit firm and an independent external audit firm, all retained by the Board of Education in accordance with State mandates. In 2005, the New York State Education Department required all School Boards in New York State to hire an independent internal auditor and claims auditor responsible directly to the Trustees. In addition, the New York State Comptroller's Office and the consulting firm KPMG have recently completed financial audits of the Board of Education.

Notwithstanding this information, Mr. Zisman has repeatedly requested to come to the Board of Education and provide simultaneous audits, often in the same areas under review by the independent auditors. Mr. Zisman's proposed audit of health insurance costs is precisely such an example. The Board's independent auditors already raised concerns about the health insurance costs. The Board has directed those auditors to conduct a thorough review of the expenditures to determine whether any opportunities for savings or economies exist. That audit is currently underway. The Board feels that a simultaneous audit by Mr. Zisman would be redundant and unproductive, and require the staff to undertake

unnecessary repetitive tasks, a waste of the taxpayers' dollars. The independent audit, when completed, will be available as a public document, and Mr. Zisman, along with all other members of the public, may review the document at that time.

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Since the Board of Education is already conducting the audit, the Board has asked Mr. Zisman to wait for the results before deciding what action he should take. In the meantime, Mr. Zisman continues to perform work for the Board's Facilities and Purchasing Departments, and the Superintendent has recently requested Mr. Zisman's review of a personnel issue. Since the health insurance issue is being addressed and since Mr. Zisman is presently performing work for the Board, the Board is surprised and concerned about the surprisingly harsh statements and threats which have recently appeared.

In an effort to return some level of civility and professionalism to the current discussion, and despite the concerns noted above, the Board is prepared to invite Mr. Zisman to participate in the health insurance costs audit, along with the independent auditors.

PHILIP A. AMICONE  
MAYOR



CITY HALL  
YONKERS, NEW YORK 10701-3883

PHILIP A. ZISMAN  
INSPECTOR GENERAL

Ph: 914-377-7000  
Fax: 914-377-6990

DEPARTMENT OF  
INSPECTOR GENERAL  
CITY OF YONKERS

**TO:** Rev. Gerald Sudick, President of the Yonkers Board of Education  
All Board of Education Trustees  
Bernard Pierorazio, Superintendent

**FROM:** Philip A. Zisman, Inspector General PAZ

**CC:** Philip A. Amicone, Mayor  
Chuck Lesnick, City Council President  
All City Council Members  
Frank Rubino, Corporation Counsel

**SUBJECT:** Response to April 28, 2009 letter and Statement of May 1, 2009

**DATE:** May 5, 2009

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I write in response to the April 28, 2009 letter of Board of Trustees President Rev. Gerald Sudick, and the May 1, 2009 "Statement released by Superintendent of Schools Bernard P. Pierorazio on behalf of the Yonkers Board of Education Trustees." (attached)

First, in President Sudick's April 28, 2009 letter, it is asserted that "the Board of Education is not a department of the City of Yonkers and is not subject to the City Charter of the City of Yonkers, but is an independent municipal corporation governed exclusively by the New York State Education Law." Therefore, the letter implies, the Inspector General does not have the authority to conduct independent audits and investigations at the School District under the powers of the Inspector General as set forth in the City Charter.

President Sudick's argument, however, is inapplicable because it does not address clearly established legal precedent of the New York State Court of Appeals. The Court has recognized that school boards in school districts, which are considered "dependent" because they do not have their own taxing authority, do not exercise complete independence from City government.

The Court of Appeals has defined the permissible area of local control over the schools as follows: "While the educational affairs in each city are under the general management and control of the Board of Education, such board is subject to municipal control in matters not strictly educational or pedagogic." Matter of Hirschfield v. Cook, 227 N.Y. 297, 304 (1919). See also Matter of Maloff v. City Commission on Human Rights 38 N.Y.2d 329 (1975) (City Commission on Human Rights had jurisdiction over teacher's claim of sex discrimination because such claims are not "strictly educational or pedagogic" matters.); Goldin v. Greenberg, 49 N.Y. 2d 566 (1980) (City Comptroller authorized to investigate and audit School District transportation contracts.)

In Karelson v. Yavner, 59 N.Y.S2d 683 (1945) the Court expressly recognized the mayor's power to direct the New York City Commissioner of Investigation to investigate the actions of a board of education committee. More recently, in January of 2009, in Matter of New York Charter Schools Assoc. v. DiNapoli, the court confirmed the right of the State Comptroller to audit the State's charter schools and cited the compelling State interest of auditing vast expenditures of taxpayer's money.

It is clear that 1) based on the powers that the City Charter vests in the Yonkers Inspector General to provide "ongoing review of monetary commitments, expenditures and processes"... "of any person or entity who is paid or receives money from or through the city" (City Charter §§ C7-2D and F), and 2) the legal precedent that authorizes municipal control of school districts in matters that are not strictly educational or pedagogical; the Inspector General is authorized to conduct appropriate independent audits and investigations at the School District without the express permission of the Board of Trustees. Moreover, with respect to the audit of the District's annual \$65 million in health insurance payments, there is a compelling municipal interest in ensuring that this vast expenditure of taxpayer's money is appropriate.

Second, with respect to the May 1, 2009 Statement of Superintendent Pierorazio, I want to correct certain factual inaccuracies. The Statement suggests that the Inspector General's Office is interfering with the efficient administration of the School District by attempting to conduct duplicative audits that are already being performed by the Board's internal auditors. This is simply not the case.

With respect to the review of the School District's health insurance payments, we first proposed this audit, and others, three years ago in May of 2006, based on the findings in the KPMP audit. In January 2008 we renewed our call for a review of fringe benefit payments based on a review of the 2007 Risk Assessment Analysis conducted by D'Arcangelo & Co., LLP. The Board rejected both of these proposals on the basis that the District was working with its own internal auditors.

Despite the Trustees' unwillingness to support our proposed health insurance payments review, during 2008, I continued to advocate for this audit, in part, because it was our understanding that the District's auditors were not

working on such a project. I specifically told Mr. Pierorazio that we did not want to perform duplicative work. Over several months, I had discussions with Mr. Pierorazio regarding our proposed review, and he specifically asked if we could incorporate into our work a review of the District's payments to the School District's union health and welfare funds. Even though we incorporated this request into the scope of our proposed work, the Board of Trustees nonetheless again rejected our proposal. Thereafter, on December 1, 2008, we announced, that despite the Trustees' opposition, we would independently perform the review. It was not until after my announcement that the D'Archangelo auditors started to conduct a review of the health insurance payments.

Thus, contrary to the assertions in the May 1, 2009 statement, the Inspector General never proposed conducting a duplicative audit. In fact, it was our insistence that the work needed to be performed that led the District to act.

I also want to point out that there is a significant difference between the audit work that Inspector General's Office performs and the work of internal auditors that are retained by the Board of Trustees. The audit findings of the Inspector General are public and provide for transparency and accountability in the School District's administrative operations. The findings of the School District's internal auditors, however, have never been made public, and thus, have not furthered the objectives of providing greater administrative transparency and accountability.

Finally, it is my intention to request that the City's Corporation Counsel render a legal opinion regarding the authority of the Inspector General to conduct independent audits consistent with the recitation of the legal principles set forth in the memorandum.

I would welcome an opportunity to meet with the Trustees in an effort to resolve our differences.



**YONKERS PUBLIC SCHOOLS**

*Achieving Excellence Together*

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bplerorazio@yonkerspublicschools.org

May 5, 2009

The Honorable Chuck Lesnick  
City Council President  
City Hall  
Yonkers, New York 10701

The Honorable Sandy Annabi  
Majority Leader/Education Chair  
City Council Office  
City Hall  
Yonkers, New York 10701

The Honorable Liam McLaughlin  
Minority Leader/Budget Co-Chair  
City Council Office  
City Hall  
Yonkers, New York 10701

**Bernard P. Plerorazio**  
Superintendent of Schools

Dear Council President Lesnick, Councilmember Annabi, Councilmember McLaughlin:

As you know, the Trustees, my staff and I make every reasonable effort to accommodate the City Council's requests for meetings. However, due to school district obligations, we are not able to join you at tonight's Joint Committee meeting. Throughout May and June, there are a myriad of school district events that require our attendance. In fact, in the past, you have attended tonight's events - the Yonkers Industrial Development Agency presentation of \$125,000 in scholarships to thirty District's college-bound seniors scheduled for 4:30 p.m., and at 5:30 p.m. the annual Leadership in Education Award sponsored by the Rotary Club of East Yonkers honoring Ralph Vigliotti, principal of Yonkers High School, the #1 ranked high school in Westchester. In addition, our counsel is involved in a PERB determination in Manhattan.

It is unclear why I received just over 24 hours notice for a Joint Committee meeting with an agenda that I believe the District has addressed in previous correspondence to you.

At meetings held over the past several months, and as long ago as last year, Inspector General Zisman has been advised that many of the services his office offers are being provided by an independent claims audit firm, an independent internal audit firm and an independent external audit firm, all retained by the Board of Education in accordance with State mandates. In 2005, the New York State Education Department required all School Boards in New York State to hire an independent internal auditor and claims auditor responsible directly to the Trustees. In addition, the New York State Comptroller's Office and the consulting firm KPMG have recently completed financial audits of the Board of Education.

Notwithstanding this information, Mr. Zisman has repeatedly requested to come to the Board of Education and provide simultaneous audits, often in the same areas under review by the independent auditors. Mr. Zisman's proposed audit of health insurance costs is precisely such an example. The Board's independent auditors already raised concerns about the health insurance costs. The Board has directed those auditors to conduct a thorough review of the expenditures to determine whether any opportunities for savings or economies exist. That audit is currently underway. The Board feels that a simultaneous audit by Mr. Zisman would be redundant and unproductive, and require the staff to undertake unnecessary repetitive tasks, a waste of the taxpayers' dollars. The independent audit, when completed, will be available as a public document, and Mr. Zisman, along with all other members of the public, may review the document at that time.

Since the Board of Education is already conducting the audit, the Board has asked Mr. Zisman to wait for the results before deciding what action he should take. In the meantime, Mr. Zisman continues to perform work for the Board's Facilities and Purchasing Departments, and the Superintendent has recently requested Mr. Zisman's review of a personnel issue. Since the health insurance issue is being addressed and since Mr. Zisman is presently performing work for the Board, the Board is surprised and concerned about the surprisingly harsh statements and threats which have recently appeared.

In an effort to return some level of civility and professionalism to the current discussion, and despite the concerns noted above, I invited Mr. Zisman to participate in the health insurance costs audit with the independent auditors.

In an effort to present our position as fully as possible, I have arranged for our counsel and internal auditor to be present at our regularly scheduled Audit, Budget and Finance Committee meeting on Tuesday, May 12<sup>th</sup> at 4:30 p.m. At that time, we will outline the current audit of our payroll and benefit functions and explain the dynamic between state and city oversight of the Board of Education. I hope that you will be able to attend this meeting which I believe will address any continuing issues on these matters. In addition, my staff and I are available to address your questions about the Board of Education's legal position regarding the Inspector General 7:00 a.m. on May 11<sup>th</sup>, 12<sup>th</sup>, 15<sup>th</sup>, 18<sup>th</sup> 19<sup>th</sup> and 22<sup>nd</sup>, and on the following evenings May 8<sup>th</sup>, 15<sup>th</sup> and 22<sup>nd</sup>. Please advise if any of these dates and times are amenable.

Sincerely,

  
Bernard P. Pierorazio

BPP:br

C: Rev. Gerald Sudick, President  
and Members of the Board of Education  
Joseph Bracchitta  
Louis Constantino  
Larry Thomas

**PHILIP A. AMICONE  
MAYOR**



**CITY HALL  
YONKERS, NEW YORK 10701-3883**

**PHILIP A. ZISMAN  
INSPECTOR GENERAL**

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**DEPARTMENT OF  
INSPECTOR GENERAL  
CITY OF YONKERS**

**TO:** Frank Rubino, Corporation Counsel

**FROM:** Philip Zisman, Inspector General

**CC:** Chuck Lesnick, City Council President  
All City Council Members

**SUBJECT:** Request for Legal Opinion

**DATE:** May 6, 2009

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I am requesting a written legal opinion from the Corporation Counsel on the authority of the Inspector General to conduct independent audits and investigations of the Yonkers Public Schools' administrative operations without an invitation from the Board of Trustees.

Also, at the May 5, 2009 joint meeting of the City Council's Budget and Education committees, City Council President Chuck Lesnick requested a Corporation Counsel opinion on the obligations of the Board of Education to cooperate with City Council requests for information. You should check with Council President Lesnick to clarify the specifics of his request.

I would like to set up a meeting to discuss this matter with you.



**Edward Benes**

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**From:** Phil Zisman  
**Sent:** Tuesday, May 26, 2009 3:29 PM  
**To:** Edward Benes  
**Subject:** FW: D'Archangelo audit

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**From:** Joseph Bracchitta [mailto:JBracchitta@yonkerspublicschools.org]  
**Sent:** Tuesday, May 26, 2009 3:27 PM  
**To:** Phil Zisman  
**Cc:** PIERORAZIO, BERNARD  
**Subject:** Re: D'Archangelo audit

Phil:

I believe Jim completed a draft of the letter on May 15th and it has since been reviewed by the Trustees. In fairness, we have had some problems scheduling the annual meeting (tonight will be our second attempt) because of the unexpected unavailability of Board members.

At any rate, I believe a final draft has been prepared and will be forwarded to you this week. Thanks for you patience.

Joe B.

---

**From:** Phil Zisman <philip.zisman@YonkersNY.gov>  
**Date:** Tue, 26 May 2009 11:52:54 -0400  
**To:** Joseph Bracchitta <JBracchitta@yonkerspublicschools.org>  
**Subject:** D'Archangelo audit

Joe,  
As a follow up to our meeting of May 12, 2009, I have not received the letter from the D'Archangelo firm regarding the scoop of their payroll and human resources audit. As the work was supposed to already be underway, I did not anticipate that after two weeks we still would not have received this information. Please advise.  
Phil Zisman

"The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message"



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MAY 29 2009

**DEPARTMENT OF  
INSPECTOR GENERAL**

One Larkin Center  
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bpierorazio@yonkerspublicschools.org

**Bernard P. Pierorazio**  
Superintendent of Schools

**DATE:** May 28, 2009

**TO:** Philip A. Zisman, Inspector General

**FROM:** Bernard P. Pierorazio, Superintendent of Schools *BPP*

**RE:** **Audit – Payroll and Human Resources Department**

At the direction of the Board of Education Trustees, I asked our Chief Administrative Officer, Joe Bracchitta, to arrange a meeting between himself, your office and our internal auditor, D'Arcangelo & Co. to discuss the engagement objectives of a current audit of our Payroll and Human Resources department. It was assumed that the audit would include an examination of the District's benefit administration process and would, therefore, render redundant a similar concurrent audit by the IG. That meeting was held on May 12, 2009.

The outcome of the May 12th meeting was, generally, that the D'Arcangelo audit would cover the same substantive areas that the IG planned to examine. Additionally, the D'Arcangelo audit would be conducted at a somewhat greater level of rigor, given the relative time, resources and expertise available to the firm. The IG agreed that the breadth and depth of the audit would make a similar audit by the IG at this time duplicative. The IG requested an outline of the procedures agreed upon between the Trustees and D'Arcangelo for this portion of audit engagement. This letter generally outlines the engagement objectives and procedures discussed at the May 12<sup>th</sup> meeting

The engagement objectives follow a risk-based approach that determines the appropriate detail procedures. The scope of the engagement is broad. It covers the full complement of Payroll and Human Resources processes and includes benefit programs for active and retired employees. Judgmental samples are tailored for each area based on the risk assessment to ensure adequate coverage.

The order in which the objectives are listed below does not dictate the sequential order of how the actual work will be conducted or completed. Many of these objectives are interrelated and will be revisited as D'Arcangelo reassesses new information and risks during the process.

During the course of the engagement, should any area of concern be developed, D'Arcangelo will apply additional procedures as necessary. The Audit Committee will be kept informed of any critical developments while the engagement is in process.

The following are the engagement objectives and procedures for the Payroll and Human Resources audit currently in progress:

### **Hiring New Employees**

#### *Objectives*

1. Determine that new employees are added to payroll records.
2. Determine that the appropriate personnel authorize new employees.
3. Determine that new employee information is recorded accurately in the appropriate period.
4. Determine that hiring policies, practices and procedures are being adhered to.

### **Terminating (Retiring) Employees**

#### *Objectives*

1. Determine that terminated employees are removed from the payroll master file in the correct period.
2. Determine that terminations are authorized appropriately.
3. Determine that terminations are in accordance with all laws, regulations and union agreements, as applicable.

### **Personnel Records Maintenance**

#### *Objectives*

1. Determine that personnel records are complete and confidential.
2. Determine that personnel records are updated regularly and accurately.
3. Determine that changes to personnel records are appropriately authorized.
4. Determine that changes to personnel records are in accordance with contracts and agreements.
5. Determine that professional development requirements are completed and approved in accordance with legal requirements and contractual agreements. Also determine that pay rate adjustments are appropriate.

### **Time Reporting**

#### *Objectives*

1. Determine that timesheets and attendance records are recorded accurately and approved by a supervisor.
2. Determine that all time worked is recorded in the proper pay period.
3. Determine that all recorded time is valid, authorized and is recorded in the proper period in accordance with Board policy.

## **Processing and Recording Payroll and Withholdings**

### *Objectives*

1. Determine that employee payments are in accordance with contractual agreements.
2. Determine that salary, wages and benefits are recorded at the proper rate.
3. Determine that tax withholdings and related deductions are accurate and properly authorized and accounted for.
4. Determine that payroll information is properly recorded in the general ledger.
5. Determine that all overtime, longevity pay, additional compensation, stipends and any bonuses are authorized and properly recorded.
6. Determine that sick leave, vacation and holidays are recorded in accordance with District policy.

## **Benefits Administration**

### *Objectives*

1. Determine that contributions to employee benefits plans are authorized and properly accounted for.
2. Determine that records are adequately maintained to determine eligibility for benefit plans.
3. Determine that the process to provide benefits to only those deemed eligible is adequate.
4. Determine that benefit plan cost recovery procedures are adequately functioning.

## **Disbursing Payroll**

### *Objectives*

1. Determine that payroll is disbursed to the appropriate employees.
2. Determine that the payroll disbursements accounts are properly reconciled.
3. Determine that payroll disbursements are recorded accurately and completely in the appropriate accounting period.

I believe this outline confirms the extent of the audit that was discussed on May 12<sup>th</sup>. As soon as a final draft of the D'Arcangelo report on the audit is submitted it will be made public and a copy will be sent to your office for review.

Please do not hesitate to contact Mr. Bracchitta or me if the District may be of further help to you in this matter.

BPP:br

C: Bernadette Dunne, President  
and Members of the Board of Education  
Joseph Bracchitta  
Larry Thomas

**Phil Zisman**

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**From:** Phil Zisman  
**Sent:** Monday, June 01, 2009 10:54 AM  
**To:** 'bpierorazio@yonkerspublicschools.org'  
**Cc:** 'BRACCHITTA, JOSEPH J.'; Edward Benes  
**Subject:** Memorandum of May 28, 2009

Bernard,

I write in response to your memorandum of May 28, 2009, which discusses the May 12<sup>th</sup> meeting attended by Joe Bracchitta, Jim D'Archangelo, Michael Lisa, Ed Benes and myself.

At the meeting it was agreed that 1) the D'Archangelo firm would send us a draft letter outlining the scope of their health insurance payments audit; 2) the Inspector General's office would conduct a review of payments to the District's unions' health and welfare funds; and 3) Jim D'Archangelo and I would appear at the June ABF meeting of the Board to explain our agreement and describe the work we would be performing. Your memorandum does not specifically address our agreement.

As outlined in your memorandum, it is not clear to us how comprehensive the D'Archangelo firm's audit will be with respect to health insurance payments. Thus, my office will reserve judgment until we have reviewed the final report and underlying work papers on whether the D'Archangelo audit of these payments is comprehensive and satisfies our concerns. I am specifically requesting that the firm's work papers regarding their audit of the health insurance payments be provided to my office when they are available.

Finally, at the May 12<sup>th</sup> meeting, I requested a copy of the D'Archangelo report on the District's purchasing operations. Please let me know when that report will be available.

Phil Z.

**Edward Benes**

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**From:** Phil Zisman  
**Sent:** Thursday, June 04, 2009 10:23 AM  
**To:** Edward Benes  
**Subject:** draft email re health and welfare payment (please review)

Joe,

I write as a follow up to the meeting on June 3, 2009 with Dr. Lugo, Stan Bronski and members of their staff.

At the meeting Dr. Lugo provided us with copies of the applicable collective bargaining agreements.

It was also agreed that the District will provide us with the following:

1. The bills and payments for the CSEA health and welfare fund along with all supporting documentation for the months of March, April, and May 2009.
2. The three bills and payments for the YFT health and welfare fund along with supporting documentation for fiscal year 2009.
3. The bills and payments and supporting documentation for the life insurance payments to First Unum and Unimerica for the months of March, April and May 2009.

The supporting documents that we are requesting include all records that shows how adjustments (additions and deletions) to the bills are determined.

As we discussed at the meeting, once we review the documents, it is probable that we will have to meet with or speak with appropriate District staff to answer any questions we may have.

Thank you for your attention to this matter.

Phil Z.

**Phil Zisman**

---

**From:** Phil Zisman  
**Sent:** Thursday, June 04, 2009 10:40 AM  
**To:** 'jdarangelo@darangelo.com'  
**Subject:** Request for website information

Jim,

I spoke with Stan Bronski, Asst. Sup. for Finance, yesterday regarding our review of the School District's health and welfare fund payments. He mentioned that you had told him that there is a website which contains information about the YFT fund. Can you give me that web address and any other background information that you or members of your firm have regarding these funds?

Thanks

Phil Zisman  
Inspector General

PHILIP A. AMICONE  
MAYOR



CITY HALL  
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INSPECTOR GENERAL

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DEPARTMENT OF  
INSPECTOR GENERAL  
CITY OF YONKERS

**TO:** Frank Rubino, Corporation Counsel

**FROM:** Philip A. Zisman, Inspector General PAZ

**CC:** Philip A. Amicone, Mayor  
Chuck Lesnick, City Council President  
All City Council Members  
(cc's are without attachments)

**SUBJECT:** Legal Opinion: Second Request

**DATE:** June 17, 2009

I was surprised to learn yesterday that to date you have not taken any action with respect to my May 3, 2009 request for a written legal opinion on the authority of the Inspector General to conduct independent audits and investigations of the Yonkers Public Schools' administrative operations without an invitation from the Board of Trustees. (See attached May 6, 2009 memorandum) You informed me that you are not certain whether you will write such an opinion.

As I mentioned to you, the issue of whether the Inspector General has independent authority to audit non-pedagogical matters at the School District has not been resolved. The Board of Trustees continues to assert that the Inspector General can act only by invitation, in accordance with Board Resolution No. 09-1-257c. It is my position that the Trustees' adoption of Resolution No. 09-1-257c was both procedurally and substantively defective and therefore without any force or effect.<sup>1</sup> (See attached memoranda of April 9 and May 5, 2009.)

<sup>1</sup> The failure to resolve this issue appears to have had a direct impact on our work at the School District. Unlike in the past, the District has been noticeably slower in responding to our requests for documentation. As a result, our review of the District's health and welfare payments has been delayed.



It is also important to note that this matter has broader implications beyond the scope the Inspector General's authority. Specifically, the dispute raises questions as to whether the City can ever unilaterally assert authority over the School District in non-pedagogic matters. As you know, the School District is required to participate in the annual City budget process. This year, the City Council raised concerns that the District was not forthcoming in their requests for information. At a budget hearing, the Council made an oral request to Deputy Corporation Counsel Mark Blanchard that the Corporation Counsel render an opinion as to whether the Council had the authority to compel the School District to comply with their requests.

In addition, the Charter gives the Mayor and City Council subpoena power to conduct investigations, and authorizes the Office of Human Rights and Affirmative Action to conduct investigations into allegations of discriminatory treatment. If the Trustees can assert that the Inspector General's authority under the City Charter is unenforceable, there is nothing to prevent them from refusing to recognize the authority of the Mayor, City Council and Office of Human Rights and Affirmative Action.

As stated in my memorandum of April 21, 2009, there is clear legal precedent from the New York State Court of Appeals establishing the right of a municipality to take action on school district matters that are not strictly educational or pedagogic. Therefore, the opinion that I am requesting should be relatively straight forward citing the applicable law.

Finally, because this is such an important matter, if you decide not to issue an opinion, it will be necessary to seek a declaratory judgment in court. I requested an opinion from you in an effort to avoid this expensive and time consuming option. Moreover, if you determine not to render an opinion, your office will nonetheless be involved because the Corporation Counsel's Office, under Charter § C13-2B, would be required to represent the Inspector General in the litigation.

Please let me know what your intentions are as soon as possible.



YONKERS PUBLIC SCHOOLS

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JUN 26 2009

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June 25, 2009

DEPARTMENT OF  
INSPECTOR GENERAL

Trustees of the  
Board of Education

Philip A. Zisman, Inspector General  
City Hall  
40 South Broadway  
Yonkers, New York 10701

Dear Mr. Zisman:

The Board has been advised about your attendance at a meeting with Board administrative staff regarding the Board's ongoing health and welfare benefits audit. Please be advised that the Board did not authorize or approve your attendance at such meeting. It is the position of the Board of Education that the Board has taken ample and adequate steps to insure the accuracy and integrity of its internal financial practices. The Board has retained the services of an external auditor, an internal auditor and a claim's auditor. Should the Board feel the need for further resources the Office of the State Comptroller also provides audit services for school districts, including the Yonkers School District. While the Board appreciates any services your office has provided in the past, the Board is also aware of its sole responsibility to administer the school system in Yonkers.

Sincerely,

Bernadette Dunne, President  
Marlin K. Wiggins, Vice President  
Michael E. Carey  
Debra Martinez  
Paresh Patel  
Nydia D. Perez  
Rev. Gerald Sudick

Bernadette Dunne, President  
Marlin K. Wiggins, Vice President  
Michael E. Carey

Debra Martinez  
Paresh Patel  
Nydia D. Perez

Rev. Gerald Sudick



YONKERS PUBLIC SCHOOLS

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**RECEIVED**

JUN 25 2009

**DEPARTMENT OF  
INSPECTOR GENERAL**

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**Trustees of the  
Board of Education**

June 25, 2009

Philip Zisman, Inspector General  
City Hall  
40 South Broadway  
Yonkers, New York 10701

Dear Mr. Zisman:

Enclosed please find a copy of the news release that sent to the media today.

Sincerely,

*Bernadette Dunne*

Bernadette Dunne, President  
Board of Education

Enc.

Rev. Gerald Sudick, President  
Marlin K. Wiggins, Vice President  
Trevor H. Bennett

Michael E. Carey  
Bernadette Dunne  
Debra Martinez

Paresh Patel  
Nydia D. Perez  
Lisa C. Perito



YONKERS PUBLIC SCHOOLS

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***FOR IMMEDIATE RELEASE***

Contact: Jerilynne Fierstein, Communication Officer at 376-8092

**June 25, 2009**

**YONKERS BOARD OF EDUCATION CONTINUES AUDIT PROCESS  
WITHOUT INSPECTOR GENERAL'S DUPLICATIVE DEMANDS**

YONKERS, NY - The Trustees of the Yonkers Board of Education (BOE) today declined the request of the City Inspector General for production of materials regarding payments made for employee coverage under the Yonkers Federation of Teachers' Welfare Fund, the Civil Service Employees' Association Employee Benefit Fund, First Unum Life Insurance Company and UniAmerica Workplace Benefits. The BOE may legally decline such a request for any reason. However, in this case, the BOE is also guided by plain common sense.

The legal issues are simple and clear. The BOE and the City of Yonkers (Yonkers) are separate governmental entities. Yonkers is a municipal corporation responsible for governing the city. The BOE is a state-created entity whose purpose is to carry out the state responsibility to furnish a free public education to the children of the city. It operates wholly independently of Yonkers, determines its own budget and manages its own operations. Yonkers acts solely as the taxing authority on behalf of the BOE and the custodian of BOE funds. Therefore, BOE operations are not subject to the City Charter of Yonkers or offices created under that Charter, like the Inspector General's office. This is part of a well-established New York State policy to place public education beyond the control of municipalities, as well as a strong public policy that argues for keeping educational decisions above the fray of local politics.

Even though the law and public policy is clear, the BOE has often sought the services of the Inspector General in the past. In fact, the BOE has passed resolutions regarding the use of the Inspector General by the BOE. Most recently, on January 21, 2009, a resolution authorizing use of the Inspector General's services at the BOE's invitation was adopted. This resolution was a late addition to that month's agenda, a so-called "walk-on" resolution. Walk-on resolutions occur several times a year; they are common and not procedurally fatal. Since passage, this resolution has had only one critic – the Inspector General. Notwithstanding existing legal and public policy, the Inspector General feels he may investigate the BOE at his pleasure.

The question may be fairly raised – Who examines the BOE if not the Inspector General? The BOE is subject to intensive state financial regulation. The state comptroller regularly audits school districts; the BOE was last audited by the state in 2006. In addition, state legislation now mandates that school districts provide continuing internal audits (to examine financial risks and internal controls) and claims audits (to make sure all financial claims are properly documented and processed). Rather than hire permanent staff to perform these functions the BOE hired independent contractors to perform each of these functions - Claims Auditor: Deans Archer & Co., Certified Public Accountants, Valley Stream, NY 11580; External Auditor: Bonadio & Co., LLP, Syracuse, NY 13202; Internal Auditor: D'Arcangelo & Co., LLP., Purchase, New York 10577.

Combined with the work of an external auditor, who conducts the annual review of our finances, the BOE is under nearly continuous financial scrutiny from three independent financial firms. In addition to assuring our adherence to the law and general accounting principles, using independent firms for this work provides the professional detachment and objectivity the taxpayers deserve. These firms regularly report to the BOE at monthly Audit Budget & Finance Committee meetings that are televised live on the school district's educational access station, WDMC-TV Cablevision Channel 75 and available to the public on demand on the school district website [www.yonkerspublicschools.org](http://www.yonkerspublicschools.org). When complete, all audit reports will be available on the school district website.

The BOE's internal auditor, as part of his planned review of the District's financial processes, is now conducting an audit of our payroll and benefits system. The audit will include an examination and audit of health and welfare payments. The Inspector General has requested to do a similar audit of our health and welfare payments. In fact, he has discussed such a review with the BOE at various levels for months. The BOE position has been consistent – such an audit would be unnecessarily duplicative of the internal auditor's work and be unnecessarily disruptive of the day-to-day operations of the District. It would be a waste of both Yonkers and the BOE resources at a time when such resources are scarce.

On May 12, 2009, after discussing the scope of such an audit with the internal auditor, the Inspector General agreed that a similar audit by his office would be redundant and a waste of taxpayers' money. It was agreed at that time that an outline of the internal auditor's procedures would be provided to the Inspector General. Such an outline has been provided. Unfortunately, the Inspector General felt the outline of procedures, which stretched to three pages in length, was not specific enough. Rather than engage in a dialogue about what level of description would satisfy him, the Inspector General has requested to review the District's health and welfare payments. The BOE is not authorizing the request.

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Attachment:

- o May 28, 2009, Memo to Philip A. Zisman, Inspector General from Bernard P. Pierorazio, Superintendent of Schools - Audit – Payroll and Human Resources Department
-

PHILIP A. AMICONE  
MAYOR

PHILIP A. ZISMAN  
INSPECTOR GENERAL



CITY HALL  
YONKERS, NEW YORK 10701-3883  
Ph: (914) 377-7000  
Fax: (914) 377-6990

DEPARTMENT OF  
INSPECTOR GENERAL  
CITY OF YONKERS

**TO:** Bernard Pierorazio, Superintendent of Schools  
**FROM:** Philip A. Zisman, Inspector General *faz*  
**CC:** Philip A. Amicone, Mayor  
Chuck Lesnick, City Council President  
All City Council Members  
Frank Rubino, Corporation Counsel  
**SUBJECT:** Subpoena for Documents  
**DATE:** June 26, 2009

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Enclosed please find a subpoena for documents required for the Inspector General's review of the School District's health and welfare fund payments. We intend to continue this work despite the Board of Trustees' efforts to prevent us from doing so.

As you know, for the past ten years the Yonkers Inspector General's Office has monitored the School District for fraud, waste, inefficiencies and corruption. The credibility of our office depends in large part on our ability to make independent judgments about the subject matter and scope of our investigations and reviews.

In January of this year, without explanation, the Board of Trustees adopted a resolution which attempts to eliminate the Inspector General's independent authority in the School District. This resolution was both procedurally and substantively defective. It violated the Board of Trustees' own procedures for adopting policy, and it also ignored clear legal precedent from the New York State Court of Appeals that authorizes municipalities to conduct audits and investigations of non-educational matters.

The Trustees acted to eliminate the Inspector General's independent authority after I announced that my office would conduct an audit of the District's \$65 million in annual health insurance payments. To deflect criticism for their actions, the Board directed their internal auditor to perform this audit.

In an effort to resolve the dispute over who should audit the District's health insurance payments and avoid duplicative audits, your office brokered an agreement under which the Inspector General would review the District's health and welfare fund payments, and, subject to the Inspector General's review, the District's internal auditor would audit the accuracy of the District's health insurance payments as part of their audit of the District's Payroll and Human Resources Department.

In accordance with this agreement, the Inspector General's Office began our review of the health and welfare fund payments at a meeting on June 3, 2009 that was scheduled by the Superintendent's office. This meeting was attended by Human Resource Director Dr. Marta Lugo, Assistant Superintendent for Finance Stan Bronski, and members of their staffs who administer the health and welfare fund payments for the School District. As a follow up to this meeting, on June 4, 2009, I requested copies of specific payments to the health and welfare funds that would be the subject of our review.

Despite repeated requests, the School District did not provide the documents. Instead, at a meeting on June 23, 2009, you informed me that the District would not provide the documents. Moreover, you stated that the Board of Trustees had informed you that you overstepped your authority when you agreed to allow the Inspector General's Office to conduct the health and welfare fund payments review. In their press release of June 25, 2009, the Board of Trustees confirmed that the Superintendent acted without authority.

The enclosed subpoena seeks to secure the documents that we requested on June 4, 2009. The Inspector General has subpoena power pursuant to Yonkers City Charter § C7-2D. Pursuant to the subpoena, the documents must be delivered to the Inspector General's Office on or before July 6, 2009.





## **Subpoena Duces Tecum**

**CITY OF YONKERS  
DEPARTMENT OF INSPECTOR GENERAL  
CITY HALL  
YONKERS, N.Y. 10701**

**To: BERNARD P. PIERORAZIO  
Superintendent of Schools  
Yonkers Public Schools  
1 Larkin Center  
Yonkers, New York 10701**

**You are hereby commanded** to appear and attend before the Department of Inspector General of the City of Yonkers at Yonkers City Hall, 5<sup>th</sup> floor, 40 South Broadway, Yonkers, New York 10701 on the 6<sup>th</sup> day of July, 2009, at 11 A.M. and at any recessed or adjourned date thereof, to testify under oath in the matter of a investigation relating to the affairs, functions, accounting methods, efficiency or personnel of the City of Yonkers, Public School District now being conducted before the Inspector General pursuant to Article VII, Sections C7-1-3 of the Charter of the City of Yonkers, and that you bring with you and produce at the time and place aforesaid, any and all books, records and documents, including, but not limited to:

- **The bills and payments for the CSEA Health and Welfare Fund along with all supporting documentation for the months of March, April and May 2009.**
- **The three bills and payments for the YFT Health and Welfare Fund along with supporting documentation for fiscal year 2009.**
- **The bills, payments and supporting documentation for the First Unum and Unimerica life insurance policies for the months of March, April and May 2009.**

**The supporting documentation is to include all records that show how adjustments (additions and deletions) to the bills are determined.**

Now in your custody or control, and all other deeds, evidences and writings which you have in your custody, control or power concerning this matter, AND, FOR FAILURE TO APPEAR AND TO PRODUCE the items herein specified, an application will be made to the Supreme Court of the State of New York to compel compliance, and to impose costs, and for the issuance of a warrant directing a Marshall to bring you before the undersigned, and you may also be subject to such other penalties and proceedings as are prescribed by law.

You are required by this subpoena to appear on the date stated or on any recessed or adjourned date of the hearing, pursuant to 2305(a) of the civil practice law and rules of the state of New York.

Witness my hand, this 26<sup>th</sup> day of June, 2009

  
Philip A. Zisman  
Inspector General

Any inquiry concerning this subpoena should be made of

Philip A. Zisman, Inspector General Telephone: (914) 377-6108

PHILIP A. AMICONE  
MAYOR



CITY HALL  
YONKERS, NEW YORK 10701-3883

PHILIP A. ZISMAN  
INSPECTOR GENERAL

Ph: 914-377-7000  
Fax: 914-377-6990

DEPARTMENT OF  
INSPECTOR GENERAL  
CITY OF YONKERS

**TO:** Frank Rubino, Corporation Counsel  
Mark Blanchard, Deputy Corporation Counsel

**CC:** Philip A. Amicone, Mayor  
Chuck Lesnick, City Council President  
All Council Members

**FROM:** Philip A. Zisman, Inspector General PAZ

**SUBJECT:** Board of Education *Subpoena Duces Tecum*

**DATE:** July 14, 2009

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On June 29, 2009, the Inspector General's Office served a *subpoena duces tecum* on the Superintendent of Schools Bernard Pierorazio seeking documents related to the IG's audit of the School District's health and welfare fund payments. The subpoena was returnable on July 6, 2009. The School District has not produced the subpoenaed documents, and Mr. Pierorazio has indicated that the District will not comply based on the legal theory that the IG does not have jurisdiction over the independent School District. (A copy of the subpoena was previously provided to you in my memorandum of July 2, 2009.)

The District's refusal to comply with the subpoena is both procedurally and substantively defective. First, if the District believed that the subpoena was invalid, it should have moved to quash in Supreme Court. The validity of a subpoena can only be determined by the courts – not unilaterally by the recipient. Second, with respect to the legal arguments, as I have previously articulated, the City Charter expressly authorizes the Inspector General to conduct independent investigations and audits of all City expenditures, and the Court of Appeals has recognized the rights of municipalities to conduct non-educational, administrative audits and investigations at school districts.

Currently, I have a pending request with your office for a legal opinion regarding the authority of the Inspector General to conduct independent investigations and audits at the School District. The purpose of my request was to try to avoid the need for litigation to resolve this ongoing dispute. However, in light of the District's refusal to comply with the subpoena, I believe that the opinion will no longer be sufficient, and I am now withdrawing that request.

~~In place of the opinion, I am requesting that the Law Department, as legal counsel to the Inspector General's Office, immediately file a motion in Supreme Court to compel production of the subpoenaed documents. In the court proceeding, the District will have an opportunity to raise its legal defenses, and the court, by necessity, will have to rule on the question of whether the IG has independent jurisdiction based on the City Charter.~~

I have a meeting with Deputy Corporation Counsel Mark Blanchard on July 16<sup>th</sup>. I want to discuss whether the Law Department will make the requested motion, and whether there may be a conflict of interest that would prevent your office from doing so. I will also be prepared to discuss the legal precedent that I believe establishes the IG's authority to conduct independent investigations and audits at the School District.

**BOARD MEMBER RESOLUTION**

09-7-1A

**Yonkers, New York**

July 15, 2009

RE: Utilization of the Inspector General for  
The Yonkers Public Schools

Ladies and Gentlemen:

WHEREAS the Board of Education, by Resolution 00-7-1 adopted a resolution appointing the City of Yonkers Inspector General as Inspector General for the Yonkers Public Schools, and

WHEREAS that resolution was amended by Resolution 09-1-257c to provide for terms and conditions for a cooperative relationship with the City of Yonkers Inspector General, and

WHEREAS the Board of Education has determined that the services can best be provided by the Board's own internal, external and claims auditors,

NOW THEREFORE BE IT RESOLVED that the Board Resolutions 00-7-1 and 09-1-257 are hereby rescinded effective immediately.

RESOLUTION SPONSORED BY:

\_\_\_\_\_  
Bernadette Dunne, President

\_\_\_\_\_  
Marlin Wiggins, Vice President

\_\_\_\_\_  
Michael E. Carey, Trustee

\_\_\_\_\_  
Debra Martinez, Trustee

\_\_\_\_\_  
Paresh Patel, Trustee

\_\_\_\_\_  
Nydia D. Perez, Trustee

\_\_\_\_\_  
Rev. Gerald Sudick, Trustee

Exhibit 25

**Phil Zisman**

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**From:** Liam McLaughlin [LMcLaughlin@bashianfarberlaw.com]  
**Sent:** Monday, July 27, 2009 12:23 PM  
**To:** Frank Rubino; Phil Zisman  
**Cc:** Mark Blanchard; LTHOMAS@DTAD.net; Phil Amicone; Lisa Mrijaj; Chuck Lesnick; Sandy Annabi; john murtagh; Dee Barbato; Joan Gronowski; Patricia McDow; Edward Benes; bpierorazio@yonkerspublicschools.org; Paul Hart  
**Subject:** RE: Subpoena Issue

Frank:

While I respect your opinion, unfortunately I do not share your optimism. We have seen the Board of Education thumb its nose at the authority of the Inspector General ("IG") and the authority of the City Council for quite some time now. While they may have finally complied with this demand, it has not been the open and transparent process that it needs to be for the taxpayers of this City to have confidence that the hundreds of millions of taxpayer dollars that the Board gets from the City are being properly spent. In fact, the Board has fought the IG every step of the way and rather than comply with the IG's subpoena the Board passed a resolution seeking to rescind the IG's authority. The Board's compliance comes on the eve of a City Council joint Education & Budget Committee meeting, coincidence, I think not. The City Council should not have to call special meetings to force the Board of Education to comply with routine financial inquiries.

The Board's actions defy all logic and are creating an air of distrust in the public eye. The Board of Education does not have independent taxing authority and therefore MUST comply with the inquiries of the City Council and the Inspector General, or forfeit City funding.

Obviously, the Mayor has not helped the situation by failing to reappoint the Inspector General. Maybe the Board reads this to mean that they do not have to comply with Mr. Zisman's demands while he is acting IG. Obviously this is not the case. The Mayor would do the entire City a great service by doing his job and either reappointing the current IG, or putting forth the name of a new IG as he is required by Charter to do. The current situation is unacceptable and the Mayor should be embarrassed that it has taken him this long to fulfill this basic yet important responsibility.

Given the above I will be asking my colleagues on the Council to seek a declaratory judgment on this matter.

Regards,

**Liam J. McLaughlin, Esq.**  
**Bashian & Farber, LLP**  
235 Main Street  
White Plains, New York 10601  
(914) 946-5100  
(914) 946-5111 (Facsimile)  
[www.bashianfarberlaw.com](http://www.bashianfarberlaw.com)

-----Confidentiality Notice-----

7/27/2009

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~~penalties under the Internal Revenue Code or promoting, marketing or recommending to another party any transaction or matter addressed in this communication.~~

**From:** Frank Rubino [mailto:frank.rubino@YonkersNY.gov]  
**Sent:** Monday, July 27, 2009 10:28 AM  
**To:** Phil Zisman  
**Cc:** Mark Blanchard; LTHOMAS@DTAD.net; Phil Amicone; Lisa Mrijaj; Chuck Lesnick; Sandy Annabi; Liam McLaughlin; john murtagh; Dee Barbato; Joan Gronowski; Patricia McDow; Edward Benes; bpierorazio@yonkerspublicschools.org; Paul Hart  
**Subject:** RE: Subpeona Issue

At this juncture, rather than assume that your efforts will likely be impeded, I am going to assume that since the Board has released to this office the documents you subpoenaed, there is an opportunity to put this contentious situation to rest. If you have any further requests for documents, I suggest that you allow this office to represent the IG's interests and I fully expect that the Board will continue to cooperate. In my opinion, legal action at this point can only be counterproductive to fostering a cooperative working relationship with the Board and that would not be good for the City. As I have said before, I have no reservations about representing the IG's authority to issue subpoenas; however, I refuse to believe that this issue cannot be resolved in a professional, cooperative way. That is what the Board has indicated to me and I know that you too desire that as well.

*Frank J. Rubino*  
*Corporation Counsel*  
*City of Yonkers*  
*40 South Broadway, Suite 300*  
*Yonkers, New York 10701*  
*(914) 377-6250*

**From:** Phil Zisman  
**Sent:** Monday, July 27, 2009 10:07 AM  
**To:** Frank Rubino  
**Cc:** Mark Blanchard; 'LTHOMAS@DTAD.net'; Phil Amicone; Lisa Mrijaj; Chuck Lesnick; Sandy Annabi; Liam McLaughlin; john murtagh; Dee Barbato; Joan Gronowski; Patricia McDow; Edward Benes; bpierorazio@yonkerspublicschools.org  
**Subject:** RE: Subpeona Issue

TO: Frank Rubino  
 FROM: Phil Zisman  
 RE: IG legal authority at the School District  
 DATE: July 27, 2009

Thanks for your efforts to resolve this matter. I have now received the School District documents that you forwarded to my office. We will review the documents as part of our work on the audit of the District's health and welfare fund payments. I hope that we will now receive full cooperation from the District with respect to requests for additional documents and interviews with staff. (Please note for the future that IG subpoenas are returnable

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directly to the Inspector General's Office.)

However, the underlying dispute – of whether the IG has independent legal authority to conduct investigations and audits at the School District – has not been resolved. The easiest way to settle this matter is for the Board to simply acknowledge the IG's independent authority. Unfortunately, if the Board will not do so, our authority at the School District will remain unresolved and in all likelihood our work will continue to be impeded. Thus, it is important that this dispute be finally resolved as expeditiously as possible. If the Board continues to assert that the IG does not have independent authority, I will request that your office seek a declaratory judgment in State Supreme Court to finally resolve the legal question.

The City Council Education Committee has scheduled a hearing on this matter for tomorrow. Given that the dispute has not yet been resolved, I believe that such a meeting is appropriate.

---

**From:** Frank Rubino  
**Sent:** Thursday, July 23, 2009 2:12 PM  
**To:** Phil Zisman  
**Cc:** Mark Blanchard; LTHOMAS@DTAD.net; Phil Amicone; Lisa Mrijaj  
**Subject:** Subpeona Issue

I have informed the Board of Education that this office will support the issuance of the subpoenas that were issued by you. I am not opining as to the underlying issue but it is clear that the IG has subpoena powers under the Charter and therefore your action is entitled to support from this office. However, it is not without reservation that I do so, because I find it difficult to believe that the underlying disagreement cannot be resolved without resorting to legal action between City entities. I hope that you will make every effort to resolve your disagreement amicably. I have expressed this opinion to Mr. Thomas as well.

*Frank J. Rubino*  
*Corporation Counsel*  
*City of Yonkers*  
*40 South Broadway, Suite 300*  
*Yonkers, New York 10701*  
*(914) 377-6250*

7/27/2009