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THE BUFFALO NEWS

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Court ruling sets county property tax hike at 2 percent

Judge's ruling ends prolonged dispute

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NEWS STAFF REPORTER

Nearly two weeks into the new year, Erie County has a property tax rate for 2009.

It's \$5.03 for every \$1,000 of assessed value, a 2 percent increase over last year.

Erie County Executive Chris Collins had once vowed to set a tax rate that would add \$24 a year to the tax bill on a \$100,000 home.

But this revision, established through a judge's order, adds just \$9.

State Supreme Court Justice John A. Michalek's decision Monday ends a lawsuit over taxing authority that was filed in December by the Democrats who control the County Legislature.

The Democrats believed they cut 2009 spending deeply enough to eliminate the need for a tax hike. When Collins faulted many of their actions and promised to set taxes as he sees fit, the Democrats won an order barring him from sending out tax bills until their day in court.

Collins intended to collect about \$10 million more than the Legislature had authorized. Michalek last week asked both sides to work through the past weekend to find a compromise. Monday's scheduled court hearing was then delayed for about 90 minutes as the attempt continued.

With no accord, the judge eventually convened a session to hear the arguments. Paul Cambria was the lawyer representing the Democrats, and Cheryl A. Green, the county attorney, represented Collins. Minutes later, Michalek ruled from the bench, reading a decision he had already roughed out.

He said the Legislature had indeed approved an unbalanced and therefore illegal budget and missed certain steps required by the County Charter and by precedents set in other lawsuits between past Erie County executives and their Legislatures.

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The judge also disputed the contention that the Collins budget — the first from the new county executive — was not transparent enough to give the Legislature the information it needed to do a more thorough job.

Michalek said he would let Collins distribute the tax bills. But the judge ordered that the total amount to be raised by taxes be reduced by \$6.8 million. So the Legislature's lawsuit reduced the \$10 million at the center of the dispute by about two-thirds.

Collins' director of real property tax services, Joseph Maciejewski, will have to scrap the tax bills printed so far and create new ones. The process, printing some 365,000 bills that will generate about \$223 million in revenue, is expected to take about a week.

Both Maciejewski and Collins said the bills, which include town-government taxes, too, will be delivered to town and city governments well before Feb. 1, their official deadline.

Payments are due from landowners in the three cities and towns with at least 10,000 people by Feb. 15. Landowners in smaller towns have until March 15 to pay without penalty.

No appeal is expected. Both sides are claiming victories.

"We are happy. We have reduced the county executive's tax increase by \$6.8 million," Cambria said. "This is a good day."

Legislature Chairwoman Lynn M. Marinelli, D-Town of Tonawanda, said her Democratic caucus had spent about \$20,000 on legal fees but saved taxpayers millions.

Collins, too, saw a triumph.

"From our perspective, I am very pleased that this judge has now confirmed that my budget was very transparent, despite the criticism from the Legislature," he said.

"This judge," Collins added later, "has affirmed my right as county executive to ignore unlawful acts by the Legislature."

The \$6.8 million has two components. The first involves \$5.2 million in revenue expected from the county's auto registration fee. When lawmakers simply accounted for the revenue in another section of the budget, Collins called it a breach of the Legislature's authority. To him, lawmakers had deleted a revenue estimate in one area of the budget and raised it in another.

Collins argued that the Charter bars lawmakers from raising a county executive's revenue estimate. He said he would have to add \$5.2 million to the amount he would charge property owners, even though the auto fee was still going to generate \$5.2 million throughout the year.

"This does not constitute an increase in revenue," Michalek said. "The revenue figures should be adjusted accordingly."

The Legislature had also added \$1.65 million to Collins' estimate of how much would be saved by keeping jobs vacant in 2009, and Collins had again said lawmakers had exceeded their authority by raising a revenue estimate.

Michalek, however, did not see "turnover savings" as "revenue," as the county executive and his lawyers claimed. The judge said the \$1.65 million should not be used to justify a larger property tax increase.

Collins, who was not in court but called a news conference later, said he is not worried that 2009 will end in a deficit. He mentioned that the latest economic stimulus plan being discussed in Washington might help certain states with their Medicaid programs.

Sen. Charles E. Schumer, D-N. Y., recently calculated that Erie County could collect \$45 million over two years.

The Legislature had wanted the judge once and for all to settle the question over who has authority to set the tax levy for Erie County: the Legislature or the county executive.

Michalek didn't specify either. He said the levy is "set as part of a collaborative effort."

At his news conference, Collins had little good to say about the Legislature Democrats. He said they were determined to pass a budget with no tax hike and simply plugged in numbers to accomplish their goal. He accused them of using "smoke and mirrors," "phantom jobs" and being "irresponsible."

"The Legislature," he said, "has not proven beyond a shadow of a doubt that they are not beyond taking an unlawful action for a political gain."

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