

**RULES, ENACTMENTS AND INTERGOVERNMENTAL RELATIONS COMMITTEE  
MINUTES**

**WEDNESDAY, FEBRUARY 14, 2018  
3:30 P.M.**

PRESENT: Thomas J. Faggione, Chairman  
Michael Amo, Katie Bonelli, Barry J. Cheney, Kevin W. Hines, James M. Kulisek,  
Michael D. Paduch, John S. Vero

ALSO

PRESENT: L. Stephen Brescia, Chairman  
Mike Anagnostakis, Legislator  
James D. O'Donnell, Legislator  
Rob Sassi, Legislator  
Peter V. Tuohy, Legislator  
Antoinette Reed, Legislative Counsel  
Harry Porr, Director, Operations and Cost Control  
Langdon Chapman, County Attorney  
Michael Ventre, Budget Analyst  
Richard Golden, Esq., Burke, Miele & Golden, LLP

Mr. Faggione opened the meeting at 3:31 p.m. and requested everyone stand for the Pledge of Allegiance to the Flag. All members were present.

Mr. Paduch moved request confirmation of reappointments to the Orange County Board of Ethics for a term expiring December 31, 2020 (R. Golden, P. Johnson), seconded by Mr. Hines.

Mr. Cheney asked about their attendance record for meetings. Mr. Porr replied that Board of Ethics Chairwoman Gail Sicina has indicated that both gentlemen attend the meetings regularly.

Mr. Hines agreed that both gentlemen are good selections and thanked Mr. Golden for all his assistance with creating the new ethics law.

Mr. Kulisek asked if the attorney for the board is appointed by the board. Legislative Counsel Reed replied yes.

Motion carried. All in favor.

Mr. Hines moved resolution of the Orange County Legislature urging the New York State Legislature and the Governor of the State of New York to enact legislation amending New York State General Municipal Law Section 72-c to provide reciprocal reimbursement to County Sheriffs by other municipal corporations for all

reimbursable expenses relating to police training school for its members who have terminated employment and commenced employment with a municipal corporation, seconded by Mr. Paduch.

Chairman Brescia explained that if a law enforcement officer terminates their employment with a local police department that department must reimburse some of the training cost for the previous three years. However, that does not happen in reverse so they are requesting that General Municipal Law Section 72-c be amended to provide for reciprocal reimbursement.

Legislative Counsel Reed added that she has reached out to Sherriff Dubois and Undersheriff Jones to garner the cost to taxpayers over the last few years but is waiting on a response.

Mr. Hines commented that the information could be available at tomorrow's Public Safety and Emergency Services committee meeting.

Mr. Amo asked if this was an issue because police officers have come to them, are trained and then move on to another location. Mr. Brescia replied yes.

Mr. Hines expressed his support as it would protect the county and make it less desirable for municipalities to take their officers. A few years ago, they lost several officers to Dutchess County and the City of Poughkeepsie; however, under the last contract they were able to resolve several of those problems as officers are now making comparable wages.

Mr. Kulisek asked for the cost of training. Mr. Hines replied that it varies, if they have worked for the county for one year it could be a certain amount but if it is three years it could be significant.

Mr. Kulisek asked if they see this as a deterrent. Mr. Hines replied yes, and they now offer a comparable wage. They are also seeing officers come from other municipalities to the county.

Chairman Brescia added that in addition to the cost of the academy there are approximately 160 hours of field training.

Mr. Vero commented that he was in favor of the resolution as it sounds like they are trying to make this a "two-way street."

Mr. Cheney asked how it would be enforceable with a municipality such as the Dutchess County Sherriff's Office and would they have the authority to force them to make the payment. Legislative Counsel Reed replied not under current state law but they are asking the state to change that law.

Mr. Paduch commented that he sees it as double taxation as they pay their police officers, pay for their training and pay again if they go to another municipality.

Mr. Faggione noted that the City of Port Jervis Police Department has two new hires that are going through the academy and if someone were to "poach" them this would be a way to reimburse those costs.

Mr. Hines pointed out that when those officers left Orange County and went to the City of Poughkeepsie, Dutchess County taxpayers paid nothing to Orange County.

Mr. O'Donnell asked for a copy of General Municipal Law Section 72-c. Legislative Counsel Reed replied that she would have it sent to all legislators.

Motion carried. All in favor.

Mr. Amo moved a Local Law amending Local Law No. 8 of 1968, known as the Orange County Charter, and Local Law No. 10 of 1969, known as the Orange County Administrative Code, as previously amended, providing for the compensation of members of the Legislature serving as officers or in a special capacity, seconded by Mr. Faggione.

Legislative Counsel Reed explained that Chairman Brescia was seeking to provide compensation to the party leader as recognized by their legislative manual. He is also seeking to provide compensation to the chair of the Green committee, which is a special committee that was created years ago and resurrected in recent years to address environmental issues and the sustainability program that is being spearheaded by the Planning Department. The theory is that the individual has taken on additional duties that are above and beyond their legislative duties and should be compensated. There is a difference between a special committee and a standing committee and under the legislative manual a special committee is designated and/or created for a temporary purpose with a goal and/or mission and once accomplished disbanded. Standing committees are comparable to a statutory committee as they meet routinely, have an agenda and make recommendations to the statutory committees and Legislature. In addition, there are other special committees; Labor Relations Advisory and Orange County Economic Development and Gaming with committee members appointed by resolution. Because these legislators have taken on additional responsibilities the chairman feels those individuals should be compensated.

Legislative Counsel Reed added that the language before them is to amend the Charter and Administrative Code because under New York State County Law the Legislature of the County is authorized to set the compensation for its members. Included in their charter under "County Legislature; Powers and Duties" there is a provision and if they are going to change the compensation of one of the members during their term of office it would be subject to permissive referendum. They would change the charter to expand compensation to members of the Legislature serving as officers or in a special capacity. A special capacity would be a party leader and members who serve as chairman of not only statutory committees but special and standing committees and this would expand their authority to set the compensation for those positions. Some counties and state legislatures set the compensation for legislators at a base salary with additional stipends. They would then pass additional legislation to set the stipend for special positions such as majority leader or chairman of a special committee. This local law changes the Charter and Administrative Code to allow for these new roles to be compensated by the legislature; however, they are not setting the salaries in the charter at this time. The changes would be amended to read: "a party leader, who at the time of his/her election for the county legislative district seat, was enrolled in the political party for which he/she holds the position of 'party' leader," and party leader is defined by New York State Election Law Section 1-104: "the term 'party' means any political organization which at the preceding election for governor polled at least fifty thousand votes for its candidate for governor." They are

also adding the chairman of a standing or special committee established by resolution of the Legislature. She has proposed they make it generic so that when a committee is created whether special or standing the chairman of that committee would be entitled to compensation. The Legislature would have to decide what the compensation would be for that specific title and it would require another local law. Normally, salaries for new legislators are set at the end of the previous term by local law. They currently do three but this would make four and anytime a committee is created they would have to create a new local law setting the compensation for the individual.

Chairman Brescia asked about the time frame and would it take 45 days to go into effect due to the permissive referendum. Legislative Counsel Reed replied that it would be longer. Once adopted, the local law goes to the County Executive for a public hearing and he has 30 days in which to hold a public hearing and to either adopt, veto, or do nothing, on the local law. They would then wait the 45 days for the permissive referendum to see if a petition is filed to have it placed on the ballot as a referendum for the general election.

Ms. Bonelli asked if this would now be applicable to the standing committees of Labor Relations Advisory and Orange County Economic Development and Gaming committees. Legislative Counsel Reed replied that they were established as "special" committees.

Ms. Bonelli asked if they have any "standing" committees. Legislative Counsel Reed replied no; however, the Green committee has morphed into a "standing" committee even though it was set for a specific purpose years ago and labeled as a "special" committee.

Ms. Bonelli asked about the Orange County Airport Advisory committee that was chaired by Legislator John Vero.

Mr. Vero commented that the Orange County Airport Advisory committee would be meeting again in the near future due to additional grant funds.

Ms. Bonelli asked if the Orange County Airport Advisory was a "standing" or "special" committee. Legislative Counsel Reed replied that, by resolution, it is a "special" committee.

Chairman Brescia clarified that he was looking at making it a "standing" committee.

Legislative Counsel Reed suggested that when the legislature is establishing these committees they need to determine whether or not the committee should be terminated once a report is issued.

Ms. Bonelli asked if the Labor Relations Advisory, Orange County Economic Development and Gaming, Green and Airport Advisory committees were established by legislative resolution. Legislative Counsel Reed replied yes.

Mr. Amo asked Chairman Brescia if he thought the standing committees could be intermittent. Chairman Brescia replied yes.

Mr. Amo pointed out that when they became the gaming committee it was because a casino was potentially happening in their region with six casino's looking at Orange County. Regardless of who the chairman is for a committee there is a reason they should be compensated but the individual could always refuse compensation.

Legislative Counsel Reed clarified that they cannot chair two statutory committees.

Chairman Brescia added that he was looking at possibly having the Green committee or other established committees be standing committees. However, that would not include Labor Relations Advisory or some of the special committees.

Mr. Paduch asked about the process of the County Executive's public hearing. Legislative Counsel Reed replied that the purpose of the public hearing is for the County Executive to receive input on whether or not he should approve, veto, or not act upon the local law.

Mr. Paduch pointed out that in all actuality the County Executive controls the Charter. Legislative Counsel Reed replied that is how the law works; however, they could override a veto.

Mr. Paduch asked if Legislative Counsel Reed would reiterate the concerns she expressed in previous meeting. Legislative Counsel Reed explained that she was concerned because each political party in the legislature elects their own party leader. She needs to research that further because their Charter does not tie the membership to the caucus and the ability to vote, in a leader, and whether or not at the time you are elected you are enrolled in that party. If an individual was elected as a republican and during their term of office changed their party affiliation to democrat, there is nothing that precludes the democratic party from electing that individual as the minority leader. However, this local law states that the individual must be enrolled in that political party and be elected by its members to be a party leader which leads to two different standards on what qualifications and criteria are needed to be a party leader. So, they have one standard in which it does not matter whether they are enrolled or not at the time they were elected to become a party leader for the republicans and/or democrats but for the party leader they must be enrolled. She understands why they would want to do that as they would not want someone who may have run as a republican and then changed parties.

Mr. Hines asked if this were in place at the time of the special investigative committees on Valley View and the government center would the Chairman of the Legislature be empowered to grant a stipend. Legislative Counsel Reed replied that they are taking the power to provide the compensation out of an individual's hands and give it to the legislature to determine whether or not the chair of that committee should be compensated. When those committees were created they would have had to pass a local law providing for compensation and be voted on by a majority of the legislature. Periodically, they have committees in which a group of legislators gather and discuss issues such as the Golf committee; however, it was not created by the legislature. She has ensured that these committees would be created by the legislature so that the entire body has a say and approves when a committee should be created and when a chair should be compensated.

Mr. Hines asked if they would have been eligible for compensation. Legislative Counsel Reed replied yes.

Chairman Brescia emphasized that he was not looking to have every committee compensated, just a handful but that would be something for the full legislature to decide.

Mr. Amo noted that it seems that Legislative Counsel Reed is assuming the party leader and majority and/or minority leader are one and the same. However, would it be possible for the republicans to have a majority leader and separate party leader. Legislative Counsel Reed replied that she would have to review it.

Mr. Kulisek asked about the number of members needed to determine a party leader. Legislative Counsel Reed replied that a party is determined by New York State Election Law and she would have to go back and review that section again in the legislative manual.

Mr. Kulisek noted that in the past they were required to have three members of the party to elect a party leader. Legislative Counsel Reed disagreed because it was not in effect when they created the party leader.

Mr. Kulisek pointed out that he remembers a conversation on it.

Chairman Brescia agreed with Mr. Kulisek that it was discussed.

Mr. Anagnostakis stated that former Legislator Dan Depew brought that discussion up. He expressed his concern over a potential issue with respect to compensation for a party leader because an individual could switch to another party but they would be treated differently than a party leader who was enrolled prior to the election.

Chairman Brescia explained that they want to prevent someone from just switching parties in order to be recognized as a party leader.

Mr. Amo addressed Mr. Anagnostakis' concerns as this issue was brought to his attention when he changed political parties. However, in the end it validated his position because he was voted in by the members of the Independence Party of Orange County.

Motion carried 7-1 with Legislators  
Amo, Bonelli, Cheney, Faggione,  
Kulisek, Paduch and Vero voting in  
favor and Legislator Hines abstaining.

Mr. Kulisek asked for clarification that it was only for them make compensation recommendations. Legislative Counsel Reed replied yes.

Mr. Amo moved a Local Law amending Local Law  
No. 13 of 2013 as previously amended now to be  
known as the "Pay-to-Play and Disclosure Local Law,"  
seconded by Mr. Faggione.

Legislative Counsel Reed addressed the committee stating that in the latter part of 2017 former Legislator Jeffrey D. Berkman requested the Orange County Pay-to-Play be amended due to various loopholes in the law and if LLC should be included. Former County Attorney Hyun Chin Kim conducted research and it was alleged that their Pay-to-Play Law was illegal and unconstitutional; however, she took a different view and that it was constitutional and they had the authority to do it. The courts have reviewed Pay-to Play laws and found them to be constitutional as they play a role in preventing the appearance of corruption with respect to procurement and the issuing of contracts. Ms. Kim came before the committee in December 2017 and presented her position which concurred with the opinion of former County Attorney Richard Golden. Their view was that the local law as drafted and enacted was unconstitutional and was preempted by New York State Election Law and that Orange County does not have the right to enter into this field of law. She advised Ms. Kim that she would review her comments and legal memorandum and conduct her own independent research

and that her findings and recommendations would be brought to the Rules, Enactments and Intergovernmental Relation committee in February 2018 at the request of the committee.

Legislative Counsel Reed explained that her argument has always been that they could preempt New York State Election Law and could do so under their Municipal Home Rule powers Section 10. They are not governing or preempting the election law per se but controlling their procurement and how they procure contracts to ensure there is no corruption. This was done after the two investigative committees on Valley View and the Orange County Government Center and whether or not they believe the findings of those committees and the allegations that there were some improprieties in the county with respect to contracts at Valley View and the government center. The question is, can they preempt state law, and in her view, they do have that right as they are trying to prevent corruption. There was also an issue of constitutionality and in her opinion, it was constitutional for them to do and the local law was adopted and, from time to time, amended. Over time issues have come to her attention from elected officials, candidates, legislators and county government operations on how effective the local law was and the disparity of how the local law was being applied to other countywide elected officials. Under their local law they have reduced the amount of campaign contributions from entities that do business with the county to \$250.00 per year or a total of \$1,000.00 over the term for legislators or candidates. For the County Executive and countywide elected officials, it was \$1,000.00 per year or \$4,000.00 for the term. The first "red flag" came from the District Attorney's office stating that the District Attorney does not sign contracts and under the county Charter that was under the purview of the County Executive. While that is true there are other contracts that he does sign under his prosecutorial role and the Pay-to-Play local law would apply. Another issue was the practical implementation of the Pay-to-Play Local Law because when a vendor comes to the county they must fill out the pay-to-play form. The second "red flag" was when it took nearly four months for a recent contract of less than \$10,000.00 to get through the process and the entity eventually hiring an attorney to assist them through the pay-to-play forms so that the contract could be awarded. The third "red flag" were the comments and legal memorandum from Ms. Kim and co-signed by Mr. Golden. Even though she had esteemed municipal attorneys telling her that it was unconstitutional and invalid and that they could not preempt state law, they proceeded anyway as she firmly stood behind it. After the presentation by Ms. Kim she conducted her own research and she found a case from Clinton County in November 2014 of *Castine v. Zurlo*. The case pertains to the Clinton County Legislature who adopted a local law that preempted New York State Election Law that stated if you are the commissioner of the board of elections you cannot hold another office nor can you run for another office. However, one of the Election Commissioners held the office of Town Justice and she challenged the local law stating that the Legislature of Clinton County could not enact the local law as it was preempted by New York State Election Law. The case holds that she was correct and they cannot preempt New York State Election Law and they conducted a full analysis of Section 1-102 of the New York State Election Law and that the language was vague and caused some controversy with this case. Basically, Section 1-102 states: "Where a specific provision of law exists in any other law which is inconsistent with the provisions of this chapter, such provision shall apply unless a provision of this chapter specifies that such provision of this chapter shall apply notwithstanding any other provision of law". The question becomes whether or not another law also includes a local law because this court made it clear that any other law only refers to New York State laws and does not apply to local government laws. Therefore, the interpretation of this court case was that they cannot preempt New York State Election Law because it is general law and cannot be preempted by local governments and as a result our Pay-to-Play law is invalid in New York State. Thus, she went back and revamped/amended their local law so that the contribution limits would be consistent with the New York State Election Law contribution limits that they would provide for disclosure from vendors for contracts above \$10,000.00.

Ms. Bonelli asked if the inclusion of LLC's was included in Section 2: Definitions (d). Legislative Counsel Reed replied yes.

Ms. Bonelli asked how the Schedule A differs from the existing disclosure form. Legislative Counsel Reed replied that it was shorter and goes directly to the point of what they want vendors to disclose.

Mr. Hines asked if the contribution limit of \$10,000.00 would make it constitutional and was that the only non-constitutional issue in the local law. Legislative Counsel Reed replied that the \$10,000.00 brings it on par so that legislators and countywide elected officials are using New York State election laws campaign contributions.

Mr. Hines asked for clarification that it makes it constitutional. Legislative Counsel Reed replied, yes, to the extent that New York State Election Law is constitutional.

Mr. Hines stated that the Clinton County case seems to have changed Legislative Counsel Reed's opinion. Legislative Counsel Reed replied yes, it did.

Mr. Hines asked if it was solely a Supreme Court decision and never went to the Appellate Division. Legislative Counsel Reed replied that it did not go to the Appellate Division.

Mr. Hines asked if the Clinton County case controls Orange County because it did not go to the Appellate Division. Legislative Counsel Reed replied that it was still a law on the books.

Mr. Hines asked if he was correct that someone chose not to appeal it. Legislative Counsel Reed replied that he was.

Mr. Hines commented that Legislative Counsel Reed seems to be implying that New York State Election Law is perfect; however, he would disagree.

Legislative Counsel Reed emphasized that she was not implying that it was but this is the law she has.

Mr. Hines pointed out that Governor Cuomo took a huge campaign donation and then rendered a veto in favor of the donor and in his opinion, state election law has its own issues.

Mr. Hines stated that when their existing law was crafted they considered household ownership such as husband, wife and domestic partner. Legislative Counsel Reed replied that she would have to research that as she knows it was in the Ethics Law.

Mr. Hines asked if the Board of Ethics would review this as it works in conjunction with their law. Legislative Counsel Reed replied no, they are not empowered to do so.

Mr. Hines added that the revised disclosure form has decreased substantially as compared to the previous one. A great deal of effort and time went into it as they were concerned that in some partnership situations it could be one family that owns the company but with several different households. Legislative Counsel Reed replied that he was referring to the Ethics Law which is different than campaign contributions.

Mr. Hines noted that when Legislator Anagnostakis originally brought the Pay-to-Play law to them it was to solve what some of them perceived as a problem, yet this would bring them right back to before they had a Pay-to-Play law.

Legislative Counsel Reed replied that she takes a different view because when they are trying to control conflicts of interest and corruption it is through three documents. The Procurement Policy which changes with federal and state law annually, the Ethics Law which was recently revamped and the Pay-to-Play local law. The Pay-to-Play law is in other counties and states but when they look at the way those governments are structured it is very different than in New York State. In New Jersey, the Procurement Policy, Ethics Law and Pay-to-Play come down from the state to the counties and local municipalities but in New York State they have Home Rule and a totally different structure. While Pay-to-Play works in other counties and states, here in New York not so much. It has worked in New York City because they received a carveout from New York State.

Mr. Hines asked if this states anything that helps their Pay-to-Play law or are they to rely on the county's procurement policy and what does this document do for Orange County that is different from the state. Legislative Counsel Reed replied that it requires vendors doing business with Orange County for discretionary contracts to disclose that they have made campaign contributions. Anyone can go the General Services website and pull up a list of vendors and then the New York State Board of Elections website and look up any contributions made to county elected officials.

Mr. Hines added that in his opinion, the Pay-to-Play law would no longer be in existence and for that reason he cannot support the change.

Legislative Counsel Reed clarified that it was more of a "disclosure law."

Mr. Paduch commented that he found it odd that in 2013 when the law was drafted that no one checked with the New York State Board of Elections to ensure that by doing this they would not be preempting the law and, therefore, not allowed to do it. Lastly, the County Executive did not sign the Pay-to-Play law, he only allowed it to go into law.

Mr. Paduch asked if the Clinton County case was not specific to Pay-to-Play, why would it apply. Legislative Counsel Reed responded that it was specific to whether or not a local government law can preempt New York State Election Law.

Mr. Paduch added that he agreed with a majority of Mr. Hines comments but he would suggest changing the form to include LLC's. Could they change what they are voting on to two separate documents so that they could address and support the short form. Legislative Counsel Reed replied that the schedule "A" is part of the local law.

Mr. Paduch asked for clarification that they cannot change the schedule without changing the local law. Legislative Counsel Reed replied yes, that is correct.

Mr. Chapman joined in stating that LLC's are included in the new form.

Mr. Cheney expressed his concern that there is an "escape" as someone could form an LLC, get a contract with the county, and then form another LLC with the same individuals controlling the entities and be able to donate through the other LLC. He would like to see if there was a way around it but he understands that it may not be practical.

Mr. Kulisek commented that he did not think this was time sensitive and they only have one countywide election this year for Sheriff. This could be put off as there is a great deal that he still needs to review. And was there only that one case from Clinton County. Legislative Counsel Reed replied that there was one case that clarifies the issue.

Mr. Chapman added that there are actually three cases that cite the provisions of the election law; that a general law cannot be superseded such as in Erie County, Rensselaer County and Clinton County. The case of *Castine v. Zurlo* is directly on point with the reference made by Legislative Counsel Reed in that they cannot enact a local law that is different than New York State Election Law.

Mr. Amo commented that it needs to be as simple as possible because they tend to fall on 40-page documents and complications that do nothing more than make life miserable. In his opinion, this gets to what the Constitution says, and has them moving in the right direction, so he would support it.

Mr. Anagnostakis pointed out that the Pay-to-Play law was moved forward in 2013 and he is unsure if everyone knew the difference between Orange County's Pay-to-Play law and the New York State Finance Law.

Mr. Anagnostakis asked if they were replacing the provisions of the Pay-to-Play law in Orange County with the Campaign Finance Law under New York State Election Law Article 14-114 Contributions and receipt limitations. Legislative Counsel Reed replied yes, in respect to monetary contributions and campaign contributions.

Mr. Anagnostakis asked for clarification that it was only campaign contributions. Legislative Counsel Reed replied that it is a two-part local law. The local law addresses campaign contribution limits and Pay-to-Play and if a vendor wants to do business with the county they need to divulge who they are contributing to.

Mr. Anagnostakis asked if there was a fundamental difference between the Orange County Pay-to-Play Local Law and the Campaign Finance Law under Article 14-114. Legislative Counsel Reed replied yes.

Mr. Anagnostakis asked that Legislative Counsel Reed define those differences. Under their Pay-to-Play law if a company controlled by three owners (not an LLC, but an incorporated company) had or tried to get a contract what would be the maximum contribution they could give to the County Executive who would sign the contract. Legislative Counsel Reed replied that under the present Pay-to-Play law each individual could contribute \$1,000.00 per year for a total of \$4,000.00.

Mr. Anagnostakis disagreed as their Pay-to-Play law states that a business entity can give a maximum of \$4,000.00 to the person signing the contract if it is the County Executive.

Legislative Counsel Reed clarified that it states \$1,000.00 per year for a total of \$4,000.00 per term.

Mr. Anagnostakis asked if that was for the business entity. Legislative Counsel Reed replied yes.

Mr. Anagnostakis asked what the contribution limit would be for that business entity based on the election law that was referred to in Albany. Legislative Counsel Reed replied \$10,000.00; however, that is based on a formula.

Mr. Anagnostakis emphasized that they could then contribute up to \$40,000.00, which is a fundamental difference between their Pay-to-Play law and the perception of the illegality in awarding contracts.

Mr. Anagnostakis added that if the committee decides to move forward he would recommend they change the name of this local law to something more appropriate such as "Campaign Contribution Disclosure Law" because this law has nothing to do with Pay-to-Play and it removes Pay-to-Play provisions.

Mr. Anagnostakis asked if Legislative Counsel Reed's opinion was that their current Orange County Pay-to-Play law was unconstitutional based on her reading of the Castine v Zurlo case. Legislative Counsel Reed replied no, the Castine decision relates to the New York State Municipal Home Rule issue and whether or not they can preempt New York State Election Law. The constitutionality relates to issues within the local law itself and language issues pertaining to whether or not a candidate is held to the same level as local elected officials. The language is unconstitutional because it states that it applies to the candidate; however, the language does not read that way.

Mr. Anagnostakis asked if there was a case that reflects that issue and was Legislative Counsel Reed citing that case. Legislative Counsel Reed replied no, but there is a problem within their own local law that must be corrected.

Mr. Anagnostakis asked if they could correct their Pay-to-Play law internally. Legislative Counsel Reed replied yes.

Mr. Anagnostakis pointed out that his understanding was that they were being told that their Pay-to-Play law was unconstitutional with the Castine v Zurlo case cited with respect to it. Legislative Counsel Reed replied no, it refers to the preemption issue.

Mr. Anagnostakis asked when the Pay-to-Play local law was enacted in 2013, was there any preemption language in New York State Election Law Article 14-114 that prohibited them from moving forward. Legislative Counsel Reed replied that it is a matter of interpreting what Section 1-104 means and they now have an interpretation by the court stating that a local government cannot adopt a local law to preempt New York State Election Law.

Mr. Anagnostakis asked if Legislative Counsel Reed read the entire case including the decision. Legislative Counsel Reed replied yes.

Mr. Anagnostakis asked for the number of times that the verbiage "Pay-to-Play" appeared in the ruling. Legislative Counsel Reed replied that it did not.

Mr. Anagnostakis asked for the number of times that the verbiage "Campaign Finance Law" or Article 14-114" appeared in the ruling. Legislative Counsel Reed replied that it did not.

Legislative Counsel Reed explained that New York State Election Law encompasses many sections of law and here they are talking about the entire general law of New York State Election Law and not just one section. The court is stating that they cannot preempt New York State Election Law because it is a general law.

Mr. Anagnostakis asked for clarification that *Castine v Zurlo* ruling came down on November 26, 2014. Legislative Counsel Reed replied yes.

Mr. Anagnostakis asked for the number of New York State municipalities that have pulled their Pay-to-Play law since that date. Legislative Counsel Reed replied that her understanding was that only one other county has a Pay-to-Play law, Rockland County, even though other counties have thought about it.

Mr. Anagnostakis asked if this issue of unconstitutionality would not relate to the municipalities that may have a Pay-to-Play law. Legislative Counsel Reed replied that it would.

Mr. Anagnostakis asked how many have pulled their Pay-to-Play laws. Legislative Counsel Reed replied that she does not know.

Legislative Counsel Reed added that she took an oath of office to uphold the Constitution and the laws of the State of New York and Orange County. She has an obligation as counsel to the Legislature to bring forth issues that she believes should come before them. It has come to her attention from many sources that their Pay-to-Play law is not valid, is void, and she brings it to them as their advisor. They can take her advice and void, repeal, and/or leave the law on the books.

Mr. Amo asked for a point of order. This interaction is inappropriate and they are not addressing the question of, is this right or wrong, but someone acting as an attorney grilling another attorney. That is not why they are here so they need to ask a question, make a decision and vote.

Mr. Faggione commented that this is a very emotional discussion and topic. The intent today was to have a professional discussion and Antoinette Reed is their Legislative Attorney and she is here to answer questions in a professional manner.

Mr. Anagnostakis thanked Legislative Counsel Reed for answering his questions in a professional manner and he appreciates her responsibility in coming to them with her professional opinion when she finds an issue that needs to be addressed. We are Legislators in Orange County, not judges and the only person who can determine if the Pay-to-Play law is constitutional or not would be a judge after a trial. They as Legislators would not do that based on the opinion of other attorneys whether they are their attorney or not. He reminded the committee that the same attorneys brought them down the road of the LDC and Valley View being legal; however, that was not the case. They have to take the information from the attorneys and make a decision. If this was a trial he would advise his fellow legislators to call a think tank that specializes in Pay-to-Play laws of which there are plenty. He has spoken to many people and there are many Political Law Briefings; Covington and Burlington etcetera and they will tell them about dozens of cases that gone before courts on Pay-to-Play and they will tell them that there has never been one that has knocked down a Pay-to-Play law since 2011. They would cite them cases out of the Washington D.C. District Court of Appeals and a recent Pay-to-Play case that eleven judges affirmed unanimously with the State Supreme Court refusing to take the case. They have a law and if they want to deem it

unconstitutional someone should sue them and prove that it is unconstitutional in a court of law. Who would sue, groups that want the Pay-to-Play law to stop corruption or taxpayers who want corruption out of contracts. What negative does this Pay-to-Play have on anyone in Orange County. They should keep it on the books and if a judge ever declares that their Pay-to-Play law is unconstitutional then it would be pulled.

Mr. Faggione added that he understands the intent of the law as passed and he does not believe that a single person in this legislature would support any form of corruption. Whether that is in the halls of the Legislature, Executive Branch, District Attorney's office, Sheriff's office or any other part of county government. They have a responsibility as legislators to enact laws that control people's behavior. In 2013, this legislature passed the Pay-to-Play law with the intent to force out corruption and he applauds that and in 2014 the law was revised. If the law was created perfectly in 2013, why was it revised in 2014, because it was reviewed and amendments needed to be done. Before them are two very esteemed attorneys and two other attorneys that have come before this committee to address the issue of constitutionality and how this law may have an adverse effect on only one position, that of the County Executive. In addition, they are talking about the compliance of state law and the most important document they have in this country is the constitution and in New York State they have state laws and as representatives here in Orange County they need to ensure that they are in compliance with state law. Today, they had a situation presented that would make this law, as amended, constitutional and be in compliance with state law. This compliance would also align this affidavit with their Procurement Policy and Ethics Disclosure Law. In his opinion, that is a sound presentation.

Mr. Faggione asked in Legislative Counsel Reed's legal opinion, would this revised new law meet the constitutionality questions that were posed. Legislative Counsel Reed replied yes.

Mr. Faggione asked if the new law, as amended, be in compliance with the state law. Legislative Counsel Reed replied yes.

Mr. Faggione asked if the new law with the affidavit align with the vendor Procurement Policy and the Ethics Disclosure Law. Legislative Counsel Reed replied yes.

Mr. Kulisek asked if it would now affect all countywide races. Legislative Counsel Reed replied yes, it changes the playing field and brings everyone back to the level of New York State Election Law Campaign Contributions with everyone being treated the same.

Mr. Kulisek asked if candidates and elected officials were treated the same under the current law. Legislative Counsel Reed replied no, as there were disparities in the language and did not cover candidates and issues with respect to the limits for legislators.

Mr. Hines commented that he was against the change as the work they conducted in 2013 and 2014 was necessary and proper and he cannot discard all that they did as it was too important. He agrees that the law needs to be changed and it should come back to the committee even if it passes today as they need to close the loopholes which was the intent of this legislature back 2013 and 2014. He agrees with Mr. Kulisek that if it did not apply to candidates, it should.

Mr. Paduch agreed with Mr. Hines and it does need to be reviewed further including the form that is attached to the new law and until that time he cannot support the proposed changes.

Motion carried 5-4 with Legislators Amo, Bonelli, Vero, Faggione and, Brescia voting in favor and Legislators Cheney, Hines, Kulisek and Paduch voting against.

Mr. Kulisek moved resolution authorizing the acceptance of a Tax Litigation Settlement with the United States Postal Service, whereby the County will receive the principal due and owing for a parcel in the Town of Montgomery, Section 309, Block 9, Lot 1, in the amount of \$456.15 with the interest and penalties forgiven, seconded by Mr. Cheney.

Motion carried.

The meeting adjourned at 5:10 p.m.