

RULES, ENACTMENTS AND INTERGOVERNMENTAL RELATIONS COMMITTEE
MINUTES
WEDNESDAY, FEBRUARY 15, 2023
3:30 P.M.

PRESENT: Paul Ruskiewicz, Chairman
Michael Amo, Barry J. Cheney, Thomas J. Faggione, Kevin W. Hines, Michael D. Paduch,
Kathy Stegenga

ALSO

PRESENT: Katie Bonelli, Chairwoman
Richard B. Golden, Esq., County Attorney
Louise Vandemark, Commissioner, Board of Elections
Courtney Canfield Greene, Commissioner, Board of Elections
Alan Sorensen, AICP, Commissioner of Planning
Erin Sztendor, Budget Analyst
Dina Sena, Budget Analyst
Dr. Paul K. Johnson, Chairman, Orange County Board of Ethics

Mr. Ruskiewicz opened the meeting at 3:30 p.m. and requested everyone stand for the Pledge of allegiance. All members were present with the exception of Legislator Sierra, who was excused.

Mr. Amo moved a local law amending Local Law No. 5 of 2015, entitled, "Orange County Ethics and Disclosure Law", as most recently amended by Local Law No. 1 of 2021 for the purposes of amending language in the Annual Statement of Financial Disclosure Form relative to financial benefits from current/prior employers, seconded by Ms. Stegenga.

Mr. Johnson explained the proposed change to number 5 of the Annual Statement of Disclosure which is as follows: List the identity and value, **if reasonably ascertainable**, of each interest in a trust, estate or other beneficial interest, including retirement plans from a current or prior employer other than retirement plans of the State of New York or other municipality's retirement system plan but only if that entity **had a contract with the County of Orange** as follows: (If not applicable, write "None" or "N/A"); ___ Any monies **in excess of \$1,000** made on your behalf including deferred income, contributions to a pension or retirement fund, profit sharing plan, severance pay, or payments under a buy-out agreement; ___ Agreements for the continuation of payments or benefits to you **in excess of \$1,000**. This includes an interest in or contributions to a pension fund or retirement fund, profit-sharing plan, life or health insurance, buy-out agreements, severance agreements, etc. They are looking to streamline the process as they review approximately 425 forms annually. A letter was also sent to the chairman of the various boards and/or committees as the board believes it is the responsibility of the chairman to advise their members of this requirement whether they served one day or the full year.

Mr. Hines asked for Mr. Johnson's interpretation of the retirement aspect and does it include 401k's because technically they are not a retirement plan. Mr. Johnson replied that it only applies to an entity that has a contract with the County of Orange.

Mr. Golden clarified that the language change with respect to retirement plans has not changed in a long time. There are two qualifiers: retirement plans from a current or prior employer other than retirement plans of the State of New York or other municipality's retirement system but only if that entity had a contract with the County of Orange. Therefore, if someone had an employer that had a contract with the County of Orange, and they had a retirement plan partial or full then it would apply.

Mr. Hines asked if a 401k was legally a retirement plan. Mr. Golden responded that a 401k is meant to assist people in their retirement so, yes.

Mr. Hines asked if there is an appeal process if the Ethics Board renders an advisory opinion that the employee disagrees with. Mr. Golden replied that the employee could challenge the decision as arbitrary and capricious in an Article 78 proceeding.

Mr. Hines considered whether they should add that provision to the local law.

Mr. Golden responded that it would be up to this Legislative body. Currently the Board of Ethics has the final say with respect to advisory opinions on whether the conduct is ethical and/or ethical with conditions and that is done in consultation with their independent counsel.

Mr. Hines asked Mr. Golden if it should be included so that if an employee disagrees with the advisory opinion there should be an appeals officer (County Attorney) to discuss this issue with the Ethics Board Attorney. Mr. Golden replied that is a policy issue; however, in his opinion, it would not be wise to have a policy on an internal appeals process. It would also not be wise to have it go to the County Attorney's office as they advise departments of the executive branch. This code purposely states that the Board of Ethics has its own counsel and that should be who they rely upon as the Board of Ethics is an independent entity un beholden to the executive branch.

Mr. Johnson added that during his tenure it has never gone to that extent.

Mr. Hines asked about "if reasonably ascertainable". Mr. Golden replied that it is a more concrete term than "just reasonably".

Mr. Hines asked if a question arises, would it go to the full board. Mr. Johnson replied and explained the process stating that if one of the two individuals reviewing the form have a question the secretary for the Ethics Board will contact the respondent and clarify the question. If they are still unsure, they will bring the respondent before the board for clarification.

Ms. Stegenga referred to prior employers and the lookback period to determine if their employer has or had a contract with the County of Orange. Mr. Johnson replied that there is an online searchable list on the Department of General Services website.

Mr. Golden clarified that the law does not ask anyone to go back thirty years in county contracts. It asks if their present employer is on the list of contracts with the county and only applies

to contractors. The purpose is to uncover a problem within the reported year. The list on the Department General Services website takes approximately twenty to twenty-five minutes to go through and all they ask is that they do their due diligence to see if their business has a contract with the county. There are two essential parts to any ethics code: disclosure and prohibited conduct. Lastly, if someone worked for an entity ten years ago and they are on the list they would disclose that; however, it does not mean it's an ethical violation.

Mr. Amo stated that a super majority vote of the board was added to the local law before taking an enforcement action.

Mr. Golden agreed as there must be clear and convincing evidence before they can take action.

Mr. Amo commented that it was unfair to have someone's only resource be to hire an attorney and have an Article 78 hearing.

Mr. Paduch commented that retired trade union members receive their retirement from the union who in turn has contracts with vendors that have contracts with the County of Orange. Mr. Golden replied that if the pension is coming from the union they would not qualify under the language of this local law as it would have to be a pension from the employer.

Mr. Paduch asked about the calculation for any monies in excess of \$1,000.00 made on your behalf including deferred income and contributions and would that be by week, month or year. Mr. Golden replied that it has not been defined and to his knowledge they have always considered annually as the statement is per year. Any changes to the ethics code and financial disclosure form must come from the Legislature. The Board of Ethics is coming to the legislature for practical changes but not the big policy issues.

Mr. Johnson agreed with Mr. Golden as the local law and disclosure form are a work in progress.

Motion passed 6-1 with Legislators Amo, Cheney, Faggione, Hines, Stegenga and Ruszkiewicz voting in favor and Legislator Paduch voting against.

Mr. Faggione moved to request confirmation of reappointments to the Orange County Board of (G. Dean, M. Horrego, Sr.), seconded by Mr. Amo.

Motion carried. All in favor.

Mr. Faggione moved request to accept salary schedule for Election Inspector, Early Voting Election Inspector, Machine Inspector, Early Voting Machine Inspector, Poll Site Chairman/Coordinator, Early Voting Poll Site

Chairman/Coordinator, Machine Inspector Blue/Red bag transporter, Poll Clerk for Nursing Homes, Poll Clerk for Court Orders, Poll Site Information Clerk, Interpreter/Affidavit Clerk, Voting Systems Technician, Early Voting – Voting Systems Technician, Training, Trainer, Training Class Assistant, Pre/Post Election Audit Clerk, Green Bag Delivery, Blue Bag pick up, RTR Reader, Early Voting Nightly Bag Transporter, Poll Site setup/take down, Cure Team, Absentee Clerk, PreLat/Configure Voting Machines & E-poll books, Class Assistant, Delivery of E-poll books, Pre and Post warehouse/packing, Office Assistant, seconded by Mr. Hines.

Ms. Vandemark explained that they are finding it very difficult to recruit inspectors due to the hours and rate of pay and they are hopeful that by increasing the salary by \$25.00 they will entice inspectors.

Motion carried. All in favor.

On the agenda was an update on the Board of Elections.

Commissioners Vandemark and Greene presented the Board of Election Year in Review 2022 (handout). They highlighted voter registration statistics in Orange County: 241,351 active voters, 21,321 inactive voters and 340,462 purged voters. Significant events of 2022: new election laws, redistricting, petition process, three elections, manual hand recount of the 99th Assembly District and grants. Implementation of new election laws: increase in early voting sites from 7 to 8 and hours on weekends from 5 to 8 hours, early canvass of absentee ballots, extension of no excuse absentee ballot requests, postage paid return envelopes required with all absentee ballots, manual recount, online voter registration, absentee ballot tracking system and cure process for affidavit ballots. State, local and federal elections: breakdown of early voting dates, election day, number of poll sites, hours for voting, number of machines deployed, number of E-Poll books and printers deployed, number of assigned election workers per election and cost, voter turnout, voter date from 2016-2022, and grants awarded through the New York State Board of Elections. Looking ahead to 2023: voter registration upgrade, two elections, Assembly maps being redrawn, rollout of 93 new voting machines, new box truck, creation of two positions (Operations Manager) for warehouse, review and poll site changes and new election laws.

Mr. Ruskiewicz asked if the grants received for the early voting mandates covered the additional costs to the county. Ms. Vandemark responded no.

Mr. Cheney asked what prompted the increase of early voting sites and was it required by the state. Ms. Vandemark replied that it was due to the increase in voter registrations and election law changes.

Mr. Cheney asked for a description of the voter registration upgrade and benefits. Ms. Vandemark replied that the upgrade is faster, less steps to register a voter, requires signoff to ensure accuracy on voter registrations and two-party authorization.

Mr. Cheney asked about election day issues regarding ballot printing and voter frustration. Ms. Vandemark replied that a new printer has been approved and certified and is currently being tested. Their statistics show that from check in to the ballot being printed is under two minutes. The biggest advantage of ballots on demand is that people are not receiving the wrong ballot because every district has its own unique ballot style.

Mr. Cheney expressed his concerns regarding the election result process, availability of results and confusion on how many districts were reporting their election results. Ms. Greene replied that in 2022, they participated in a pilot program with new vendor Enhanced Voting to streamline election results which would assist them once they begin certification of the election. However, they had major issues as it took a tremendous amount of time to input and upload. The first set of results they report are either absentees or early voting. They have discussed their concerns with the vendor, and they have been assured that it will be corrected for the June Primary.

Mr. Faggione commented that at recent legislative sessions citizens have expressed their concerns on both federal and local elections. The two primary topics were: voter rolls and how names are expunged from the voter rolls, machine integrity, accuracy, and machine inspections. Ms. Vandemark replied that once they receive notification from the New York State Board of Health, Town Clerks and newspaper obituaries that the person has died, they are purged.

Ms. Vandemark addressed the question on accuracy and they are 100% accurate. After every election a random audit is conducted, and they do not know until the day after the election as to what machines will be audited as they must do 3% of the machines. Each ballot is hand counted and they have not had the count between the machines and audit be off by even one vote. Their machines are not connected to the internet and when they receive a machine the company comes in and puts the machines together. After that a representative from the NYS Board of Elections comes down with their own software to perform acceptance testing.

Mr. Faggione commented that the presentation states that a manual recount was performed on the 99th Assembly District and are they to assume that there was only an eight-vote difference on election. Ms. Greene replied no, when a ballot is cast on election night the machine looks for a vote inside the circle on the ballot. During a manual hand count they now have voter intent, and every vote must be accepted that way. If a voter does not have the greatest eyesight and voted slightly off the circle the machine would not have picked up that vote but that vote counts. Both candidates in that district received extra votes during the manual hand count.

Ms. Vandemark thanked the committee for the support they received last year and invited the committee to tour the warehouse anytime.

Mr. Faggione thanked the commissioners, their staff and the election workers for all their hard work.

Mr. Paduch asked about a report that showed a significant increase in purged felons in Orange County. Ms. Greene replied that they file a report with the New York State Board of Election annually which listed purged felons at 1,672; however, it was actually 162 and has since been corrected.

Mr. Faggione moved to request supplemental appropriation to the 2023 Planning Department budget to increase the budget line for Land Preservation Services. The increase will allow the consultant to monitor the County's Conservation Easements, \$50,000.00, seconded by Mr. Cheney.

Mr. Sorensen explained that the County has a number of conservation easements that have been monitored by the Planning Department for years; however, the staff member who monitored this is no longer with the Planning Department. It would be more cost effective to include these additional services and have the Land Trust monitor the conservation easements for the county which is ongoing work.

Mr. Cheney asked for clarification that this would not be open to a qualified individual because the consultant must be tax exempt under Section 501(c) (3) and what is the basis for that stipulation. Mr. Sorensen replied that this is an ongoing contract and his understanding was that it had to go through a not for profit.

Motion carried. All in favor.

Mr. Faggione moved request to accept and appropriate \$1,500,000.00 first instance Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) planning funds made available on a reimbursement basis through the NYSDOT 2023-2024 budget for the Orange County Transportation Council (OCTC) Unified Planning Work Program (UPWP). Nominal Shares: Federal 80%, State in-kind 15%, County 5% share. Given in-kind, non-cash State share, effective Federal reimbursement share is 95.0% and County share is 5%. No new County share appropriation requested, as County share is supported through in-kind staff/program support expenses within Planning Department budgets, seconded by Ms. Stegenga.

Mr. Sorensen explained that the Orange County Planning Department is the host agency for the Orange County Transportation Council and the recipient of federal funding to provide transportation transit service throughout the county. They have three work projects that Orange County produce: the Long-Range Transportation Plan, Transportation Improvement Program and the Unified Planning Work Program (UPWP). The UPWP is updated annually, and their current draft is out for review with an anticipated adoption by the Transportation Council on February 28, 2023. Many of the staff workers assigned to work on transportation related work have their salaries reimbursed up to 95% through the UPWP. These funds are also utilized for transportation studies.

Mr. Cheney asked for clarification on Schedule A which states consultant services; however, Mr. Sorensen indicated that this would also include salaries and benefits for staff and could he provide them with a breakdown. Mr. Sorensen replied that he does not have an exact percentage but a majority of this funding would offset salaries within the department. These funds are for planning work and cannot be used for infrastructure investment.

Motion carried. All in favor.

Mr. Faggione moved resolution of the Orange County Legislature in support of Part Z of the proposed FY 2024 New York State Executive Budget, Revenue Article VII legislation, terminating the Catskill Regional Off-Track Corporation and allowing existing county's for whose benefit Catskill Regional Off-Track Betting Corporation had been established to enter into an agreement with an existing Off-Track Betting Corporation from a different region, seconded by Ms. Stegenga.

Ms. Stegenga presented a brief overview of the recent history of the Catskill Regional Off-Track Betting Corporation (Catskill OTB). There are thirteen counties in the Catskill Regional Off-Track Betting Corporation, and they have no revenue and/or activities pending. Part Z, relates to the Operation of the Off-Track Betting Corporations and they are seeking a resolution that would allow them to disband. This could then provide them with an opportunity to receive any funds left in the capital project that was supposed to be shared amongst the counties and to possibly join one of the other corporations if they so choose.

Mr. Hines commented that this should have been done a long time ago. At one time they knew there was \$12 million and that they were just bleeding money and if this had been disbanded years ago, they could have received a share of those funds.

Motion carried. All in favor.

Mr. Amo moved resolution of the Orange County Legislature calling on the State of New York to continue to pass-thru Federal Affordable Care Act enhanced Federal Medicaid Assistance Percentage funds, seconded by Mr. Hines.

Chairwoman Bonelli explained that in 2014, New York began sharing these federal Affordable Care Act savings directly with counties. This was provided to lower the weekly payments in each county. The proposed state budget would end the Affordable Care Act and federal medical assistance percentage and a federal pass-thru which would be devastating to Orange County if eliminated as it will cost Orange County an estimated \$9.2 million annually.

Mr. Amo commented that they need to stand up against this. It is abundantly clear that New York State has a huge bill regarding medicaid and they have to find a way to cut into that bill and they are looking to the counties.

Chairwoman Bonelli pointed out that NYSAC is strongly advocating for this.

Ms. Stegenga commented that this was discussed at the National Association of Counties (NACo) where federal representatives and county health department and their intent is that the funds be sent to the counties. They have come to realize that the states are holding and/or have the opportunity to withhold funds that are designated to help counties so that it does not fall on the taxpayers. Per NYSAC Executive Director, Stephen J. Acquairo, Esq. and Deputy Director Mark LaVigne this will also be discussed at the upcoming conference.

Motion carried. All in favor.

Mr. Faggione moved resolution recognizing March as Women's History Month, seconded by Mr. Ruszkiewicz.

Motion carried. All in favor.

The meeting adjourned at 4:54 p.m.