

RULES SPECIAL INVESTIGATIVE COMMITTEE
MINUTES
MONDAY, SEPTEMBER 20, 2021
3:30 P.M.

PRESENT: Thomas J. Faggione, Chairman
Katie Bonelli, Michael D. Paduch (via telephone), Barry J. Cheney, Kevin W. Hines,
James K. Kulisek, John S. Vero

ALSO

PRESENT: Paul Ruskiewicz, Legislator
Betsy N. Abraham, Legislative Counsel
Langdon Chapman, Interim Attorney for the Orange County Industrial Development
Agency (IDA)

Mr. Faggione opened the meeting at 2:00 p.m. and requested everyone stand for the Pledge of Allegiance to the Flag. All members were present with the exception of Legislator Amo who was absent.

Mr. Faggione quoted President Martin Van Buren who said: "It is easier to do a job right than to explain why you didn't". The purpose of this meeting was to discuss: The investigation of the Orange County Industrial Development **Agency and the Orange County Funding Corporation. More** particularly, whether certain contracts signed by the entities are void under General Municipal Law". This responsibility was placed into their trust with unanimous consent of the Legislature on August 5, 2021. At their first meeting on August 25, 2021, they set a goal to formulate a plan and timeline that includes research, review, legal opinion and input, and the issuance of their findings in a report as to whether any of those signed contracts are void. Today they are here to discuss General Municipal Law 800 through 804, it's background and legislative intent. Joining them today is Legislative Counsel Abraham as well as the Interim Counsel for the Orange County Industrial Development Agency (IDA) Langdon Chapman.

Legislative Counsel Abraham presented a synopsis of General Municipal Law - Article 18 and Sections 800-804. This section deals with conflicts of interest for municipal officers and employees and regulated through Article 18 of this section of law. It's the prevailing State Law with regard to conflicts of interest in municipal transactions and is not to be superseded by local law of any municipality subject to its provisions. Article 18 was enacted in 1964 and was meant to provide clarity and guidance in rooting out and preventing conflicts of interest. Prior to enactment of Article 18, conflicts of interest were governed by the common law, codification of the common law in various state statutes and city charters, and by administrative and judicial decisions interpreting the common law. The historical and statutory notes of the section itself lays out the legislative intent of the Article, noting that the purpose is to "...define areas of conflicts in municipal transactions..." and to codify same for clarity of understanding. While the statute did not "spring from widespread malfeasance on the part of municipal officers, the Legislature recognizes their integrity as a group, their culpability in only a few instances. "...but lest the few brand the many, the discernment of the offending case must be made certain..." The Legislature, in enacting this section also states, "there is another and equally important objective: a formula of conduct which is not only clear but reasonable, one which will permit governmental employees to share the normal benefits of the democratic society and economy they serve. If government is to attract and hold competent administrators, public service must not require a complete divesting of all proprietary interests. Real conflict must be rooted out, without condemning the inconsequential." The Legislatures intent in

enacting Article 18 was a "trinity of purposes: to protect the public from municipal contracts influenced by avaricious officers, to protect innocent public officers from unwarranted assaults on their integrity and to encourage each community to adopt an appropriate code of ethics to supplement this chapter." Within Section 800 of the General Municipal Law definitions of Article 18 are clearly outlined and there significance here and where they find the authority to apply in the instant case, §800(4) states that an industrial development agency is deemed a "municipality". A "Municipal officer or employee" is defined as an officer or employee of a municipality, whether paid or unpaid, including members of any administrative board, commission or other agency thereof and in the case of a county, shall be deemed to also include any officer or employee paid from county funds. A "Contract" as defined by Article 18 means any claim, account or demand against or agreement with a municipality, express or implied. An "interest" is defined by Article 18 as a direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as the result of a contract with the municipality which such officer or employee serves. A municipal officer or employee shall be deemed to have an interest in the contract of a firm, partnership or association of which such officer or employee is a member or employee, a corporation of which such officer or employee is an officer, director or employee and a corporation any stock of which is owned or controlled directly or indirectly by such officer or employee. Under General Municipal Law §803 there are several factors that must be met for a municipal officer or employee to have a prohibited interest in a contract. General Municipal Law §803 deals with Disclosure of an Interest.

1. Any municipal officer or employee who has, will have, or later acquires an interest in any actual or proposed contract with the municipality of which he is an officer or employee, shall publicly disclose the nature and extent of such interest in writing to the governing body thereof as soon as he has knowledge of such actual or prospective interest. Such written disclosure shall be made part of and set forth in the official record of the proceedings of such body. Once disclosure has been made by an officer or employee with respect to an interest in a contract with a particular person, firm, corporation or association, no further disclosures need to be made by such officer or employee with respect to additional contracts with the same party during the remainder of the fiscal year.
2. Notwithstanding the provisions of subdivision one of this section, disclosure shall not be required in the case of an interest in a contract described in subdivision two of section eight hundred two hereof.

There are four factors that must be met in order to determine if a municipal officer has a prohibited interest in a contract. The first requires the existence of a contract. Second, the individual must have an interest in that contract. Third, the individual, in his or her official capacity, must have one or more of the duties that can give rise to a prohibited interest. Lastly, the situation must not fit **within any of the statutory exceptions outlined in General Municipal Law §802**. There are seventeen exemptions outlined in that section which are fairly straightforward, and they can review on their own. Of importance here is that when reading the law, it does not state that the interest must only be disclosed if the interest is prohibited, rather, the interest must be publicly disclosed in writing. Article 18 deems a municipal officer or employee to have an interest in the contracts of business entities with which he or she is affiliated. The law specifically states that a municipal officer or employee shall be deemed to have an interest in the contract of a firm, partnership or association of which such officer or employee is a member or employee, a corporation of which such officer or employee is an officer, director or employee, and a corporation any stock of which is owned or controlled directly or indirectly by such officer or employee. For an interest in a contract to be

deemed “prohibited” the municipal officer or employee must have the power or duty to “(a) negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder, (b) audit bills or claims under the contract, or (c) appoint an officer or employee who has any of the powers or duties set forth above....” It is important to note that the law is clear in stating the existence of these duties are enough to create a prohibited interest, not whether the individual actually exercises those powers or duties. In a situation such as this, courts have been clear that recusal or abstention does not cure an otherwise prohibited interest in a contract. Article 18 dictates that any contract willfully entered into by or with a municipality in which there is an interest prohibited by Article 18 is null, void and wholly unenforceable. They need to remember when it comes to Article 18 and the application of this particular section of law and the instance that brings them there is that any individual as a municipal employee or officer should not have the ability to carry weight on both sides of a transaction. They should not be able to be a part of municipal procurement and also payments made under terms of a contract within the municipality, and that should be kept in mind when approaching their task at hand which is determining whether these contracts particularly Galileo Technology Group (GTG), Strategic Economic Consortium (TSEC) and Accelerator without Walls (AWOW) as listed in the resolution are void or not.

Mr. Chapman addressed the committee stating that since the last meeting on August 25, 2021, the joint District Attorney and New York State Comptrollers Report was released which should be helpful. They did not know at the time of their initial gathering what documents would come out from the New York State Comptroller and District Attorney’s reports. He has reviewed the report, and, in his opinion, it should make their task much easier. They have in their possession the plea agreements from Vincent Cozzolino, Laurie Villasuso and Edward Diana and combined with facts laid out in the report it has made their mission eminently easier. His understanding was that their next step would be to go over what the basics of the law are which Legislative Counsel Abraham did eloquently and to have the details of those plea agreements and to come to their own conclusion on whether their conclusion matches that of the District Attorney and New York State Comptroller. He thanked them for their continued efforts as it has been very helpful.

Mr. Kulisek asked if there could still be contracts that were led by the Orange County Industrial Development Agency (IDA) that they had not received. Legislative Counsel Abraham replied that when she was sent the contracts in response to the letter sent to them by the Education and Economic Development Committee in December 2020, she was told by the person sending them from the Orange County Industrial Development Agency (IDA) that it was all inclusive for the time frame requested and to her knowledge there are no other contracts other than those sent to the Legislature.

Mr. Kulisek stated that as an investigative committee they are only reviewing content that was sent to them by another investigation and could they ask the Orange County Industrial Development Agency (IDA) if there are any additional contracts that they have not received for that time period.

Legislative Counsel Abraham reiterated that her understanding was that there were no other contracts, and it was not a result of an investigation but procured as a result of the inquiry made by the Education and Economic Development committee in December 2020. Her understanding was that a diligent effort was made to provide the contracts that were in their possession during that scope of time. However, they can certainly follow up to determine if there is anything else.

Ms. Bonelli asked if it would be possible to receive an update from the Orange County Industrial Development Agency (IDA) on the status of the contracts as they exist and have, they taken any action to void those contracts. Mr. Chapman replied that the Orange County Industrial Development Agency (IDA) had terminated the Galileo Technology Group (GTG) contracts at the end of March. His office became interim counsel and the next day the Orange County Industrial Development Agency (IDA) met and voted to terminate those contracts. The Orange County Industrial Development Agency (IDA) has also taken the position that the Highland Falls Accelerator contract was void and not paid and it is a so-called business accelerator that the Orange County Industrial Development Agency (IDA) rented a vacant building that was not code ready and uninhabitable for business purposes. The Orange County Industrial Development Agency (IDA) had rented the property at the end of September 2020 and the new board took the position that that contract was void. The new board on his advice considered that the contract for the Newburgh Accelerator at 603-605 Broadway was also void. The basics of that is that one of the buildings was marginally unoccupied and the Orange County Industrial Development Agency (IDA) was paying rent for the whole building but was not remotely all occupied. They are also looking closely at a few shorter-term contracts relative to the Accelerator in Middletown at the Touro College of Osteopathic Medicine and one in New Windsor that have numerous tenants that occupy space as compared to the other facilities.

Mr. Ruskiewicz responded to Mr. Kulisek's question on any additional contracts. He clarified that when the Education and Economic Development committee sent the letter requesting information from the Orange County Industrial Development Agency (IDA) it was sent to the old board. When the new board took over their first priority was to ensure that everything the Legislature, District Attorney, and New York State Comptroller requested be sent, and he is confident that the Legislature has received all the contracts and there should not be any contracts that they are not aware of.

Mr. Hines commented that the report laid out testimony from Leonard W. Vona, CPA, CFE, Fraud Auditing, Inc. and would Mr. Chapman know if an actual statement was made by Mr. Vona to the District Attorney's office. Mr. Chapman replied that his understanding was that Mr. Vona met with the District Attorney's office.

Mr. Hines asked if it was a written statement. Mr. Chapman replied that he was not sure.

Mr. Hines asked if they could request the statements from Mr. Vona from the District Attorney's office. The District Attorney's Report summarized that the scope of Mr. Vona's work was changing almost daily, and he would like to know who was changing his scope of his work. Was it the people that were the targets of the investigation or the Orange County Industrial Development Agency (IDA) board. Mr. Chapman replied that he could not speculate as he was not present.

Mr. Hines stated that he would like to look further into this and who changed the scope of that work. He was instrumental because when the Orange County Legislature started questioning the Orange County Industrial Development Agency (IDA) the Orange County Industrial Development Agency (IDA) board hired Mr. Vona to audit them. It would seem that there is a partial coverup there as they changed the scope of his work as he was finding more items. When Mr. Vona appeared before the legislature that was what brought this to the District Attorney's attention and to realize that something is wrong there. In addition, the District Attorney's report seemed to state that

Mr. Cozzolino was making a mockery of the very contracts that were being written as Mr. Vona was quoted as saying "...did your lawyer review these contracts? and Mr. Cozzolino replied would a lawyer actually sign any of these contracts..." like it was a joke. He would assume that Mr. Cozzolino provided a statement to the District Attorney, and would it be possible to get a copy of that statement and would they have the right to have those copies.

Mr. Chapman replied that they could certainly ask the District Attorney; however, he does not practice criminal law and cannot say what the District Attorney will or will not give them.

Mr. Hines requested they ask for the statements of Vincent Cozzolino, Laurie Villasuso, Edward Diana and Leonard Vona from the District Attorney. It is important because if they were changing the scope of his work it set off warning bells. He understands that Mr. Vona's initial task was to look for missing funds and as Mr. Vona looked at the contracts, he could not find missing funds because he couldn't find billable hours for contracts that would lineup with how much money was owed and it seemed that two of the defendants signed their own contracts for payment and would that be Mr. Chapman's understanding as well.

Mr. Chapman replied yes, that was his understanding that they signed their own contracts.

Mr. Hines asked that Mr. Chapman clarify the relationship of the Orange County Industrial Development Agency (IDA) Board and who hires the employees of the Orange County Industrial Development Agency (IDA). The general public thinks that the Orange County Legislature controls the Orange County Industrial Development Agency (IDA). Mr. Chapman replied that the Orange County Industrial Development Agency (IDA) Board is appointed by the Orange County Legislature, and they do not hire the IDA employees. The legislature does enter into contracts with the entities of the Orange County Industrial Development Agency (IDA). The board that the legislature appoints is supposed to exercise a fiduciary duty but they as the Orange County Legislature do not oversee those employees nor do they report to them. Normally, the legislature would not be involved; however, this is a unique and unusual situation and they stepped in to hopefully recoup all the monies.

Mr. Faggione asked for clarification that Mr. Hines was requesting the statements of Vincent Cozzolino, Laurie Villasuso, Edward Diana and Leonard Vona from the District Attorney. Mr. Hines replied yes.

Mr. Faggione stated that they would reach out to the District Attorney's office with the hope that they will have that information for the next meeting.

Mr. Kulisek referred to pages 81 and 82 of the District Attorney and New York State Comptrollers Reports: "...According to Mr. Vona, this was supposed to be a risk assessment, but the project evolved over time. In the beginning the end result was never supposed to be a report to the Orange County Legislature. Mr. Vona agreed his initial scope of work was to look for missing/stolen money from the Orange County IDA. Mr. Vona noted that he was initially retained to review and defend the Orange County IDA...." and was Mr. Vona there to defend the Orange County Industrial Development Agency (IDA) or not.

Mr. Faggione stated that no one was present from the District Attorney's office and/or the New York State Comptroller's to address Mr. Kulisek's question. However, his question would be submitted to the District Attorney for comment.

Mr. Faggione commented that at the meeting in August they discussed a timeline for this committee going forward. Both Messrs. Hines and Kulisek's points lead into the next phase of their schedule of meetings and their questions lead into what they will be doing at the next meeting.

Mr. Hines asked if the attorney for the Orange County Industrial Development Agency (IDA), Kevin Dowd Esq. was paid a salary or by the hour and who signed off on it. Mr. Chapman replied that he is paid by the hour on a monthly basis.

Mr. Hines commented that in the District Attorney's report it indicated that Mr. Dowd did not see some of the contracts and on others he approved them but did not read them so there could be missing funds there also, but they will not know that until they dig deeper.

Mr. Chapman agreed.

Mr. Paduch stated that Messrs. Hines and Kulisek addressed the questions he was going to ask; however, what was Mr. Dowd's responsibility and if he is not doing his job who is responsible to ensure that he does because it does not seem that anyone does. He would like to know what Mr. Dowd's actual job description is.

Mr. Faggione replied to Mr. Paduch's question stating that the next meeting will be to address the facts as they exist in these matters and his question regarding Mr. Dowd will be addressed then.

Mr. Faggione asked that Legislative Counsel Abraham provide the committee with a brief preview of what they would be working on at the next meeting. Legislative Counsel Abraham replied that it would be straightforward as they have the plea arrangements for the three individuals that were signed off on and provided to the committee. The plea arrangements list in detail what they were pleading to and the application to those facts as to the broad range of these contracts during this time frame will dictate the analysis to determine whether these contracts given what they know now, the conflicts of interest that existed during that time frame, and if in fact effected the legitimacy and validity of these contracts to determine if they are void or not. In addition, they could address some of the questions presented today as she will endeavor to find out if these documents being requested can be attained by that time frame as the next meeting is scheduled for September 29, 2021; however, if that needs to be moved it can be done.

Mr. Faggione noted that there is some work that must be done between now and September 29, 2021, and they are capable of making sure that they put all that information together. He encouraged his colleagues on the committee and the legislature to read and reread the District Attorney and New York State Comptroller's Reports on the IDA and they do have a great deal of information that is readily available to them. They have tentatively set the meeting schedule as follows: September 29, 2021, October 13, 2021, October 28, 2021, November 10, 2021, and the final meeting and report on December 1, 2021.

Ms. Bonelli moved to reconvene the Rules Special Investigative Committee On September 29, 2021, at a time to be determined, seconded by Mr. Vero.

Motion carried. All in favor.

The meeting adjourned at 2:37 p.m.