

WESTCHESTER COUNTY CHARTER REVISION COMMISSION
MINUTES

JANUARY 24, 2013

Members in Attendance: Richard Wishnie, Jeff Binder, Anne McAndrews, Florence McCue, Paul Meissner, David Menken, Jane Morgenstern, Guy Parisi, Vincenza Restiano, Bertrand Sellier, Matthew Thomas, Gary Zuckerman

Absent Members: Raymond Belair, Alfred Gatta, Herman Geist, Julie Killian, Derickson Lawrence, John Mattis, Steve Mayo, Ronald Volino, Paul Windels Sam Zerka

County Staff in Attendance: Stacey Dolgin-Kmetz, Chris Crane, Melanie Montalto

Commission Counsel: Lester Steinman

MINUTES

Chairman Wishnie called the meeting to order at 7:15 PM.

With a motion by Mr. Parisi, seconded by Mr. Meissner, the minutes of January 10, 2013 were approved with a vote of 14-0.

Bertrand Sellier gave a presentation on an idea he would like the Commission to consider for the final report as a charter change. The proposal is to allow citizen initiatives for enactment of local laws. A copy of the presentation is attached. The presentation included amending the charter to allow more items to go to public referendum. Mr. Sellier stated that the Commission would need to think about how many signatures would be needed for petitions as well as the appeals process.

The commission discussed the proposal. Mr. Zuckerman, Mr. Steinman, and Chairman Wishnie all stated that if the Commission endorsed Mr. Sellier's proposal, the crafting of the specific legislation would be best left to the Board of Legislators.

Ms. Restiano stated that she supports the idea whole heartedly.

Ms. McAndrews asked about the 90 day requirement for items to be put back on the floor of the Legislature. Stacey Dolgin-Kmetz explained that by the Board of Legislators rules, any item that is referred to committee on the floor of the Board is required to come out of committee and back to the floor of the Board for a vote within 90 days. She stated however that this rule is not enforced at the legislature.

Ms. McCue asked everyone what their experience has been with home rule messages. Chairman Wishnie stated that his experience as a legislator is that home rule messages receive a great response from the state.

Mr. Zuckerman stated that if the Commission decides to consider Mr. Sellier's proposal it will need to be structured with the specific direction the Commission would like it to take.

Chairman Wishnie stated that any focus group who has an interest in this issue can take it up and incorporate it into their final report. Mr. Steinman stated that he believes it should be a conversation for the whole Commission rather than going to a focus group at this point when the reports are already in process.

Ms. Restiano stated that she believes we are in a different climate than we were when the 1988 report was written and she feels we should be firmer in our report and go out and get public support for our recommendations.

Several members attended the Empire Center's meeting at the County Center last week. Mr. Meissner stated that it was a very interesting look at projections and how important it is to have them as far out as four years. He said EJ McMahon spoke and he was very impressive. Mr. Thomas agreed that it was a very interesting presentation with regard to finances. Mr. Meissner and Mr. Thomas stated that he discussed school districts and pension costs. Chairman Wishnie stated that Mr. McMahon will be speaking at our next Commission meeting. The Commission discussed the feasibility of making financial projections for government.

Ms. McCue gave a presentation on the draft final report for the Charter & Codes Focus Group. She provided the first nine pages of the report to Commission members as well as a list of issues. Both documents are attached.

Ms. McCue stated that after meeting with the current County Attorney and several former County Attorney's they all stated that they did not have a problem working for both the County Executive and the Board of Legislators because, as they stated, they worked for the County as a whole. Ms. McCue stated that aside from the testimony, the Focus Group as well as the Commission is aware that there have been many problems recently with the relationship between the County Attorney and the Board of Legislators. Ms. McCue stated that as a result they are recommending in the report as their number one issue that the Commission discuss whether the Board should be allowed to hire their own attorneys to represent them. Mr. Binder stated that an attorney owes their loyalty to their client and when you have two clients, which often happens when the County Executive and the Board of Legislators do not agree, where does the attorney's loyalty lie? Counsel Dolgin-Kmetz stated that the current issues are not the only ones that the County has faced due to this dual allegiance to both bodies of government. Counsel Dolgin-Kmetz described a time in the past with a different County Executive and different Board of Legislators where there was a disagreement and the County Attorney represented the County Executive and the Board of Legislators had to hire its own counsel. Counsel Steinman stated that when he was with the County Attorney's office if there was a dispute between the two branches the County Attorney did not represent either one of

them and they both got outside counsel in order to preserve the County Attorney's relationship with both bodies of government going forward.

Mr. Meissner suggested mandating a mediation process. Ms. McCue stated that they discussed this idea in the Focus Group and came to the conclusion that separate attorneys would still be needed and the outcome could be the same but just take a longer time. Several members agreed.

Counsel Steinman explained that the role of the County Attorney is to provide an objective legal opinion based on the law as it is written. He said the CA is not to give the opinion of the County Executive or the Legislature. He said however, that once the opinion is rendered, even though it is a binding opinion, you cannot force "the client" to take your advice and the legislature or County Executive can choose to enact a policy which does not agree with the opinion. He said the only time there is a situation where the CA cannot represent either body is when there is litigation between them. A discussion ensued. There was general agreement that the charter needs to be clarified as to the hiring of attorneys for the legislature.

Ms. McCue stated that included in the report is the recommendation to bring the discussion of allowing for additional attorneys for the Board of Legislators to the full Commission.

Counsel Dolgin-Kmetz explained that the idea over the past few years has been that the attorneys hired by the Board of Legislators provide legal research for the legislature, but they do not replace the County Attorney and do not submit official legal opinions. Only the CA can provide those.

Ms. McCue stated that number 8 on the list of issues is to somehow provide one collective list of the services the county provides. Ms. Morgenstern agreed stating that his would be helpful to tax payers who question what the county does for them and how to access the services.

Ms. McCue stated that number 7 is to review the county government structure. She said number 5 suggests that a permanent charter revision commission be established as they have realized what a mammoth task this is. If number 5 is accomplished then number 7 would be one of the tasks of the new Commission. Mr. Binder stated that many other counties have committee to review their administrative codes and that may be helpful. Ms. McCue stated that number 4 suggests that a county wide assessment would be helpful.

Ms. McCue stated that number 2 is the establishment of a parks district. She said they met several times with former Parks Commissioner Joe Stout. He suggests that a separate parks district be created in the budget to show how much funding goes toward county parks. She said Mr. Stout feels that he would be able to get more donations for the parks if people could see how little of their tax bill goes towards the parks system. Chairman

Wishnie asked if this were created would Friends of Parks remain separate. Ms. McCue replied yes that is the vision. The Commission discussed whether a parks district would allow for private donations to go directly to the parks instead into the county general fund. Commission members also noted that a problem with this idea is that it will appear that a new tax is being created. Ms. McCue and Mr. Parisi said they feel this should be discussed but understand that it will probably not happen. Mr. Zuckerman asked if the Focus Group received any testimony in opposition to the parks district. Ms. Morgenstern said no, maybe we should do that. Mr. Parisi suggested that we do that as a full Commission as it is proposed now for discussion.

Ms. McCue stated that the final suggestion, number 3 is that the language for the appointments process be clarified in the Charter with regard to people serving on boards and commissions or as department heads prior to their confirmation by the Board of Legislators, as well as, what happens if the legislature does not confirm an appointment. They also suggest that if the legislature does not vote on an appointment within 90 days the appointment should be deemed confirmed. Counsel Steinman stated he would provide examples of such a process from other counties.

A discussion ensued regarding the 90 day period prior to confirmation and whether or not the appointed person be allowed to act during that time. Ms. Restiano stated that she would not like to see anyone sitting in a position without being confirmed. Mr. Wishnie, Counsels Steinman and Dolgin-Kmetz all expressed concern about this especially in terms of department commissioners and directors, as this could leave a department without a leader for up to 90 days. Counsel Steinman stated that the law today allows the deputy to act as the commissioner until a commissioner is appointed. Counsel Dolgin-Kmetz stated that the County Charter requires that all acting commissioners be appointed and approved as well.

Ms. McCue stated that there are several people on the Human Rights Commission right now who have never been confirmed and are active members of the Commission. Ms. Restiano stated that she thinks that is wrong, and the previously approved member who is being replaced should sit in that seat until a new member is approved. The Commission agreed to discuss this further.

Chairman Wishnie stated that the next meeting will be on February 7th, 2013 at 6:30. He stated that Mr. Binder has a couple of speakers coming and will hopefully provide his focus group report presentation as well.

Mr. Zuckerman stated that the League of Women Voters will be having a forum on campaign finance and Jeff Binder will be a panelist. Mr. Zuckerman stated that he will be moderating the forum. Mr. Zuckerman will circulate the information to the Commission.

With a motion by Mr. Zuckerman, seconded by Ms. McAndrews the Charter Revision Commission adjourned at 9:00 PM.