

**WESTCHESTER COUNTY CHARTER REVISION COMMISSION
MINUTES**

JUNE 20, 2013

Members in Attendance: Richard Wishnie, Alfred Gatta, Herman Geist, Derickson Lawrence, Anne McAndrews, Paul Meissner, Vincenza Restiano, Bertrand Sellier, Matthew Thomas, Paul Windels, Gary Zuckerman

Absent Members: Raymond Belair, Jeff Binder, Julie Killian, John Mattis, Steve Mayo, Florence McCue, David Menken, Jane Morgenstern, Guy Parisi, Ronald Volino,

County Staff in Attendance: Melanie Montalto, Chris Crane

Commission Counsel: Lester Steinman

Commission Consultant: Dr. Gerald Benjamin

MINUTES

With a quorum present, Chairman Wishnie called the meeting of the Charter Revision Commission to order at 6:09 pm. Chairman Wishnie introduced the evening's guest speaker, Mark Davies, Executive Director of the New York City Conflicts of Interest Board. Mr. Davies introduced himself, and specified that he was speaking for himself and not the New York City Conflicts of Interest Board. Mr. Davies passed out an outline of his remarks.

Mr. Davies first introduced the basis for ethic laws for municipalities. His explained his two cardinal principals. He then explained that most players in ethics reforms don't usually understand the purpose of ethics laws, and that until there is an understanding it is difficult to reform the laws.

Mr. Davies explained that the purpose of ethics laws is to prevent a breach of ethical conduct. Effective ethics laws promote a reality and perception of integrity, focusing on prevention instead of punishment while also ensuring that the public has a stake in the ethics system. Although people seeking to abuse their powers will disregard rules, rules are there as a guide for the majority of honest people. He went on to explain that they are also the basis for preventing conflicts of interest.

Mr. Davies described the three pillars of an effective ethics law, with the first pillar being a simple code of ethics. The second pillar is comprised of sensible disclosure. Finally, the third pillar is the establishment of an ethics board. He then explained several different critical ethical regulations, for public officials during and after service in government that would be included in a code of ethics. He continued on citing examples of less common, but critical rules municipalities sometimes have. He advised that Article 18 of the New York State General Municipal Law be included in a code of ethics to prevent confusion.

Mr. Davies went on to explain the three different types of disclosure. He explained that a transactional disclosure is the most common interest, usually accompanied by a recusal. He continued that a transactional disclosure is the most important and least controversial, and must be available to the public. The next type of disclosure he described was an applicant disclosure. While uncommon, it needs to occur when private citizens or businesses looking to do business with the government or obtain permits and/or licenses disclose their information. He next explained the last and most controversial disclosure, annual financial disclosure. He stated that most officials use this in order to cure their ethical ills, although he was of the opinion that it didn't work. He went on to say that annual financial disclosure allows the public to know where the filer's conflicts of interest may lie. Additionally, he explained that some municipalities require officials to read a summary of ethics laws every year. Mr. Davies explained that ethics laws do not catch criminals.

The commission asked if financial disclosure requires revealing an individual's source of income. Mr. Davies confirmed that it did. At this point Chairman Wishnie asked that all questions be held until Mr. Davies finished his presentation.

Mr. Davies noted that the public has no more right to know an official's financial information (that doesn't produce a conflict of interest) than they do of an official's relationships. He continued on stressing that that type of information shouldn't be forcibly disclosed and that only information relevant to the specific conflict of interest need be revealed. He stated that the disclosure form must be tailored to the ethical code.

He then explained that the success of an ethics law rests on the body that administers the law, stating that the body must be independent of all public officials subject to its jurisdiction. The criteria for members serving on that body began with selecting qualified volunteers with integrity who served for a fixed term. Additionally, they held no other government positions, nor were party to any government contracts, engaged in lobbying, or represented the government. Finally they could only be removed from the body with just cause.

Mr. Davies explained that split appointments should be avoided because it causes factions and leaks, as demonstrated by New York State. He explains the best practice is that the appointees should be chosen by the chief executive and approved by the legislature. The board should appoint its own independent staff and as well as serve as the sole interpreter of the ethics code. The four primary duties of an ethics board are legal advice, ethics training, administrative disclosure, and enforcement of rules. It has to provide timely, confidential advice on the legality of all future conduct under the code as well as provide public waivers for conducts. The ethics board must train officials so that they understand the ethics law in order to properly administer the disclosure system and also must have the authority to enforce the ethics law. He explained that without authority it prevents the ethics board from carrying out its purpose. He continued on stating that its investigations must remain private until a formal complaint is lodged, giving an example of Albany's revision of its ethics laws in 2004.

Mr. Davies then moved onto his assessment of Westchester's ethic laws, assessing it as a medium for its level of effectiveness. He explained that the preamble could be expanded to list the values essential to public service and that the definitions section is too complex and lends itself to creating confusion. He noted that the standards of conduct need revision, and gave several examples of issues with the current standard. He suggested a bright line rule, giving an example of its usefulness. He explained that confidential information should be defined, and should be expanded so as to prevent the use of confidential information. He commented that the revolving door provision is anemic, and currently only applies to high level officials, permitting most former officials to work on matters they may have formerly dealt with, allowing them to solicit and accept jobs from a firm that the official is dealing with there, but not in their capacity as a vendor for the county. He explained the revisions that he would make to the revolving door provision and gave examples of several other provisions and other current rules that should be added to the ethics code, or otherwise be clarified.

Mr. Davies went on to explain that changing annual disclosure is difficult, and reiterated that only pertinent information should be disclosed. He stated to be more effective, the form could be potentially shorter. Additionally, the board should be given the power to fine for late filings. He added that a provision should be added to ensure that a member of the ethics board should not be an employee subject to the board's jurisdiction. He stated that the board should have a mandated budget, or the legal department lends it its staff. He noted that only the ethics board should have the power to grant waivers. Finally he discussed the apparent lack of clarity as to the board's power to investigate and pursue fines, as it presently doesn't have the power to pursue fines for conduct violations besides disclosure form problems. Mr. Davies expressed confidence that these revisions could be implemented with relative ease.

A Commission member asked whether or not the ethics board should be compensated because of the relative effort that must be put in to carry out their duties. Additionally, it was raised as to how leaks could be prevented if they borrow staff from other departments and how to make the laws more effective to prevent and catch violations. He continued, asking how their laws should crossover with state and federal laws.

Mr. Davies explained that the system for an ethics board's operation varies depending on the municipality. He explained that although the ethics board must be independent, it is not a perfect system, citing difficulty in hiring staff for the ethics board. Mr. Davies explained that pro bono work encourages independence. He used NYC as example where their ethics board is given an appropriate stipend. Adding that if the ethics board is not paid then in all likelihood there wouldn't be sufficient time for investigations, thus forcing them to hire outside help, which could prove costly. He reiterated that the method varies from place to place but he recommends using staff from other departments, subjecting them to a non-disclosure penalty.

A commission member stated that in his experience, if a high level official is under investigation, generally they seek outside counsel early on in the process, citing White Plains as an example, with the other commission members agreeing.

A commission member explains that other boards, such as zoning or planning, aren't paid, and suggested that a volunteer board might be more effective. She continued on questioning earlier statements made because of the lack of perceived corruption. It was clarified that former legislators have made statements that implied corruption, resulting in a major trial. There was further clarification as to the purpose of examining the issue to make sure the rules are the best suited for the present situation in light of former issues.

Chairman Wishnie explained that while most government is honest, at some point there will be individuals who may not be one hundred percent and the purpose of the code is to guide them. He continues, cautioning that many violations come during periods of political excitements so that violations must be examined carefully. Mr. Davies referenced Phil Zisman as someone who is very knowledgeable on the topic. The Chairman obtained a consensus that they would like to have Mr. Davies back.

Mr. Windels asked Mr. Davies if he was qualified to address the issue of preventing corruption through a local ethics code. Mr. Davies indicated that he did not feel comfortable addressing that issue. Mr. Davies elaborated that they should not wait for the state ethics laws to change. The comment was raised that they can change the ethics laws

to be either equal or greater than the state law. At this time Mr. Davies finished his presentation and the committee thanked him.

Mr. Wishnie introduced former Commissioner of Mental Health Steve Friedman, who gave a brief outline of what he would be speaking about during the meeting. Dr. Friedman spoke about the process that resulted in his holding the positions of both Commissioner of Mental Health and Commissioner of Social Services. Dr. Friedman shared that in his experience by having one commissioner run two departments you lose a lot of time and experience for relatively little savings. In his opinion most of the large departments wouldn't benefit from merging, and that most of the smaller departments which could easily be merged already have been. Also, in his opinion he believed that some of the large departments are already too large to be most effective. Dr. Friedman then talked about the breaking up of the New York State Department of Social Services into smaller offices to provide services. In his opinion there should be a department in county government that merges groups to correspond to the State's service delivery structure.

A commission member asked what the difference was between the County's Department of Social Services (DSS) and the State's Social Services Office – specifically how they are funded. Dr. Friedman explains that the county department is funded by both the county and state. It was noted that the county pays for 71% the cost of providing these services, with Chairman Wishnie noting that DSS is the largest department in terms of funding and staff in the county. It was noted that the majority of funding used to come from the federal and state levels, but now it's largely county. A commission member asked if Medicaid is the most dollar or personnel intense in the County. Dr. Friedman then explained that it's largely State-run now although the State charges the County for it, continuing by describing how Medicaid became a large portion of the budget. Dr. Benjamin stated that state and local funds are matched with the federal funds, and while there have been attempts to change this, historically they have failed. It was noted that New York has an additional safety net. Dr. Benjamin added that it's part of the New York State Constitution that it provides for the State to take care of the poor.

A commission member asked if the Medicaid contribution was being phased out, to which the commission members generally confirmed that the amount the county must pay has been capped despite the cost continuing to rise. Dr. Friedman states that he believes that the County would function better with the state if it broke up a department that was too large. He gave an example of what functions could be moved around along with the changes the state has already made. It was then noted that the County Executive of Chautauqua County had made a move such as Dr. Friedman was describing. He continued describing how he would arrange the functions between departments,

specifically discussing the Health Department, describing the three functions as environmental concerns, state health, and client services along with the actions each function requires. He suggested an Office of Family and Child Services, as well as an Environmental Department, and removing their functions from the Health Department in order to improve each of the services.

It was noted that New York City merged their Department of Health and Department of Mental Health. Dr. Friedman stated that the general feeling of the mental health committee was that it was a disaster due both a lack of knowledge on issues by its leaders as well as different operating procedures. Dr. Friedman explained one of the beneficial programs that came out of the Department of Community Mental Health was one in which they found people who had been arrested who were suffering from mental health issues. In his experience the best recommendations for the referrals came from the District Attorney's Office rather than the defense attorneys. The commission discussed the complex bureaucratic process where the state passes down contracts to the county, with the county doing most of the ground work. Dr. Friedman added that the Office of Children and Family Services runs all the secure and non-secure detention facilities.

A commission member asked if bureaucracy was getting in the way of helping the mentally ill individuals. Dr. Friedman replied that part of the problem was the public's perception and the hostility that patients face. Additionally, the fact remained that for most mental illnesses there is no cure and little understanding of causation, which can add to the stigma. It was asked whether or not the home rule applied, and if they can make their own decisions. Dr. Friedman answered that for the most part they can control it, but in some cases the State will step in. Dr. Friedman explained his suggestions to help improve departmental efficiency and focus. Dr. Friedman further explained that they can add departments to the charter, and that the state creates offices instead in order to get around changing State law. Dr. Benjamin notes that New York State can only have 20 Departments, but realistically have more but call them offices instead. Dr. Friedman uses the Department of Mental Hygiene, but that they have three offices inside of it each with their own commissioner.

Chairman Wishnie notes that Dr. Friedman has the expertise, and asks that he provide written suggestions with which they can use. It was stated that as long as they attempt to make things work better, than they've done well. He continued that the Medical Center's Psych Ward has lost many of its functions. Dr. Friedman responded that the Medical Center volunteered to give up many of the programs and that the County outsourced corrections. A discussion ensued on the State merging its alcohol and substance abuse services along with the potential impacts it might have. A commission member noted that while they probably can't do much to change the state there is much they can do to help

Westchester. It was noted that the commission's goal was to revise the charter, and that reorganizing the government is a different animal, though the counterpoint was made that their goal was to use charter changes to affect positive change in Westchester. Chairman Wishnie stated that if they can make everything more efficient than they've done a good thing. It was the general consensus that it would be beneficial if each group can be more focused and that that they have the power to make suggested revisions.

At that time Chairman Wishnie reiterated they obtain written suggestions for department reorganization so that they may convey them to the Board of Legislators and the County Executive. The question was raised if they would need to add the powers to the charter, or if it is already provided for. It was explained that they already have the power, but should only recommend changes and point out what they can do so that others can determine what action they should take. Additionally it was asked whether it would require a referendum change, which was answered in the negative, and if there are other departments they should look at. Mr. Wishnie stated that he knew that mergers would inevitably come up.

A commission member noted that they are focusing on certain departments as they account for approximately forty percent of the budget. A discussion ensued on whether a recommendation versus a charter change would be the appropriate course of action. It was stated that because they weren't making it a referendum they should put forth their recommendations for the elected officials to decide, though it was also noted that public input was needed for such an issue. Dr. Friedman believed it to be an executive function, although the charter could change it. The committee thanked Dr. Friedman, and expressed interest in having him back. At this time the Chairman called for a brief recess.

After returning from recess Dr. Benjamin began his presentation on capital planning and budgeting, explaining that it is a complex subject, and thus he may not get through the whole presentation. His five major topics were inventory, maintenance, the planning process, plan approval/adoption, and budgeting. Dr. Benjamin explained that many people don't attribute this to the charter, but that there has been activity in New York showing that they apply.

Dr. Benjamin explained the definition of capital assets. He further explained that the definition of capital asset is locally adopted, that the minimum asset value for Westchester is \$50,000, and in Westchester has to be useful for at least one year. He continued, stating that the NYS Comptroller must provide financial oversight for local governments, specifically a Unified System of Accounts, and is required to adhere to the Generally Accepted Accounting Principles. He then explained that every government must release a Comprehensive Annual Financial Report. It was pointed out that it's a

Non-Governmental Organization rule, thus it's not required, rather being a response to market forces. Dr. Benjamin pointed out that they should be mindful not to run afoul of some groups as they have a responsibility to numerous groups. Dr. Benjamin next explained the GASB 34, quoting Anne Marie Berg that the County maintains separate guidelines for each function, has a five year capital improvement plan, and reviews the policies on an annual basis.

Dr. Benjamin next discussed inventory directly. Dr. Benjamin explained that an inventory helps create a budget because it helps governments account for their assets along with what they may need, as required by GASB 34. He stated that the counties change in investment in capital assets, and presented a page from Westchester's CAFR.

Dr. Benjamin began to discuss maintenance. He stated that maintenance, politically speaking, was necessary and behind the scenes for the most part, however new construction is highly visible. He then presented the requirements for NYC maintenance as an example, explaining that the presented requirements were put in by Richard Ravitch in order to revitalize the subway system. Mr. Ravitch believes the current requirements need teeth in order to make them effective. Chairman Wishnie spoke as to his former experience, and how the Commissioner of Public Works suggested implementing a rigorous system to keep track of maintenance. The committee then discussed whether or not it should be charter based. Dr. Benjamin further explained the maintenance requirement. Mr. Windels suggested that to really give the system teeth, every time you borrow money on that asset there should be a reporting requirement in place, with a discussion ensuing on the example of the Tappan Zee Bridge.

Chairman Wishnie moved the discussion along and back onto the presentation. Dr. Benjamin's next slide discussed Planning, specifically mentioning the timeframe for the process, its coordination and subsequent presentation. Mr. Geist asked about controls to ensure meeting the timetable after adoption of a plan. Dr. Benjamin stated that his question may be answered as they continued the presentation. He continued on, discussing the current system in Westchester County, noting that it seemed to be relatively more dominated by the Executive compared to the Legislative Branch.

He continued explaining the 5 year capital plan, emphasizing the critical elements for project selection of 1) Necessity 2) Priority 3) Location 4) Cost & 5) Method of Financing. It was noted that in Westchester a fiscal impact statement was required to be included in bond acts for each project, although Dr. Benjamin noted the process could be clarified. He then moved onto important additional criteria that needed to be met along with several of his own suggestions such as the plan being longer than 5 years, as well as factoring in resilience (emergency preparedness) and sustainability. He showed a map of

flooding areas and a chart of wastewater facilities noting that the County should be considering this, citing the recent major storms. A question was raised on some of the language, to which Dr. Benjamin stated there would be a definitions section. Additionally, he noted that amending the capital plan in Westchester was initiated by the County Executive, not the Board of Legislators; however this was not the case in other counties in New York, citing Suffolk County and describing some of the examples. The reasons for this in Suffolk stemmed from the massive scandals over some capital projects. He referenced the earlier discussion about laws being changed in response to the current situation, stating that the numerous controls in place and the detail of the plan in Suffolk County was in response to them. Additionally, there were very specific details on what happened to the unspent balance of funds on completed capital projects, as well as public hearing requirements that brought very public attention to each capital project.

Dr. Benjamin moved onto the year-to-year operation and sunset of capital projects, addressing Mr. Geist's earlier question about whether Planning was "real". If projects are continually pushed back or remain stuck in a certain phase then the process couldn't be considered "real" to which Chairman Wishnie commented that this occurs in Westchester. Dr. Benjamin stated that in his research he found it to be instructive to compare yearly 5 year plans citing the example of what happened in year two was distinct from what was projected to happen in year two. A potential remedy would be a sunset provision if a project had no funds expended on it. A discussion on this issue ensued, with some comments on the recent Stormwater Management Law and its impacts in Westchester on the process.

Dr. Benjamin talked about provisions for the annual capital budget along with its format and practices in reality, showing a page of the County Capital Budget that displays how the County meets the requirements of the Charter along with expenditures. He gave his recommendations as to what would help distinguish the capital budgets process and capital planning projects. With no further questions Dr. Benjamin moved onto his final presentation.

His final presentation came back to his prior discussion on the function of the County Clerk as well as what other counties had to say on the office. He first went over the state provisions establishing the office of County Clerk. He and Mr. Steinman engaged in a discussion on the process of making elective offices appointive, in which Mr. Steinman believed that changing the mode of selection did not affect the functions and powers of the office. He continued by presenting the definitions and requirements of the county clerk in other counties, such as a residency requirement, term limits, or ensuring no conflict of interest. He continued discussing the history of the office explaining how the criteria had changed in response to each political climate of the time.

He went on to describe the functions of the clerk in non-charter counties, which by and largely was administrative support, although some counties such as Monroe County had characteristics of both. In other upstate, rural counties, the clerk also served as the commissioner of jurors, management of records, primary public information officer, and an agent for the DMV in 51 counties. He continued discussing unique provisions to prevent abuses of power such as paying over fees in Tompkins County. In Westchester duties of the clerk that weren't specified in the charter were maintaining legal and land records, organization and support of court functions, along with issuance of various permits among others. A discussion ensued on changing the office to an appointive office, along with the potential consequences at state level. A question about the clarification of specified vs. non-specified duties of clerk was raised and answered.

Chairman Wishnie stated that they would be adjourning shortly and asked if there were any further questions or discussions members would like to rise. He briefly discussed the upcoming schedule and the course that the commission would be taking.

With no further items to discuss, Mr. Zuckerman made a motion to adjourn that was seconded by Mr. Meissner and the meeting of the Charter Revision Commission adjourned at 8:38 pm.