

**WESTCHESTER COUNTY CHARTER REVISION COMMISSION
MINUTES**

JUNE 6, 2013

Members in Attendance: Richard Wishnie, Alfred Gatta, Herman Geist, Steve Mayo, Anne McAndrews, Florence McCue, Meissner, Vincenza Restiano, Bertrand Sellier, Matthew Thomas, Ronald Volino, Paul Windels, Gary Zuckerman

Absent Members: Raymond Belair, Jeff Binder, Julie Killian, Derickson Lawrence, John Mattis, Paul David Menken, Jane Morgenstern, Guy Parisi

County Staff in Attendance: Melanie Montalto, Stacey Dolgin-Kmetz Justin Adin

Commission Counsel: Lester Steinman, Dr. Gerald Benjamin

MINUTES

With a quorum present, Chairman Wishnie called the meeting of the Charter Revision Commission to order at 6:11pm. The first item on the agenda was the approval of the minutes of May 9, 2013. With a motion by Mr. Zuckerman seconded by Mr. Gatta, the minutes were voted on and approved unanimously with a vote of 12-0.

Dr. Gerald Benjamin gave a PowerPoint presentation on Executive Succession and Filling Vacancies in Elective office. A copy of the presentation is available for review. Dr. Benjamin stated that the importance of the topic was that it allowed for a continuity of government and legitimacy of democratic process. Dr. Benjamin continued and stated that the large number of elected officials, as well as the probability that an individual could die any given year, added to the importance of this issue. He then explained the other ways that it would become necessary to fill a vacancy in office which are removal for cause and resignation. He gave an example of Ulster County which had no way to remove an official.

Dr. Benjamin stated that elections provide legitimacy and democracy while appointments are immediate, automatic, and allows for the continuity of a policy. He continued, stating that while terms of office are fixed the electoral cycle and timing of vacancies making it difficult to create contingencies. He continued, stating that vacancies are often timed to fulfill political ambitions, and filling vacancies can cause a cascade of vacancies in multiple departments. He gave an example that in New York City when filling a vacancy the legal choice was with the city council, the effective choices were with the delegation with the borough delegation and the party chairman of the borough.

Dr. Benjamin then discussed filling a vacancy in the executive office. He stated that most governments take a combined approach where either a designated successor or temporary appointee acts as the executive for a time before a permanent successor can be elected. Dr. Benjamin stated that New Jersey was cited as an example where the Governor died and the head of the NJ Senate acted temporarily as Governor because of a lack of a Lieutenant Governor. Dr. Benjamin then stated that NJ then reintroduced the position of Lieutenant Governor in order to maintain a separation of powers. Dr. Benjamin showed the current rules for succession in Westchester County. He explained that if there is less than 9 months remaining in the County Executive's term then the County Board specifies a department head or other qualified elector to serve in the office. If there is more than nine months remaining in the County Executive's term then there must be special elections no more than 90 days from the vacancy in order to choose a permanent replacement. Dr. Benjamin stated that in some counties the Deputy Executive or the Chair of the legislature fulfills a vacancy in the executive. During the interim the acting becomes executive and the individual chosen to fulfill the vacancy must be the same party.

Dr. Benjamin discussed fulfilling a vacancy in the Legislator. He stated that currently if there is more than 7 months remaining in the term than the office is filled by special election in the office's district no more than 90 days after vacancy. If it is within seven months of the vacancy then the Board can appoint an individual to serve in that capacity for the remainder, but that individual is removed if they desire to run for office. Mr. Zuckerman asked if an appointee to the Legislator is removed from the Legislature if he wishes to run for the same office. Ms. Dolgin-Kmetz clarified that they cannot in order to prevent unfair advantages. Dr. Benjamin stated that there is no worry of timing a vacancy because of the 7 month time period with elections in November. Dr. Benjamin then presented alternative processes from several other County Charters.

Dr. Benjamin discussed the temporary inability of the executive. He stated that this process is begun when either the Executive or another determines that he is unable to fulfill the roles of the office. The individual acting as the executive cannot fire or hire anyone. Mr. Thomas asked about what happens if the Executive is incapacitated and their terms runs out and they are nominated by their party run for the office again. Dr. Benjamin stated that he has no answer for the question currently. Dr. Benjamin then begins discussing Executive Absence, noting that while it would be difficult for the Executive to be out of touch in modern times the provision could be used for mischief. Mr. Geist pointed out there is currently a list of people who could act as the Executive if the Executive is absence. At Mr. Zuckerman weighed in that there could be a provision specifying time allotment. At Mr. Thomas it is brought up that if there is an accident that occurs, such as at a nuclear plant, then someone must be prepared to take control.

Dr. Benjamin stated that the Deputy Executive or an individual appointed by the Executive shall act as the Acting County Executive. In this case the Acting County Executive shall have all powers of the Executive except the power of removal. Mr. Geist stated that previously there was no Deputy Executive. Dr. Benjamin then stated that if the County Executive fails to appoint an individual to designate a successor then the County Legislators may appoint a department or executive head. He notes that in Rockland should the Legislators fail to appoint an individual than a special election is to be held. Mr. Geist said that at one point the Party head would choose the individual to serve in the Executive capacity. Dr. Benjamin counters, stating that that process was what New York City was trying to avoid by having an anti-party bias.

Dr. Benjamin stated that in Ulster County the Executive can only choose from a list confirmed by the Legislature, or that they must be the same party as the Executive. He stated that Westchester currently requires that the Legislature approve of such a list of succession. Dr. Benjamin then uses the appointment of Anne Rice as the National Security Advisor as an example of an appointee who could not be part of the chain of succession. He then stated that Ulster County is the only county where the Legislature can claim inability of the Executive, as long as it is verified by a competent medical authority. Mr. Sellier asked if the competence of the executive has been questioned, which Dr. Benjamin confirms it has not.

Mr. Geist asked who the head of the model charter, which Dr. Benjamin stated he will look in on. Dr. Benjamin sums up the issues as the degree of which they want to rely upon appointments or elections to ensure continuity of government, and the time period to determine if a special election is warranted. Mr. Mayo asked if an alternate list could be created of a list of non-office holding individuals to prevent a cascade of vacancies. Dr. Benjamin stated that there is no insurance they will accept positions, but an alternative would be special elections for more positions although it could cause too many elections. Mr. Sellier asked Dr. Benjamin if he feels inability is an important thing to consider, to which Dr. Benjamin affirms as an important issue to at least discuss. Mr. Thomas asked if there is recall legislation in the county. Dr. Benjamin stated there is no recall provisions in NYS but the county could include them in a revised charter. Dr. Benjamin gives an example of California of how recalls can be abused by ideological lines so legislation would have to be mindful. Mr. Thomas asked if a deliberative body would have to be created in order to determine inability. Dr. Benjamin stated that there would be several reason with which one might want to remove an individual.

Dr. Gerald Benjamin gave a PowerPoint presentation on Intergovernmental Relations. A copy of the presentation is available for review. Dr. Benjamin stated that there are provisions in most charters that allow local governments to cooperate, and thus encourage cooperation. The committee then discussed the intergovernmental processes

within Westchester, and inter-municipal relations between counties. Dr. Benjamin uses a Suffolk provision of Suffolk County which allows interaction with Nassau County, and stated that Nassau would have to have a reciprocal provision as well under State law.

Dr. Benjamin used Schenectady County as an example of how a charter change cannot take away powers from other local governments. Dr. Benjamin then explained that in Ulster County there is an Intergovernmental Collaboration Council that is charter based. He stated that this is a failed provision because it depends too much on the Executive who claims to create collaboration in other ways. Mr. Steinman pointed out that when it comes to intergovernmental cooperation all of the local governments, including school districts, are included in the process. It is discussed that it is important to include all levels of government in the collaborative process. Dr. Benjamin stated how school districts were created to depoliticize schooling, and how collaboration would have speed up changes. The committee discussed the various ways that collaboration could benefit schools and necessary services, as well as the various difficulties of dividing school districts and local governments. Dr. Benjamin points out that BOCES is an important example of collaboration with which services are better rendered across districts.

Dr. Benjamin discussed types of non-charter based ways of intergovernmental collaboration. He then discussed Regional Planning Councils which are created by local governments, act in an advisory capacity, and have flexibility on authority for policy.

Dr. Benjamin used the Westchester Municipal Officials Association as an organization that is related to the charter. Mr. Geist brought up the Metropolitan Regional Council as an example of another such organization. The committee then discussed a council of governments which is just really meeting of different local governments which is an informal council. Mr. Zuckerman asked if Yonkers has ever attended the Municipal Officials Association. Ms. Restiano stated that yes Yonkers has attended their meetings. Mr. Steinman stated that the various cities in Westchester have a variable participation within the Municipal Officials Association depending on leadership.

Ms. Restiano pointed out that if the Association was a formal organization then it would promote participation. Dr. Benjamin suggested that the county not set the agenda but the participants had equal standing on setting the agenda. He continues with an example of the county's collaboration with Kingston for sales tax as well as the civil service efficiency, and how a formal intergovernmental venue could help better deal with such concerns.

Mr. Steinman pointed out that the setting of the Municipal Officials Association's schedules switches between the County Legislature, the County Executive, and the Local Governments. Dr. Benjamin presents several different councils of governments from other counties and each of their purpose and membership. Chairman Wishnie asked if it

was possible to mandate local governments to participate in a council. Dr. Benjamin responded that you could not mandate participation but instead try to create incentives in order to promote participation. Ms. Restiano suggested that the council should be flexible on local participation to encourage local governments to come when they see benefit. Dr. Benjamin used the Northern Westchester Energy Action Coalition and Southern Westchester Energy Action Coalition as an organization that provide benefits and thus encourages their participation even with a monetary commitment. Mr. Steinman made the point that the structure of such organizations was not able to handle greater authority and suggested creating a public authority to fulfill the same roles.

Mr. Wishnie discussed the Town Supervisors Association. Dr. Benjamin stated that making such associations charter based would open it up to additional resources Ms. Restiano stated suggested making an association like a bid like in Yonkers. Ms. McAndrews discussed whether basing organizations around a unifying cause would be beneficial to attracting interests. The Commission took a brief recess and then called back to order.

Dr. Gerald Benjamin gave a PowerPoint presentation on Ethics. A copy of the presentation is available for review. Dr. Benjamin noted that state law requires localities to adopt a code of ethics. Mr. Steinman noted that it was guideline for conduct and not really for establishing criminality. Mr. Steinman clarified that a criminal violation would be prosecuted by the District Attorney while a violation of the code of ethics would be prosecuted by the Board of Ethics.

Dr. Benjamin cited Mark Davies and explained that the point of a code of ethics, specifically to guide honest officials. Davies notes the three keys elements of ethics are precepts, rules, and administration. He further noted that it required an ethics code, disclosures, and an Independent Committee to interpret and enforce. He recommends that a committee should have a size of 5 to prevent factions and missed quorums, have an appointing authority, and have final authority over all matters of ethics. He explains the four duties that such a committee would have. Dr. Benjamin then noted the make-ups of other ethic committees of other counties. He then cited the appointing authorities of other counties. Dr. Benjamin then reviewed the Model County Charter for a Board of Ethics. Chairman Wishnie asked if they have subpoena power to which Dr. Benjamin responded in the affirmative. Mr. Steinman noted that state law requires a code of ethics but not a Board of Ethics, nor does a county board of ethics automatically supersede that of local municipalities. Dr. Benjamin then reviewed the current Westchester County Charter rules for the Board of Ethics and its powers. Dr. Benjamin clarified that the Board of Legislators determines the Code while the Board of Ethics delivers advice on code creation. Ms. Dolgin-Kmetz gave an example was given of Board of Ethics transferring information to the District Attorney. Mr. Thomas asked and Mr. Steinman explained

where the line was drawn between Human Resources and the Board of Ethics, and which issues would go to which group. Dr. Benjamin said that the Human Resources Department isn't the formal authority on governing actions. Mr. Steinman stated that Ethics governs external influences on the job. Mr. Thomas asked about the fines for ethics violations. The Commission noted that the Board has the ability to both fine and remove offenders from office, and that there is the capacity for legal appeals. Dr. Benjamin then reviews the additional powers that the Board of Ethics possesses. Dr. Benjamin then explains the purpose for an independent consultant.

Dr. Benjamin then affirms that he is reviewing budgeting. Dr. Benjamin stated that he has found no examples of the county clerk being appointed, and that he will do further research.

At the suggestion of Mr. Windels, Mr. Wishnie stated that we will invite District Attorney Janet DiFiore in to discuss the JCOPE due to her experience as the chair.

Mr. Zuckerman raised three issues. The first was increasing the term for the legislature from two to four years. The second issue was a reduction in the number of legislators and the third is impartial redistricting. Ms. Restiano stated that she is not going to support anything that she feels will not be passed by the legislature.

Mr. Windels stated that they should also hear from someone on the Board of Ethics, or from one of the local government Ethic Commissions. Chairman Wishnie stated that we will find out who the members are and when they last met.

Chairman Wishnie noted that they were soon moving into the next phases of preparation. He stated that the Commission will meet to make decisions on items for the final report and then a draft will be created. He said after the draft is complete a public hearing will be held, and then the final report will be issued.

Chairman Wishnie stated that it will be hard to have full Commission meetings over the summer, but the Steering Committee will probably meet.

With a motion by Mr. Zuckerman seconded by Ms. McCue the Charter Revision Commission adjourned at 8:05 pm.