



County of Lackawanna

Lackawanna County
Administration Building
200 Adams Avenue
Scranton, Pennsylvania
18503

Meeting Minutes

Board of Commissioners

Wednesday, January 13, 2016

10:00 AM

Commissioner's Conference Room

Call to Order

The Meeting was called to order at 10:02am.

Present 3 - Patrick M. O'Malley, Jerry Notarianni and Lauren A. Cummings

[16-0031](#)

Commissioner Jerry Notarianni requested that the letter to his fellow Board members be entered into the record.

Attachments: [JN-1-13-2016 Meeting Objection](#)

Attorney Paul Walker: I want to address the Board before it starts, as Commissioner Notarianni has challenged the legality of the meeting, we have a couple issues with the meeting and they are outlined in the letter that was sent to the Commissioners'.

Solicitor John Brazil: there is audience participation-a roll call is made Mr. Walker, and I believe that would be the appreciate time.

Commissioner Patrick O'Malley: on agenda items only, if anybody would like to speak.

Attorney Paul Walker: and I am not going to challenge 'Robert's Rules of Order', but there were challenges to the legality of the meeting, so if we start the roll call, or anything else, we will have waived our challenge, we are not going to do that. So we are going to address the legality of the meeting before we do anything. We have information that a solicitor was appointed on 12/29/2015, when this Board reorganized no solicitor was appointed. By Code and the Home Rule Charter, the Commissioners are supposed to appoint a solicitor who acts as attorney for the County. Mr. Notarianni has not participated in that, when there was a reorganization that it should've been done. We have information that that appointment may have been done incorrectly, we are not satisfied with that, as we think the County exposes itself by having a meeting where there is no representation, appropriate representation, so that is the basis on which I am challenging this meeting. We also have a Chief Clerk who made have been appointed in violation the Sunshine Law.

Solicitor John Brazil: (inaudible)...there is absolutely no indication that there is a challenge to the right of the Commissioners to sit, this is a Commissioners meeting, so those items can be addressed under audience participation, but there has absolutely been no indication that these Commissioners' have not been duly elected to office, my suggestion that it be done under audience participation.

Attorney Paul Walker: well my problem with that, is that if you conduct this meeting illegally, that it is subject to challenge, these things have to be addressed.

Solicitor Don Frederickson: the Commissioners have been duly elected and sworn in, so to say that it is an illegal meeting, I don't understand how that could be, even if there was a question to a solicitors appointment, this is still a Commissioners' meeting not a solicitors meeting. You have the right to act as Commissioners and conduct county business.

Commissioner Patrick O'Malley: we will discuss this under 'Commissioners' New Business'

Attorney Paul Walker: you're asking me to sit down-I just want this on the record what you are asking me to do.

Reading and Approval of Minutes

A motion was made by Commissioner Patrick O'Malley, seconded by Commissioner Lauren Cummings, to Dispense with the Reading and Approve as Prepared. The motion carried by the following vote.

Aye: 2 - Patrick O'Malley and Lauren Cummings

No response: 1 - Jerry Notarianni

Opportunity for the Public to Address the Board (Agenda Items Only)

Marie Schumacher, Scranton: Gypsy Moth spraying- locations?

Proclamation Presentation

[16-0012](#)

Presentation of a "Good Works in Lackawanna County" Certificate of Recognition to Bethel AME Church Shelter.

Resolutions

[16-0011](#)

Approving Current Payables

Attachments: [3H504HBU](#)

[3H504HBT](#)

A motion was made by Commissioner Patrick O'Malley, seconded by Commissioner Lauren Cummings, that this Resolution be Adopted. The motion carried by the following vote.

Aye: 2 - Patrick O'Malley and Lauren Cummings

No response: 1 - Jerry Notarianni

[16-0005](#)

Entering into an Engagement Letter for Audit Services

Attachments: [Baker Tilly Audit](#)

A motion was made by Commissioner Patrick O'Malley, seconded by Commissioner Lauren Cummings, that this Resolution be Adopted. The motion carried by the following vote.

Aye: 2 - Patrick O'Malley and Lauren Cummings

No response: 1 - Jerry Notarianni

[16-0006](#)

Entering into a Grant Agreement with PEMA

Attachments: [HMRF Grant Agreement](#)

A motion was made by Commissioner Patrick O'Malley, seconded by Commissioner Lauren Cummings, that this Resolution be Adopted. The motion carried by the following vote.

Aye: 2 - Patrick O'Malley and Lauren Cummings

No response: 1 - Jerry Notarianni

[16-0008](#)

Approving a Professional Services Contract

Attachments: [2016 Calvey Professional Services Agreement](#)

A motion was made by Commissioner Patrick O'Malley, seconded by Commissioner Lauren Cummings, that this Resolution be Adopted. The motion carried by the following vote.

Aye: 2 - Patrick O'Malley and Lauren Cummings

No response: 1 - Jerry Notarianni

[16-0009](#)

Awarding an Arts & Culture Grant

Attachments: [2016 Dickson City Municipal Grant](#)
[Municipal Grant](#)

A motion was made by Commissioner Patrick O'Malley, seconded by Commissioner Lauren Cummings, that this Resolution be Adopted. The motion carried by the following vote.

Aye: 2 - Patrick O'Malley and Lauren Cummings

No response: 1 - Jerry Notarianni

[16-0010](#)

Awarding Arts & Culture Anchor Grants

Attachments: [2016 Anchor Institution Grants](#)
[Anchor Inst.](#)

A motion was made by Commissioner Patrick O'Malley, seconded by Commissioner Lauren Cummings, that this Resolution be Adopted. The motion carried by the following vote.

Aye: 2 - Patrick O'Malley and Laureen Cummings

No response: 1 - Jerry Notarianni

[16-0015](#)

Awarding the Arts & Culture Program Stream and Project Grants

Attachments: [ProgramProject Grant](#)
[2016 Program Stream Grants](#)
[2016 Project Grant Awards](#)

A motion was made by Commissioner Patrick O'Malley, seconded by Commissioner Laureen Cummings, that this Resolution be Adopted. The motion carried by the following vote.

Aye: 2 - Patrick O'Malley and Laureen Cummings

No response: 1 - Jerry Notarianni

[16-0013](#)

Entering into a Cooperative Agreement

Attachments: [2016 Gypsy Moth Cooperative Agreement](#)

A motion was made by Commissioner Patrick O'Malley, seconded by Commissioner Laureen Cummings, that this Resolution be Adopted. The motion carried by the following vote.

Aye: 2 - Patrick O'Malley and Laureen Cummings

No response: 1 - Jerry Notarianni

Opportunity for the Public to Address the Board

Stanley Hale, Scranton: Thank you for the opportunity to address an important issue. Plan and execute County re-assessment in five years. Past and present Commissioners have been sympathetic, but said cannot afford. One past Commissioner has said we should wait for the Commonwealth to address the issue.

Commissioner Laureen Cummings: Unknown to us, there was an assessment done, Tax Assessor is looking into it to see if anything was implemented.

Thom Welby, State Representative Marty Flynn: State passed some time ago, can only be implemented by the County. Tax issues, seniors and repository list; based on criteria would allow for the senior citizens, stay in their homes, and should they sell their home or pass away, then back taxes would be paid with interest, no loss to the taxing bodies. 65 yrs old or over, household income up to \$35,000.00 tax claim could be deferred up to three months or until the title is transferred, a special tax sale could be held, all that money would be paid back eventually.

Martina Sodine, Scranton Public Library: Overdrive-online service with your

valid library card- last year over 40,000 items were checked out with it- online service, download audio books, eBooks, anything they are looking for- a great service. If there is something that you want you can request what you need.

Commissioner Laureen Cummings: Martina, I see you all the time on ECTV, you are always positive, have a positive outlook, thank you. I appreciate your work.

Commissioner Patrick O'Malley: thank you for being at 90% of our meetings!

Charles Brewer, Greenfield Township: This year is Greenfield's Bi-Centennial, and I was wondering if the Commissioners would consider having an off-site meeting at our fire hall- it would be an honor- I could make the arrangements on behalf of the supervisors with the fire hall.

Commissioner Patrick O'Malley: I have been to your fire hall numerous times-Traci, want to put that down as one of the four locations of evening meeting.

Charles Brewer, Greenfield Township: secondly, would like to commend and applaud for appointing qualified individuals and looking beyond political appointees. I have talked to many individuals-and they are very pleased with the way this Commission has done so far-look beyond politics, people are happy that you are representing them.

Marie Schumacher, Scranton: thank you to the library representatives. Re-assessment-desperately need reassessment- don't agree with spending 8 million, or any amount. I suggest you have one of your staff look into what Fairfax County has done-homes are reassessed annually-manage to provide reductions to the elderly, veterans and disabled people. How often are you meeting with our state legislators, and letting them know what we need from them- pensions at the top of the list after reassessment. Courthouse Square input-courthouse summary of recommendation; misquote on monument.

Matt Pendrak: condolences to Mrs. McNulty and Mr. Notarianni. I was wondering how the Commissioner felt about the proposed landfill expansion? Can someone elaborate on what Attorney Paul Walker was referring to?

Commissioner Patrick O'Malley: we will be able to address these questions at the end of the meeting, during Commissioners' Other Business.

Matt Pendrak: "Dear Mr. O'Malley- what happened to Jerry is a terrible disgrace, don't you recall the actual vote tally? You hit Jerry hard, with a coup de grace (sic)—coup de graw if you please- I'm Pat O'Malley, just say cheese."

Attorney Paul Walker: I understand you will address other things on other business, under the County Code and Home Rule Charter, the Commissioners' are supposed to get together to appoint a County Solicitor, the Solicitor thereafter is supposed to appoint subordinate solicitors, one is assigned to the minority Commissioner. There is no definition of a Minority Solicitor in the Home Rule Charter or County Code.

Commissioner Laureen Cummings: I can stop you there, and do a back and forth on that subject.

Commissioner Patrick O'Malley: can address during Commissioners' Other Business, keep going Paul.

Attorney Paul Walker: there is no definition of in either the Code or Home Rule Charter, definition of Majority or Minority. I read in the paper, and therefore must be true, that a Solicitor was appointed and that was Mr. Brazil and Mr. Frederickson was appointed for Litigation purposes. I also read Mr. Cerra was the Minority Solicitor-a man I have the utmost respect-if that is true, there is no meeting at which this was decided. The Commissioners can only act by Ordinances, Motions, and Resolutions; you have motions and resolutions on the agenda today-as far as I know, Mr. Notarianni was not invited to any meeting at which the appointments were made. Mr. Cerra isn't an appointment that has to be made at a meeting, as it is the prerogative of the Minority Commissioner. If Mr. Brazil was appointed by Mr. O'Malley and Miss. Cummings, then Mr. Notarianni for those purposes is a minority commissioner, and has the right to appoint a minority solicitor. And that is the role I will be acting if he makes such an appointment. We have a document that indicates that Mr. Brazil was appointed on 12/29/2015 as the Solicitor-assuming for the majority. Note on there- there is a start date of 12/29/15, initialed by Brian Loughney-two things about that: it is signed by Mr. Staback-as of 1/4/2016, he does not have any authority to make any appointments. The start date was changed and handwritten to that date. Mr. Staback who was a lame duck, and as such, does not have the authority to bind the incoming commissioners-it is out contention that these appointments have to be made at a meeting. A meeting duly advertised, which indicates that that is the purpose of the meeting, in some manner. Mr. Notarianni has a right to participate in the selection, and in the selection of a Chief Clerk, another man I have also have a lot of confidence in. Nonetheless, there was no public input, no public participation-these are public officials- which should be done at a meeting, pursuant to the Sunshine Law, and there should be notice of that meeting and Mr. Notarianni should be a participant. If you have appointed Mr. Brazil, by you Mr. O'Malley and Miss. Cummings, then it is our contention that Mr. Notarianni is the minority commissioner, and that Mr. Cerra cannot act as minority solicitor, if our requests are not met, we are going to file suit.

CJ Paisley: I would like to bring to your attention that at the County's Parks there has been a ban on smoking and people are still smoking at the County Parks.

Glen Cashuric, Olyphant: Commissioner Cummings- your move from watch dog to alpha dog, are you going to keep your campaign promises-the tax cut, the 11 million dollar surplus you were going to give back to the taxpayers in some capacity, and the elimination of wasteful departments-do you still intend to follow through on what you promised now that you are majority? Have you looked at it yet? I agree completely on the re-assessment-question of what happens when it does occur- it's a fixed income problem- expanding tax credits, rent rebate, it will be a disaster, prepare a year in advance, tax and appeals process in place. Thank you.

Thom Welby, State Representative Marty Flynn: here on behalf of First Friday-monomies received form the County, etc- wonderful opportunity for the public to attend these once a month opportunities downtown for First Friday. really appreciate the support.

Commissioners' Other Business

Commissioner Jerry Notarianni: again, this is an illegal meeting- I don't have a solicitor, a duly appointed one- is something I did not participate in because of that. I do plan on addressing it as per my letter, available to anyone. Thank you and I will continue to work very hard for the county in an open manner, going forward.

Commissioner Laureen Cummings: I appreciate all your input and questions. Reassessment-I have been working on it with the Dep. Director of our Tax Assessors office, he is researching it, and so I have a better answer for everyone. My opinion is that initially we can't do that until we lower our taxes- and yes I still plan on doing that- all three commissioners are on board with cutting, looking at the budget. Concern of the senior citizens, and their ability to pay their taxes. (Addresses a few people individually who spoke). I am not sure what your condolences are, I'm not sure why there was condolences to Evie Rafalko McNulty, with the same complaint that is being issued, I was never included in the hire for Evie- I have no idea who or where she got the impression she was hired, why her stuff was in this building-maybe you want to address that with her. As far as Mr. Notarianni not being included in a meeting, prior to being sworn in, I wasn't invited to anything like that wither. Definition-I am the only republican on this Board, whoever gets the most votes-there are two votes given-whoever gets the most is in the majority, I am sorry you don't understand that. Lastly I would like to thank Commissioner O'Malley for actually including people in the process, and people that generally aren't on the same side as him. Word of advice- just because he is such a kind hearted soul, doesn't make him unintelligent-you should appreciate as citizens, all the hard work he has done.

Commissioner Patrick O'Malley: I have been working for the public for over 16 years- be it with the City of Scranton, or the County, on behalf of the 214,000 citizens, I am sorry I am so sick, I came in today because I want to make sure we had a good first meeting and had all of our agenda items voted on. This is about a progressive government, working and moving forward. The last four years, have done a lot of good work- now we are going forward, 2016-2020, this is about working on behalf of the people every day. Anyone who knows me, knows of me, knows that I am very truthful, and what I do, I do on behalf of the people of the county. My family has been giving back to the community the past 35 years-we really do care about the citizens. Today is the day that everything begins, agenda and votes went well. This is about everyone working together. I am not in the majority with Laureen- we are here working on the behalf of the citizens of the county. Everyone up here is working for the people, commissioner together- that's the way you move the county forward. When I was here as the minority I worked with the majority- because they were a lot of good opportunities happen in Lackawanna County. Audits done on time, bond rating back, baseball stayed-which we can't even gauge how much money that brings in for the county. I would like to have another great four years. It's about everybody here- working on behalf of the community. I am here to work with my fellow commissioners. I would like to move forward, and ask our council, was this a legal meeting?

Solicitor John Brazil: first of all, to get the right perspective, I would ask Attorney Frederickson, as he was the council in 2015, and I will follow up.

Solicitor Don Frederickson: In PA, the office of County Commissioner is a little different; most people are used to a separate legislative and executive (examples given). Under the County Code, you are the executive and legislative authority are wrapped into one- you function both as executive and legislative departments of government. Under our Home Rule Charter, it states that the Board of Commissioners is to appoint a County Solicitor. Now we have gone back and checked the records- never has there been a vote on a solicitor at a meeting. The appointment is made under the executive authority Board of Comm. It is done under the authorization to hire. I think it was December 29, 2015 the Board of Commissioners made the appointment to hire John Brazil as the County Solicitor- they were still Commissioners and fully empowered to make the appointment-all solicitors serve at the behest of the Commissioners- you can terminate us at any time you feel like it-however you continue in that role until you are replaced or resign. Now Mr. Brazil was appointed in that role in 2015 as County Solicitor- nothing illegal about that, its past practice, it's been done for the past 40 years. For instance, Joe O'Brien was solicitor for 20 years for Comm. Corcoran and Alberigi; he wasn't re-appointed every four years. The solicitor before me, John O'Brien, was solicitor until his resignation in March 2012. So there is nothing illegal about- this is a Board of Commissioners meeting- not a board of solicitors meeting. You have all been elected, and duly sworn in, you are official the Commissioners of Lackawanna County, and you are carrying out your legislative duty.

Solicitor John Brazil: There is some confusion between the dichotomies between the executive a legislation branch. Hiring people is not a legislative act- has never been-unless your chart says "with the approval of" it is an executive act of the Commissioners. Not only the solicitor and chief clerk, everyone who is hired, every employee, is hired the same way. Issue was raised as to whether there was a violation of the Sunshine Law- and the answer is absolutely not. If you look at the Sunshine law, there is an exception for administrative decisions. That provision was put in there and championed by CCAP, and it was done for the purpose of the dichotomies between the legislation and executive branch, frankly, the actions done in this manner were proper and consistent with the years of history.

Commissioner Patrick O'Malley: so what counsel is saying is that as long as you have two signatures- on an approval to hire-that will suffice. (Comm. O'Malley brought forth documentation from the past two administrations, on hiring of Solicitors, Chief of Staff and Directors) this is how the county government has been run- at least a decade. So our legal department- was this a legally conducted meeting?

Commissioner Jerry Notarianni: I totally disagree with not. I am not represented by an attorney-Atty Brazil is your attorney. Atty Cerra is Laureen attorney. It is my right to have legal representation and I am going to go forward in the court system to see if this can be reminded. I am the minority.

Commissioner Laureen Cummings: Mr. Brazil, you represent all of us?

John Brazil: I represent the commission-all three commissioners. You have a minority solicitor as well.

Commissioner Laureen Cummings: I have a minority because I was elected with the least amount of votes, correct? And according to the PA Dept,

GOvonnors Office, is it accurate.

John Brazil: yes- you can't base minority on how you go on a vote. Because quite frankly, it will always be changing.

Commissioner Laureen Cummings: Titles, Majority/Minority Member "Under Pennsylvania's county structure, each party nominates two individuals to the office of commissioner, the electorate votes for two, and the top three vote-getters form the three-member board of commissioners. This mechanism assures that each county has minority party representation on its board, creating a de facto check-and-balance within the board. This mechanism can sometimes engender a setting that poses philosophical and political challenges. The manner in which commissioners express their views and vote on issues can sometimes reflect the philosophy of their political party. This does not mean that the board cannot have unanimous decisions and in fact, most votes are unanimous. Minority members are often pressured by their party to act in opposition to the action recommended by majority members, but this is not required or intended as their role. Members of both parties are encouraged to voice their opinions in a productive, cooperative manner for the benefit of the county. A respectful relationship results in the ability of individual members of the board to adequately represent their constituents and to achieve reasonable success in individual agendas. It is not uncommon for boards to experience some conflict and division in the course of their operations as members seek to promote their programs of interest. When boards encounter such conflict, it is prudent for the commissioners to find a way to voice their viewpoints and address any differences with other board members in a productive manner."

Commissioner Patrick O'Malley: and to CJ- we will talk to the Director of Parks, make sure that there is no one smoking ok? Thanks for coming in.

Adjournment

A motion was made by Commissioner Patrick O'Malley, seconded by Commissioner Laureen Cummings, that this be Adjourned at 11:12am. The motion carried by the following vote.

Aye: 2 - Patrick O'Malley and Laureen Cummings

No response: 1 - Jerry Notarianni