

RULES, ENACTMENTS & INTERGOVERNMENTAL RELATIONS COMMITTEE
Held In Room 318
PUTNAM COUNTY OFFICE BUILDING
CARMEL, NEW YORK 10512

Members: Chairman Sullivan and Legislators Addonizio & Albano

Wednesday

6:30pm

February 15, 2017

The meeting was called to order at 6:30pm by Chairman Sullivan who requested Legislator Albano lead in the Pledge of Allegiance. Upon roll call, Legislators Addonizio & Albano and Chairman Sullivan were present.

Item #3 - Approval of Minutes – December 19, 2016

The minutes were approved as submitted.

Item #4 - Approval/ Putnam Arts Council Grants for 2017/ Executive Director Joyce Picone

Executive Director of the Putnam Arts Council (PAC) Joyce Picone stated the “Arts Link” program is an umbrella program that encompasses funding received from both the County and the State. She stated for 2017, the Putnam Arts Council received \$11,000 in County funding and \$28,000 from the State, making a total of \$39,000 to fund art programs throughout the County. She stated this year there are 23 awardees of funding. She stated the list provided to the Committee includes the programs that the Grant Panel recommended to receive funding that originated from the County. She stated some programs will be receiving funds from both the County and the State. She stated the process for an art organization to apply for funding through the PAC is very competitive. She stated over \$68,000 was requested through the application process. She stated there are guidelines to follow for each applicant. She stated the Putnam Arts Council can provide an applicant with a maximum of 70% of their total cost; the applicant must be a non-profit; and funding must be utilized for a project taking place in 2017. She stated the PAC closely monitors how the money is being spent once it is awarded to an organization. She stated many of the organizations would not be able to sustain their program without this funding. She stated the Panel reviews multiple aspects of each applicant including the artistic merit of the project and artist and the type of audience the project will serve. She stated since these are taxpayer dollars, they choose projects that will serve the broadest audiences in the most places. She stated they also look for a variety of disciplines such as theater, music, visual art, etc. She stated the projects are very successful and can serve up to thousands of people. She stated for every \$1.00 spent on the arts, it is estimated that \$7.00 - \$8.00 are indirectly raised; therefore the arts are also an economic development tool. She stated this is money very well spent. She stated a full list of funding for all 23 projects, which would include the funding coming from the State will be posted on their website soon.

Legislator Addonizio questioned if the Patterson Library Summer Theater Experience was funded in 2016.

Ms. Picone stated that is a new program. She stated the list is not the same year to year. She also stated a project may receive all State money, and therefore would not appear on the list submitted to the Legislature. She stated they attempt to stagger where the money comes from.

Legislator Addonizio stated Arts on the Lake has changed their project from previous years, now having a concert every Friday.

Legislator Albano requested clarification on the total grant amount of \$39,000 to be dispersed by the PAC.

Ms. Picone stated \$28,000 was received from the State. She stated some projects will be receiving State money in addition to County money, which may make their total more than what is shown on the list. She stated she could send a full overview if desired. She stated this funding is essential for these organizations.

Chairman Sullivan stated it is nice to see that the funding is being spread in many towns throughout the County.

Ms. Picone stated that is a goal of the PAC.

Legislator LoBue thanked Ms. Picone and stated this is a model program. She stated the allocation of the funds is very impressive, the oversight of this funding is great, and the variation from year to year is important. She added that the arts are absolutely a component of tourism.

Ms. Picone thanked Legislator LoBue. She stated arts and culture are a driving force of economic development in every community and are an anchor for many grant programs as well.

Legislator LoBue stated it is her hope that the Legislature favors an increase of funding to the PAC during the budget review this year.

Legislator Addonizio questioned if more funding is available from the State.

Ms. Picone stated they did request more funding from the State and in 2017 the State provided \$400 more than in 2016. She stated the PAC has a three (3) year contract with the State, so the \$28,000 is guaranteed during that time. She stated the State provides some funding to manage the program as well. She stated the \$11,000 that was received from the County goes directly to art programs and is not kept by the PAC.

Legislator Gouldman agreed with Legislator LoBue. He stated this is a wonderful program.

Legislator Albano made a motion to pre-file the necessary resolution; Seconded by Legislator Addonizio. All in favor.

**Item #5 - Discussion/ Proposed Amendment of County Code Section 90-7(c)
Denial of Access to Records/ District Attorney Tendy**

District Attorney Robert Tendy stated he believes there was an oversight when this law was written. He stated in Putnam County, appeals from a denial of access to records under the FOIL (Freedom of Information Law) law shall go to the County Executive. He stated under most circumstances this makes sense because the County Executive has direct oversight over many of the departments in the County. He stated however, the County law includes an exception for the Sheriff's Department under Sections 90-11 and 90-16. He stated under these sections, it states that the Sheriff's Department and the Sheriff make the decision as to what is released under a FOIL request and what is not. He stated the only remedy to a denial of the requested information is for the person who requested the information to file an Article 78 petition in the Supreme Court to compel production of the documents. He stated for law enforcement, this procedure is virtually identical in every county in New York State. He stated the reason law enforcement agencies such as a Sheriff's Department or District Attorney's Office are often exempt from this law is because most FOIL requests to those agencies are for documents that cannot be viewed by anyone other than the District Attorney's Office and the Courts. He stated if someone were to appeal a FOIL request denial from the District Attorney's Office and file an Article 78, a judge would review the documents and make a decision on whether or not they can be given. He stated for example, documents related to an ongoing investigation cannot be reviewed by anyone other than the appropriate law enforcement agency, be it the District Attorney's Office or the Sheriff's Department. He stated it would be illegal for the County Executive to view such documents. He stated similarly, juvenile, sealed, or closed cases are not permitted to be viewed by anyone outside of that particular legal department. He stated due to what he believes to be an oversight when the law was written, Putnam County does not have a separate procedure for FOIL requests to the District Attorney's Office. He stated every other county in the State has a procedure where the particular District Attorney's Office has a Records or FOIL Officer who makes an initial determination as to whether or not the FOIL request should be granted. He stated in this procedure, if a request is denied, the appeal would go to a higher up appellate officer in that Office, or directly to the District Attorney. He stated if the District Attorney denies that appeal, then the only legal recourse for the individual seeking the information is to file an Article 78 with the proper court of jurisdiction. He stated the County Executive does not have jurisdiction to hear the appeal and the law would be violated if the documents were to be viewed by the person in that position. He stated if this is not changed, it could put the County Executive and the District Attorney in an untenable situation. He stated he has provided a copy of the law that is in place in Rockland County, which is a simple representation of this law.

Legislator LoBue questioned how long the current law has been in place.

Legislative Representative Senior Deputy County Attorney for Risk and Compliance Adrienne Lotto stated the overall section was written in 1981 and the particular section regarding the appeal was written in 2010.

District Attorney Tendy stated in speaking with the staff in the District Attorney's Office who had dealt with FOIL requests even before his arrival, he learned that appeals would go to an Appellate Officer and then to the Chief Assistant. He stated he does not believe there is any recent record of the appeal going before the County Executive or Legislature.

Legislator LoBue stated a FOIL request goes to the FOIL Officer of the County; County Clerk Michael Bartolotti. She stated it then goes to the Law Department and they make the final decision.

District Attorney Tendy stated the Law Department does not make the final decision.

Legislator Albano clarified that this discussion is pertaining to only the District Attorney's Office.

Legislator LoBue stated the law pertaining to the District Attorney's Office has been in effect since 1981. She states she does not see a reason to change the law. She stated it is her understanding that there was a FOIL request for a service contract.

District Attorney Tendy stated the Journal News requested a contract and report from a confidentially retained agency involving an ongoing criminal investigation.

Legislator LoBue stated it is her understanding that only the contract was requested. She stated according to the New York State Open Government Law it is a public document.

District Attorney Tendy stated that is incorrect.

Legislator LoBue stated she would get a copy of the request. She stated this requested amendment must be thoroughly vetted. She stated this law has been in effect since 1981 and as far as she is aware there have been no issues with it. She stated this issue should be handled very carefully.

District Attorney Tendy stated as an officer of the Court, he would have to file an Article 78 against the County if records from the District Attorney's office are requested that other parties are not entitled to see. He stated every county in the Country has this language in their law. He stated it must have been an oversight in Putnam County when the law was written. He stated to continue with a law that is illegal is foolish.

Legislator Albano stated both the Sheriff's Department and the District Attorney's Office deal with sensitive information and handle FOIL requests differently than the other departments within the County. He stated this matter needs to be looked into more.

Legislator Gouldman questioned if Senior Deputy County Attorney for Risk & Compliance Lotto was aware if every county in New York State or in the Country had this law.

Legislative Representative Senior Deputy County Attorney for Risk & Compliance Lotto stated she did not look into that and is not aware.

District Attorney Tandy stated he checked with Rockland, Sullivan, Dutchess, and Orange Counties and with the District Attorney's Association of the State of New York. He stated there are no counties in New York State that permits or requires the District Attorney to provide confidential documents to a County Executive or Legislator.

Legislator LoBue questioned what the law in Westchester says.

District Attorney Tandy stated Westchester has the same law. He stated there was a recent FOIL request for the Westchester District Attorney's Office that was denied and the person who submitted the FOIL request filed an Article 78 with the Supreme Court. He stated it did not go to the Westchester County Executive.

Legislator Albano questioned if Senior Deputy County Attorney for Risk & Compliance Lotto could verify what is being discussed and assist the Legislature moving forward with this matter.

Legislative Representative Senior Deputy County Attorney for Risk & Compliance Lotto stated should the Legislature proceed with this amendment to the Putnam County Law, if and when it is passed by the Full Legislature it would be subject to a mandatory referendum because the amendment would curtail the County Executive's powers. She stated if such an amendment was passed by this Legislative body, it would have to appear on the November ballot for consideration by the public. She stated if it passed by a majority vote, it would then be filed with the State.

Legislator LoBue requested that a public hearing be held on this matter so the public's view may be taken into consideration. She stated if this were passed, public access to information would be restricted.

Legislator Albano stated he does not believe this would be restricting public access. He stated this amendment relates to where an appeal of a FOIL request denial would go.

District Attorney Tandy stated a referendum would not be necessary. He stated this is a procedure as to who the appeal would go to. He stated a public referendum cannot grant the County Executive powers that they are not statutorily given.

Legislative Representative Senior Deputy County Attorney for Risk & Compliance Lotto respectfully disagreed.

Legislator Albano stated he would like to have more information on this matter.

District Attorney Tandy stated he submitted the law from Rockland County. He stated he could direct the Committee to the District Attorney's Association of New York State as well. He stated under most situations this is a minor issue; however under some situations it could be very serious.

Chairman Sullivan questioned if the District Attorney's Office would require additional resources if this amendment were to be passed.

District Attorney Tandy stated the situation would not arise often, therefore no additional resources would be necessary.

Legislator Gouldman questioned if there is a State or Federal Law pertaining to this.

District Attorney Tandy stated County Law Section 700 provides the District Attorney's Office with the exclusive power to deal with all criminal transactions in the County. He stated the only governmental body that has authority over the District Attorney's Office would be a court of appropriate jurisdiction. He stated the County Executive or Legislature would only have authority over the District Attorney's Office if ethical violations were alleged.

Legislator Scuccimarra stated sensitive material is being handled by the District Attorney's Office. She stated the possibility of exposing that material to the public could lead to a liability.

District Attorney Tandy stated if a FOIL request came in for a sealed case, by law the County Executive is not permitted to look at it because it is sealed. He stated the procedure in the current law sends that sealed document to the County Executive. He stated the law itself as written is inadvertently illegal.

Legislator Scuccimarra clarified that if a FOIL request came in for a similar document in the Sheriff's Department, the Sheriff has sole discretion over it.

District Attorney Tandy stated that is correct.

Legislator Albano stated he would like to see the laws that are in place in the surrounding counties. He also requested more information from Senior Deputy County Attorney for Risk & Compliance Lotto.

Legislative Representative Senior Deputy County Attorney for Risk & Compliance Lotto stated for clarification, what is being discussed is a curtailment of the County Executive's powers in the sense that she is the Appeal Officer. She stated a curtailment

or revamping of the District Attorney's powers under Section 700 of the State Law is not being discussed. She stated as per the process as it stands currently, when a FOIL request comes in, the County Clerk's Office will send it to the respective department and the Law Department. She stated there are certain exemptions that already exist in the law. She stated for example, if the document being requested is a sealed document or an ongoing criminal investigation it cannot be distributed to the public. She stated when the County issues a denial, the law is very clear that the denial must be issued with specificity and outline in the letter what the basis of the denial is. She stated if a person disagrees with the reasoning for the denial, the request would go to County Executive Odell for all departments excluding the Sheriff's Department, in which case it would go to Sheriff Smith. She stated this amendment would curtail the power of the County Executive as far as her being the Appellate Officer in the Putnam County Law. She stated if that law is amended, Section 24 states that a local law is subject to mandatory referendum if it abolishes, transfers, or curtails any power of an elected officer. She stated also, the law states that the County Clerk is the County Record Officer. She stated the County Clerk is also an Elected Officer so either way it is read; it is a curtailment of either the County Executive's powers or the County Clerk's powers. She stated if the Legislature wanted to approve this amendment, this procedure would need to be followed.

Legislator Albano stated he would like to look into this matter more in depth and move forward from there.

Item #6 - Discussion/ Proposed Local Law to Amend Section 220-55 of the Putnam County Code by Adding a New Section D (Alternative Veterans Exemption)/ Director of Real Property Johnson

Director of Real Property Lisa Johnson stated in 1970 the Post Office went on strike for three (3) days and during that time the Military was called in to deliver the mail. She stated the reservists that were called in are who this exemption would affect. She stated she is having a difficult time justifying having these three (3) days of service being covered under the Alternative Veterans Exemption where periods of war are covered. She stated she believes Nassau is the only county in New York State that passed this. She stated Nassau passed this in December and their taxable status date is January 1st, therefore there was not enough time to gage the amount of residents who would be eligible. She stated the total number of reservists was about 10,000; however it is unknown how many only qualify based on those three (3) days of service.

Legislator Addonizio questioned how to find out the number of Veterans this would effect.

Director Johnson stated she called Director of Veterans Services Karl Rohde and he was unaware.

Legislator Albano questioned where this proposed exemption came from.

Director Johnson stated it was passed in the State.

Legislator Addonizio stated those who served for those three (3) days may have also served during a period of war.

Director Johnson stated those Veterans would already be qualified for serving during a period of war.

Legislator Addonizio questioned if they would have a larger exemption if they served in both a period of war and these three (3) days.

Director Johnson stated they would not receive a larger exemption. She stated the individuals who delivered the mail were not armed or in uniform during that time. She stated the New York Post Office was the largest strike and the mail was delivered to Wall Street; no residential mail was delivered.

Legislator Albano stated he does not believe action should be taken.

Legislator Jonke stated when the postal workers went on strike, President Nixon did not activate, but called into service Reservists and the National Guard. He stated as an assessor, the State trained him to recognize these Veterans who worked during that time as "active service" even those they had not been activated. He stated in the past 28 years, he has only come across one (1) or two (2) applications for this time period.

Chairman Sullivan stated the financial impact of this proposal is unknown; however based on Legislator Jonke's experience it seems as if it would be minimal.

Legislator Jonke stated there may also be Reservists who are receiving the exemption for war time served.

Legislator LoBue stated she would like to know what the financial impact may be before moving forward. She stated this can always be enacted in the future.

Legislator Albano agreed with Legislator LoBue.

Legislator Addonizio suggested asking people who may qualify to come forward.

Chairman Sullivan stated Director Rohde was unable to attend the meeting, however he did speak with him and no one had requested this exemption through the Department of Veterans Affairs.

Legislator Albano stated the strike happened over 46 years ago and he does not think many people would come forward.

Director Johnson stated the exemption would be about \$166 per person.

Legislator Albano requested that Director Johnson notify the Legislature if any inquiries are made about this exemption.

Item #7 - Discussion/ Putnam County Hazardous Spill Response Policy/ Safety Officer O'Connor

Safety Officer John O'Connor stated a few years ago there was an incident where a fuel cap was not replaced on a bus from Brewster Central School District and fuel was spilled on a County road. He stated the County Highway Department was called directly and the response was to send a sand truck. He stated the sand truck went to the scene and spread sand, however it was not cleaned up after. He stated a day or two (2) later a motorcyclist came through the area and fell and later sued the County. He stated since then, they have looked into putting together a spill response policy. He stated the New York State Department of Environmental Conservation has the authority and has created a system where they give certain criteria to spills and how they will be remediated. He stated this system is on the first page of the Putnam County Hazardous Spill Response Policy. He stated Putnam County operates 116 miles of roadway; therefore they would like to have a logical, well thought out response to hazardous spills. He stated when there is a chemical spill, first responders should use SpeedyDry, which is a product similar to cat litter. He stated this product absorbs the material that has been spilled. He stated it has been scientifically proven that sand is not a good absorbent and after about 18 vehicles drive over the sand, it becomes so round that it turns into a lubricant. He stated it is important to use the correct material in the remediation of a spill. He stated the waterways are included in this policy as well. He stated it is also important to notify the Putnam County Highway Department when there is a chemical spill on a roadway because the hazardous material may cause damage or deterioration to the road. He stated it is their intention to bring this policy to the Towns and Police agencies within the County once it has been approved by the Legislature and is County policy.

Legislator Gouldman questioned if this policy includes spills on railways in the County.

Safety Officer O'Connor stated spills on any County property or roadway should be addressed according to this policy. He stated the policy will be brought to the Towns and Police agencies with the suggestion that they adopt a similar policy.

Legislator Gouldman stated there are freight trains that transport crude oil along the Hudson River. He questioned if this policy would come into effect if a spill were to occur.

Safety Officer O'Connor stated Orange County would respond to a spill on those railways and the Coast Guard has purview of the Hudson River.

Legislator Gouldman questioned if the Fire Departments or Emergency Service agencies had input when this policy was being created.

Safety Officer O'Connor stated the policy was created for County agencies and how they would respond on County properties and roadways. He stated once this is approved, it will be sent to the Fire Departments.

Chairman Sullivan questioned if there are employees in the Highway Department who would be designated to respond.

Safety Officer O'Connor stated he often responds on behalf of the Highway Department; however the Superintendent of Road Maintenance would have to respond as well.

Legislator Scuccimarra stated she supports sending this policy to the Towns and emergency service agencies throughout the County.

Legislator Addonizio questioned who would provide the training.

Safety Officer O'Connor stated the training would be provided by the Sheriff's Department, Bureau of Emergency Services, Highway Department, and him as the Safety Officer.

Legislative Representative Senior Deputy County Attorney for Risk and Compliance Lotto stated she would like to reply to Legislator Gouldman's question regarding whether the Fire Departments were consulted when creating this policy. She stated the policy was written in collaboration with representatives from the Law Department, the Bureau of Emergency Services, the Sheriff's Department, and the Highway Department. She stated once approved within the County, the intention is to mail a letter along with the policy to emergency service agencies throughout the County.

Legislator Gouldman questioned if the Bureau of Emergency Services got input from the Fire Departments.

Commissioner of Emergency Services Anthony Sutton stated a draft of the policy was sent out. He stated communication operators at the 911 center are stuck in the middle. He stated a Fire Chief would be called for a sand truck, however very few municipalities use sand and instead use salt or brine. He stated sand is not a great absorbent; it is meant to be used for traction on a slippery road. He stated years ago, the response to a hazardous spill would be to call the Fire Department and they would come and wash down the road. He stated once that was discovered to be harmful, they would put down sand which would then be swept up and placed in barrels. He stated the barrels would be left on the side of the road for a long time before being disposed of. He stated now, SpeedyDry is used and provides traction while absorbing the hazardous material on the roadway. He stated it is then swept up and disposed of. He stated this is a matter of breaking the routine and getting all agencies on board with this policy. He stated the incident where fuel was spilled from a Brewster Central School District school bus, the call went right to the Highway Department and never went through the 911 center.

Legislator Albano made a motion to pre-file the necessary resolution; Seconded by Legislator Addonizio. All in favor.

Item #8 - Approval/ Re-Appointments/ Putnam County Board of Electrical Examiners

Chairman Sullivan made a motion to pre-file the necessary resolution; Seconded by Legislator Addonizio. All in favor.

Item #9 - Approval/ Memorialization/ NYSAC Resolution/ Calling for an Increase in the Share of Revenue Counties Retain for Providing State DMV Services

Chairman Sullivan stated currently, the State keeps 87.3% of all fees collected by the DMV while the County retains the remaining 12.7%.

Legislator Gouldman questioned if these percentages are representative of only transactions made online or through the mail. He stated it was his understanding that the percentages of revenue kept were less at the local DMV.

Legislator Albano stated the percentages are for the transactions completed in the local DMV. He stated the New York State DMV is encouraging residents to do more online, which would bypass the local DMV. He stated he is definitely supportive of this. He stated the Putnam County DMV runs very efficiently.

Legislator LoBue stated the County currently keeps 12.7% and this memorialization would support the resolution requesting that the Counties keep 25%, which would be great.

Chairman Sullivan made a motion to pre-file the necessary resolution; Seconded by Legislator Addonizio.

Item #10 - Approval/ Memorialization/ NYSAC Resolution/ Supporting Efforts to Allocate New York State Resources and Funding to Regions, Counties, and Municipalities that want to take part in the US Census Bureau Local Update of Census Addresses (LUCA) Program

Chairman Sullivan stated he sat in on this presentation at the NYSAC Conference. He stated this program is about making residents aware how important it is to respond to the census data. He stated the more accurate information that is collected; the more potential funding the County could get from the Federal Government. He stated \$400 billion is allocated annually for infrastructure programs and services.

Legislator Gouldman stated the census is done every 10 years and will be done again in three (3) years. He stated he is in support of this memorialization.

Legislator Albano stated this is a group effort as all counties need to supply accurate information.

Legislator Gouldman stated the population in New York State has declined in the past few years. He stated it is important to have accurate information when the census comes out.

Legislator Albano made a motion to pre-file the necessary resolution; Seconded by Legislator Addonizio. All in favor.

Chairman Sullivan stated there is another memorialization from the NYSAC Conference that was mistakenly left off of the agenda. He stated this would be addressed at this time.

Item #13 - Other Business

a. Approval/ Memorialization/ NYSAC Resolution/ Urging New York State to Cover the Added Costs of Early Voting

Chairman Sullivan stated the Governor's budget for 2017-2018 has included early voting hours and access up to 12 days prior to all special, primary, and general elections. He stated he is also asking for additional hours. He stated if the State would like the County to provide these additional services, they should provide the necessary funding.

Legislator Albano stated elections are very expensive as it is.

Legislator Gouldman questioned if there is currently a bill in the Assembly or Senate for early voting.

Legislator Albano stated this is going to be a requirement for Counties.

Legislator Albano made a motion to waive the rules and accept the Other Business; Seconded by Legislator Addonizio. All in favor.

Legislator Albano made a motion to pre-file the necessary resolution; Seconded by Legislator Addonizio. All in favor.

Item #11 - FYI/ County Clerk Annual Report – Duly Noted

Item #12 - FYI/ Litigation Report

Lithgow Osbourne, resident, questioned why the litigation report was not included on the backup material posted on the website.

Chairman Sullivan stated the litigation report is confidential, and therefore cannot be distributed to the public.

Mr. Osbourne questioned if a FOIL request could be submitted for the litigation report.

Legislator LoBue stated because the report contains information regarding ongoing litigation it cannot be made public.

Item #14 - Adjournment

There being no further business at 7:27pm Legislator Albano made a motion to adjourn; Seconded by Legislator Addonizio. All in favor.

Respectfully submitted by Administrative Assistant Beth Green.