

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

Members: Chairwoman Nacerino, Legislators Castellano & DiCarlo

Tuesday **6:30 P.M.** **May 21, 2013**

The meeting was called to order at 6:30 P.M. by Chairwoman Nacerino who requested that Legislator Castellano lead in the Pledge of Allegiance. Upon roll call, Legislators Castellano, DiCarlo, and Chairwoman Nacerino were present.

Chairwoman Nacerino made a motion to accept the Other Business for the meeting, seconded by Legislator DiCarlo. All in favor.

Item #3) Approval of Minutes – March 19, 2013
March 27, 2013
April 16, 2013

The minutes were approved as submitted.

Item #4) Presentation/Putnam County Code Chapter 195 - Precious Metals and Gems

Chairwoman Nacerino stated that this law has been on the books since 1983 but she believes it is a good time to revisit the language of this law as it pertains to the culture of our community and benefit of our community at-large. She further stated that there was a team of individuals that came together to discuss revising this law and she asks that everyone take a look at the revisions.

Legislator Oliverio stated that the Legislature revisited this in the 1990s and he believes it was voided. The Legislature discussed this law because of the run on the silver market. He is curious why we are looking at it again.

Chairwoman Nacerino stated that her opinion is that the culture and environment of Putnam County has changed. She stated that a decade ago we did not have "Cash for Gold" stores. She further stated that stolen gems and jewelry being taken to stores and sold and then melted down is on the rise. She believes we need to put a law in place that addresses the needs of the community. She stated that at no time did the group of individuals looking at and discussing this law know that it was voided.

County Attorney Jennifer Bumgarner stated the law is on the books, it was not voided.

Legislator Oliverio stated he remembers discussing its voiding. He further asked, if it is on the books, if the revisions presented tonight were discussed with local jewelers.

Chairwoman Nacerino stated they have in some capacity. She invited Investigator Henry Lopez from the Putnam County District Attorney's office forward to present on these revisions.

Legislator Oliverio stated he does not want what happened with our Item Pricing Law to happen again here.

Chairwoman Nacerino agreed.

Investigator Lopez discussed the formation of the Putnam County Intelligence Committee and its recommendation of revising the Putnam County Code as it pertains to Precious Metals and Gems. He stated that unfortunately narcotics abuse is on the rise. He stated that these addictions lead individuals to become desperate to continue using and fund their addictions. This leads to the breaking into our homes and stealing of jewelry and metals, etc. for a quick sale for quick cash. It is difficult to recover these stolen items as they are typically melted down soon after the sale. The Intelligence Committee understood the problems within the Code and met with the County Government to discuss the investigative process and the law as it stood.

Gerry Locascio, Detective, Town of Kent Police Department, stated that currently as the law reads once a store purchases any precious gems and metals they fill out a specific ledger which is then picked up each month by a police officer and then processed by hand. By the time everything is processed, some ledgers are found to be incomplete and lack identifying detail of items and sellers. Law enforcement receives emailed copies of these ledgers and must go through them page by page to attempt to match up stolen items from outstanding cases. It can be at most 35 days until law enforcement receives these emailed ledgers and unfortunately, by this time the 14 day hold requirement is up and the metals can be melted down and then are rarely recoverable. He stated that a better system is needed. He also stated that the current law only has civil penalties, not criminal, for the stores that had not kept their ledgers correctly.

Legislator LoBue asked if a photograph of the jewelry would help. She also asked what the fees would be associated with the revisions.

Investigator Lopez stated that real time electronic reporting, detailed descriptions with proper photographs, standardized identification requirements, payments made to seller by check, and criminal and civil penalties are revisions they are asking for.

Legislator Albano stated it is imperative that this law be revised. He stated that we are living in a drug culture. We need to help investigators by giving them more tools to work with.

Chairwoman Nacerino agreed.

Legislator Oliverio agreed as well. He stated the only issue he has is the fee schedule, \$250, plus all documentation involved. He stated a couple of jewelers have called him. They stated they understood the need for this and they do not have a problem with

doing this but it is money out of their pocket to use checks all the time instead of cash. The accounting of all of those checks is more. Also the recordkeeping and holding records is onerous. They understand the intent but none of them like the \$250. They asked who can help them keep these records.

Detective Locascio introduced the LeadsOnline software and stated it is nationwide and what they are hoping to implement here in Putnam County. He stated that the reason for the checks instead of cash is for people to think-twice about selling and if they do sell they are required to present identification to cash said check.

Legislator LoBue asked if the software was free.

Detective Locascio stated that it is free to storeowners.

Legislator LoBue stated that there are many businesses that are not jewelers that buy gold and metals.

Detective Locascio stated that is what they are also trying to curtail.

Chairwoman Nacerino stated that LeadsOnline is user-friendly and will be at no cost to the stores.

Legislator Oliverio recommended that the County contact the jewelers in the County and ask for their input on the revisions to this law.

Director of Consumer Affairs Jean Marie Noel stated that law enforcement came to her department to help. She also stated that they needed to be concerned with servers, computers, computer-able employees, etc. of each of the stores and if stores had these capabilities.

Investigator Lopez stated that LeadsOnline is browser-based.

Director Noel stated that she received an email from Chamber of Commerce President Bill Nulk stating that he cannot make the meeting tonight but the two jewelers in his Chamber are okay with the changes.

Legislator DiCarlo asked what the bottom line is for the businesses for each year. He also stated that the software being web-based is a great idea. He asked for confirmation if the stores are not licensed to buy gold that they absolutely cannot buy gold.

Investigator Lopez confirmed that a license will be needed to buy gold, period. He further read information about LeadsOnline and stated we will be saving resources by using LeadsOnline. He stated that LeadsOnline will cost the County approximately \$11,000 and it will initially be paid out of the District Attorney Asset Forfeiture line.

Legislator Oliverio stated that the County should contact all jewelers about LeadsOnline and the revisions to the law to obtain their opinions of both.

Investigator Lopez stated that they plan to educate the public and businesses.

Chairwoman Nacerino stated there will be a grace period, training, and notice given.

Legislator Castellano asked if someone steals a gold bracelet from your house and sells it up in Albany how it is tracked.

Investigator Lopez stated that if the area in Albany participates in LeadsOnline, they will see it.

Legislator Castellano asked about Gamestop, if they were included.

Detective Locascio stated that is not under this program. They felt they should start with precious metals and gems.

Legislator Oliverio asked if we could investigate the \$250 fee.

Chairwoman Nacerino stated that we will be revisiting these proposed changes next month.

Chairwoman Nacerino made a motion to approve the authorization to contract with LeadsOnline Service, seconded by Legislator DiCarlo. All in favor.

Item #5) Discussion/Legislative Term Limits

Chairwoman Nacerino stated that we have a law for Legislative term limits which required a supermajority to take effect. She further stated that we were remiss in realizing that this was not the case and therefore we presently do not have Legislative term limits. She stated that she is an advocate for term limits.

County Attorney Bumgarner explained what had taken place leading up to the vote in question. She further stated that the vote in question was a 5-4 vote and therefore not a supermajority and the resolution should have been deemed as failed. In researching this law she stated she researched the language and existing case law regarding said language. The case law states that in New York State all laws passed are considered prospective unless explicit retrospective language is used. With that said, the law that we thought we passed was only prospective because it did not contain retrospective language. She stated that we do not have term limits. She stated that if the Legislature wishes to impose term limits that they discuss the prospective and retrospective aspects of the law as well. If the Legislature wishes to only have four terms in his/her lifetime then the law can be written that way and that is considered retrospective language.

Chairwoman Nacerino stated that if we do not include the words “in his/her lifetime,” she believes it defeats the purpose of having term limits. She further stated that twelve years is ample time for a part-time public service job.

Chairman of the Legislature Othmer asked if we still needed a supermajority whether we wrote the law prospectively or retrospectively.

County Attorney Bumgarner answered yes.

Legislator Oliverio stated we have a political situation currently where an individual has served four terms and asked if anything we passed right now would affect that individual.

County Attorney Bumgarner stated no.

Legislator Oliverio asked why because if we passed four terms in a lifetime, that individual falls under that.

County Attorney Bumgarner stated that because of the political calendar and the deadlines for balloting, petitions, etc. it is going to directly affect it. She stated that her answer would depend upon how the enacting occurs and how quickly, if that would affect the situation.

Legislator DiCarlo stated that what is interesting about this is that everyone thought we had term limits. He stated the only reason we figured out that this law was not actually passed is because someone is running against him that has served four Legislative terms and research was required into the term limits law, which then it was uncovered that the vote count had not obtained a supermajority and therefore should have failed. Without his situation, everyone would think we still have term limits. He further stated that there are legislators that decided not to run any longer because they thought there were term limits.

Anita Olivia, Resident, asked why County Attorney Bumgarner is assessing this and not a judge.

County Attorney Bumgarner stated it is legislation, not a legal matter.

Legislator Albano stated it was a mistake.

Ms. Olivia asked if it was supposed to be a supermajority.

Chairwoman Nacerino stated yes it was supposed to be a supermajority and was not.

Ms. Olivia asked if Former Legislator Vincent Tamagna would have run if he did not believe there were term limits.

County Attorney Bumgarner stated he may have run.

Chairwoman Nacerino stated that that prerogative was taken away from him based on the law that we believed we had on the books.

Legislator LoBue stated that she supports term limits and believes that we need to start what we finished. She stated that people made decisions based on a law that we thought was valid. She further stated that she feels it should be retroactive.

Chairwoman Nacerino stated she agreed.

Legislator Oliverio stated that he would recommend we not pass this until after the election. If we enact this before the next election we will be allowing someone who has already served four terms, run for a fifth term. He stated that if we pass this retroactively than Mr. Wright cannot run.

Legislator LoBue stated that we need a legal opinion.

Chairwoman Nacerino agreed.

Legislator LoBue stated that she believes that we need to correct this immediately. She stated that it might take three months to establish this as a law.

Chairwoman Nacerino stated that politics is not driving the bus. She stated that legislative intent is. She stated if we are going to start floundering because of political issues we will need to revisit this over and over again.

Legislator Oliverio stated that if we allow one individual that has served four terms to be able to run and we pass this law prior to the election then you have opened a flood gate for precedent setting and he guarantees that it will be challenged and fall flat on its face. He stated that all he is asking is that you wait until after the election.

Chairwoman Nacerino stated that is not what we want to do.

Legislator Oliverio asked what was the rush.

Legislator LoBue stated we need a legal opinion.

Legislative Counsel Van Ross stated it is legislative prerogative either way.

Lynne Eckhardt, Resident of Southeast, stated that the people of Putnam County thought we had term limits. She stated that because of some Legislative screw-up that you are going to allow someone to run. She asked what was a realistic timeline for passage of a new law.

Chairwoman Nacerino stated we could pass it at the June Full Legislative Meeting.

County Attorney Bumgarner stated that the Legislature could pass it at the June Full Legislative Meeting but it is subjective to a permissive referendum and must go through the public hearing phase and 45 day rule.

Legislator DiCarlo stated that we had Legislators sit there when this vote was taken who are astute with the rules and regulations and they would be shocked at learning that it actually failed.

Chairman Othmer stated that he agrees with Legislator Oliverio. He stated that he thinks we will open ourselves up to litigation. He wants term limits but he does not want to open up the County to litigation.

Ms. Olivia stated that the people of this County do not know that this law does not exist.

Legislator Albano stated that the bottom line is that it did not pass. He stated that the only people it really affects and the only people who should be concerned are the people who did not run again.

Chairman Othmer asked if we date the term limits January 1, 2014, and someone who has already served four terms is re-elected for a fifth term in November 2013, they would serve the fifth term and then be cut off.

County Attorney Bumgarner stated that is correct.

Legislator Oliverio stated that is his point and that would not open the County up to litigation. He stated then it is fair and the person cannot argue.

Chairwoman Nacerino stated that would defeat the whole purpose of the law. She stated that the point is four terms, twelve years.

County Attorney Bumgarner stated that previous legislative terms were two years. She asked if the Legislature means four terms or twelve years.

Legislator Oliverio stated that you need to do terms.

County Attorney Bumgarner stated that we need to make that clear, terms or years.

Legislator LoBue stated we want it so it is enforceable. She stated that whatever the language needs to be to apply retroactively and the terms.

Chairwoman Nacerino stated four terms, not to exceed twelve years.

Legislator Oliverio reiterated it should be passed after the election. He stated that he is not running again and it would only apply to him as a current legislator.

Chairwoman Nacerino stated that we need to stop backpedaling.

Legislator LoBue stated we should bring the correct language to the June Rules meeting.

Legislator Gross stated that if we pass this before the election the perception will be we are targeting someone. He stated that we should be doing it for 2014.

Legislator DiCarlo asked if saying it retroactively starts January 1, 2014 means that everyone from January 1, 2014 on will have four terms.

County Attorney Bumgarner stated no. She stated that if you have served four terms and you are elected to a fifth term before January 1, 2014 that fifth term is your last term. She further stated that if there is a Legislator that served six terms but they happen to serve six terms before you passed the law, then they have just served more terms than you. If you happened to serve eighteen years before the law is passed then you got to serve those eighteen years.

Deputy County Attorney Walker stated that you should exempt any incumbents.

Chairwoman Nacerino asked County Attorney Bumgarner to draft a law based on the language that we discussed tonight to place on the June Rules Committee Agenda.

Item #6) Discussion/RDC Golf Group, Inc./Civil Action

AND

Item #7a) Other Business - Update/Community Foundation Litigation

At 7:54 PM, Chairwoman Nacerino made a motion to go into Executive Session to discuss litigation, item #6 and item #7a, seconded by Legislator DiCarlo. All in favor.

At 8:49 PM, Chairwoman Nacerino made a motion to come out of Executive Session, seconded by Legislator DiCarlo. All in favor.

No action was taken in Executive Session.

There being no further business, at 8:50 P.M., Chairwoman Nacerino made a motion to adjourn, seconded by Legislator DiCarlo. All in favor.

Respectfully submitted by Krista M. Butler, Administrative Assistant.