

Allegheny County Council

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Committee Meeting Minutes

Thursday, July 24, 2008

5:00 PM

Conference Room 1

Committee on Government Reform

***Rich Fitzgerald, Chair; Jim Burn, Jim Ellenbogen, Nick Futules, Vince Gastgeb,
Amanda Green, Bob Macey, and Chuck McCullough - Members***

I. Call to Order

Invited Guests:

Jim Flynn, County Manger or Designee
Mike Wojcik, County Solicitor or Designee
Jack Cambest, Council's Legal Advisor or Designee

Summary: *Invited guests in attendance: Mr. Flynn, and John Rushford for Mr. Cambest*

Council staff in attendance: Jared Barker and Jennifer Liptak

II. Roll Call

Roll Call: Present: Jim Burn, Jim Ellenbogen, Vince Gastgeb, Amanda Green, Bob Macey, Chuck McCullough, Rich Fitzgerald, Council Member Joan Cleary, Council Member John DeFazio, and Council Member Matt Drozd
Absent: Nick Futules

III. Approval of Minutes

4210-08 Motion to approve the Minutes of the April 29, 2008 Government Reform Committee meeting.

Action: **A motion was made by McCullough, seconded by Ellenbogen, that this matter be Passed. The motion carried unanimously.**

IV. Agenda Items

Ordinance

4208-08 An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania directing that an ordinance be submitted by referendum question to the registered voters of the County on the November 2008 General Election ballot.

Sponsors: Rich Fitzgerald

Summary: *The Chair read the title and summarized the bill, noting that it is a balanced budget question.*

Mr. McCullough indicated that his presence should not be constituted as a waiver of his concerns regarding the procedure by which the bill was being considered.

Ms. Rea noted that she is not of the opinion that it is not necessarily a choice between drink and property tax.

Ms. Cleary indicated that she cannot see where \$30 million would come from without raising property taxes in the event that the drink tax is repealed.

Ms. Rea noted that there will be surplus collections if we continue at the current rate, and asked what we are going to do with them. She expressed her belief that there is a question about whether we can really run the County without a drink tax or a property

tax hike.

Ms. Cleary suggested that, if we are going to reevaluate what to do with a surplus, we should wait until it actually happens, and then address that issue through the budget process.

Mr. Ellenbogen expressed his belief that Council is acting like the Executive branch in making an administrative decision about tax structure, and we're eliminating his options.

Mr. McCullough stated his agreement with Mr. Ellenbogen, and suggested that there is no reason to tie the Executive's hands when there are supplemental revenue sources out there. He also asked whether a millage increase would be prohibited if the tavern owners' question passes and this question fails, and noted that there may be difficulties in future tax years trying to figure out what the drink tax would have been in order to establish the millage.

Ms. Cleary noted that her feeling is no power is taken away from the Executive, because budget power is conferred to Council.

Mr. Drozd noted that he does not understand why it's reduced to only two alternatives, and why we don't pursue other revenues.

Ms. Rea voiced agreement with Mr. Ellenbogen's separation of powers point, and with Ms. Cleary's budget power point. She also noted that no Member of Council said that we should tax hospitality and car rental industries, that option was presented to Council by the Executive, and she feels that there has to be ground for compromise.

Mr. McCullough noted that there is confusion about how much millage would have to be raised, what amount needs to be raised for PAT, and so on, and making an indeterminate concept mandatory is not something should be done.

Mr. Ellenbogen suggested that legalistic arguments are not really the issue, public confusion and/or perception is. He repeated his feeling that this is not a legislative function.

In response to a question from Mr. Burn, the Chair indicated that this ordinance, if passed, would not lock the County into a 10% drink tax rate.

In response to a question from Mr. Drozd, the Chair indicated that a fiscal not is not necessary for this bill in his opinion, because it functions as a balance, and we still go through the regular budget process regardless of what the revenues are.

Mr. Drozd expressed his feeling that Council should take a longer look at the situation, and should do the projections to see what the options really are.

Mr. McCullough indicated that his understanding is that the Executive initiates the budget process under the Charter, and Council has the power to levy taxes, collect fees, etc. under the Charter. He then noted that, in his view, this question limits the Executive's powers and Council's because it only provides for property taxes.

Ms. Cleary agreed that the Executive presents the Comprehensive Fiscal Plan, but emphasized that Council actually puts the budget together. She noted that Council can still look at fees and other revenue sources, but if the drink tax goes away, the budget is \$30 million short. She asked how that much revenue could be made up through fees.

Mr. McCullough suggested that the problem with the bill is that it looks at the shortfall as one lump sum, and that keeps Council from looking at a bunch of partial solutions. He suggested that the tax rate should instead be set at a rate that everyone can deal with.

Mr. Ellenbogen repeated the separation of powers argument.

Mr. Gastgeb noted that, while the question says one thing, interpretations may vary, and expressed his sense that the County has to choose between the drink and property taxes only.

Mr. Burn noted that, if the Executive has any concerns about the separation of powers, he has the option to veto this.

Ms. Rea asked whether this bill, if passed, would impinge on Council's budgetary discretion away because it requires a particular property tax increase if the drink tax goes away?

Mr. Rushford noted that this ordinance does not set a millage rate, it says "comcommittant," which means "at the same time."

Ms. Rea suggested that the public needs to understand the question, and noted that she does not think that it has been adequately explained as of yet.

The Chair noted that, for 70 years, the County had one major source of revenue. He expressed his sense that this question empowers the public, because the people will have the choice to go back to the old property tax only system. He noted that the ordinance does not set a rate, and that Council can again review multiple budgetary scenarios, as was done last year. He also indicated that this bill only functions to prohibit using the drink tax when Council balances the budget this year.

Ms. Rea indicated that the question does not clearly say that to her.

Mr. McCullough expressed his feeling that this bill functions as a blank check, because it doesn't state an upper limit on the millage rate, and we have no idea how much we'd have to raise property taxes to compensate for the loss of drink tax revenue.

Mr. Ellenbogen indicated that he does not want to question the intent of the bill, but expressed his belief that laws that last forever should not be created for isolated situations. He then restated the separation of powers argument, and suggested that the decision of which revenue options should be used is one that should be left to the Executive.

Mr. Gastgeb noted that this is different than issues Council has dealt with in the past,

and noted that if this question impinges on the power of Council, he feels it is illegal. He also noted that this bill limits options, which have opened up since last year with gaming money and all the rest, and expressed his belief that Council should not be looking at taxing people's homes as the only choice.

Mr. DeFazio indicated that the County solicitor and Council's solicitor both have opined that this bill is permissible, and asked why an argument over legality was being undertaken.

Ms. Rea noted that, while she respects everyone's opinion, and if we give this ordinance to 20 different lawyers, we could get a variety of different answers back.

Mr. DeFazio noted that everyone is entitled to their opinion, but the reality is that we go by the lawyers that we employ to give their opinions.

Mr. McCullough indicated that he believes that the ordinance is illegal.

Mr. Ellenbogen expressed agreement with Mr. DeFazio insofar as the rules are what they are, but noted that the Charter gives the Manager the duty to advise everyone on the financial condition of the County.

Mr. DeFazio suggested that interpretations vary, and noted that he follows the course that is required by law or rule, whether he agrees with it or not.

Mr. Ellenbogen indicated that he is not questioning whether it's legal or not, but is questioning the language of the question.

Mr. Gastgeb indicated that he would rather look for other interpretations than go by our solicitor or the County Solicitor in this one case. He noted that he has confirmed our solicitor every time his contract has come up for a vote, but here he feels our solicitors may be compromised, because he believes they may have taken part in meetings they should not have.

The Chair noted that asserting a lack of objectivity is a serious charge.

Mr. Gastgeb asked why no written legal opinions were drafted.

Mr. DeFazio asked whether getting written legal opinions would be sufficient.

Mr. Gastgeb indicated that it would not be, because he believes they've been compromised.

The Chair expressed that he does not believe that anyone is compromised, and explained the drafting process and the involvement of Mr. Cambest and Mr. Wojcik.

Mr. Gastgeb noted that, in most cases, that would give him comfort, but in this case, he does not know what predetermined opinions may exist.

Mr. McCullough noted that he would never say that Mr. Wojcik would compromise his professional integrity, and stated his feeling that the Law Department is incorruptible.

He also indicated that, if there has been advice from counsel, he would like to see that in writing to review it, because this is an issue of first impression.

Mr. DeFazio again noted that interpretations vary, but that this was the first time anyone had requested a written legal opinion.

Mr. McCullough noted that this is an issue of first impression, and while attorneys can give opinions on what will happen, they cannot guarantee outcomes.

Mr. Rushford indicated that his office would be happy to provide a written opinion, and noted that any accusation that we favor one side or another runs contrary to the rules or professional responsibility that govern all attorneys.

Mr. DeFazio indicated that Council should listen to the people it retains to give advice.

Mr. McCullough agreed that we have our people, and noted that he wants to see what they say, but also indicated that's not necessarily the end point.

Ms. Cleary expressed her appreciation for the work that was done, and noted that she did not believe that anyone officially asked for legal opinions until now, and asked that the Chair make a request for written opinions from Mr. Cambest and Mr. Wojcik.

The Chair requested written opinions from Mr. Rushford and Mr. Wojcik.

Mr. Ellenbogen expressed his feeling that issues were being mixed, and asked if a referendum could be legal but conflict with the Charter.

Mr. Rushford noted that a referendum that's forbidden by the Charter is impermissible, but expressed his opinion that this referendum is not forbidden.

Mr. Gastgeb expressed his belief that there is a difference of opinion, and noted that there is credibility on both sides, but noted that is precisely why he does want to see written opinions.

The Chair asked for motion to release with a neutral recommendation.

Action: **A motion was made that this matter be Returned Without Recommendation. The motion carried by the following vote:**

Votes: Yes: 4 - Burn, Green, Macey and Fitzgerald
No: 3 - Ellenbogen, Gastgeb and McCullough
Absent: 1 - Futules
Non-Member: 3 - Council Member Cleary, Council Member DeFazio and Council Member Drozd

Enactment No: 24-08-OR

V. Adjournment