

Allegheny County Council

*County of Allegheny
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Committee Meeting Minutes

Thursday, July 27, 2006

4:00 PM

4th Floor, Gold Room

Committee on Health & Human Services

***Mike Finnerty, Chair; Joan Cleary, Susan Caldwell, Brenda Frazier, Bob Macey,
and William Robinson - Members***

I. Call to Order

Summary: *Meeting called to order at 4:10 p.m.*

Invited Guests:

Jim Flynn, County Manager or Designee

Dr. Bruce Dixon, Director, Health Department or Designee

Mike Wojcik, County Solicitor or Designee

Jack Cambest, Council's Legal Advisor or Designee

Kevin Joyce, President of the Pennsylvania Restaurant Association

Rachel Fillipini, Group Against Smog and Pollution

Summary: *Invited Guests Present: Mr. Robert Borgoyne for Mr. Mike Wojcik; Mr. Jim Flynn; Dr. Bruce Dixon; Mr. Jack Cambest; Mr. Kevin Joyce, President of the PA Restaurant Association; Ms. Rachel Fillipini, Group Against Smog and Pollution*

Council Staff Present: Joe Catanese, Jared Barker, John Mascio, Stephanie Buka, Dane Ruccio

II. Roll Call

Summary: *Non-Committee Council Members Present: Jim Burn; Jan Rea; Vince Gastgeb*

Ex-Officio Member Present: Rich Fitzgerald

Roll Call: Present: Joan Cleary, Susan Caldwell, Brenda Frazier, Bob Macey, William Robinson, and Michael Finnerty

III. Approval of Minutes

2711-06 Motion to approve the minutes of the May 9, 2006 Health & Human Services Committee Meeting.

Action: **A motion was made by Macey that this matter be Passed. The motion carried unanimously.**

IV. Agenda Items

Ordinance

2705-06 An Ordinance to prohibit smoking in certain public places and workplaces, and providing for penalties for violations.

Sponsors: Rich Fitzgerald, Michael Finnerty, William Russell Robinson, Susan Caldwell, Chuck Martoni, Bob Macey, Joan Cleary, Jim Burn and Brenda Frazier

Summary: *Mr. Kevin Joyce, owner of The Carlton restaurant and President of the Pennsylvania Restaurant Association addressed the committee first and said he wants to explain his industry's position. He asked the Committee to table this Ordinance until at least the end of 2006 in order to give the state a chance to take action. He said debate over this*

issue is long standing. Historically, the PA Restaurant Association opposed this type of legislation and supported defending the rights of restaurant owners to make their own decisions regarding smoking in their establishment.

However, recent studies about non-smoking employees health issues changed his view. The PA Restaurant Association now supports a comprehensive statewide smoking ban in all public places and they recently passed a Resolution stating such. Mr. Joyce believes that they can lobby in Harrisburg to influence the state legislators in this regard. He said this is about employee health, but he doesn't want to see 75 different laws enacted in Pennsylvania, and is calling for a statewide ban so there's uniformity. He said there needs to be a level playing field.

He asked the Committee to give the process some time to work since the PA General Assembly will meet again on this issue. He would like additional time to be able to influence them to vote in favor of this. Mr. Joyce explained that if the legislation passes at the county level it will be challenged and there will be a long costly court battle. From our standpoint, he said it is better to enact a ban statewide, rather than passing a local ordinance.

President Fitzgerald agreed with Mr. Joyce. He explained that the Resolution that Council passed on 7/12/06 did urge the state to enact a statewide ban. He said if the state does enact this legislation then we will back off, but if they don't, Fitzgerald believes they can still go forward with this at the county level. He said that because the PA Restaurant Association changed its stand it will change the political landscape on the state level. This is about protecting the health of the workers. Fitzgerald stated that in the absence of the state acting, County Council needs to test the limits and be willing to take this fight on.

Mr. Joyce is in favor of no exceptions. He reiterated that the Bill should be tabled because it will be challenged.

President Fitzgerald said the threat of being challenged should not be the reason that we table the bill, because we have been challenged before and we moved forward, an example would be the Base Year 2002 Property Assessment legislation.

Mr. Borgoyne referred to a letter from Solicitor Wojcik stating that the law department's assessment is that the county is prohibited from entering this field of regulation. The preemption language of the Clean Air Act specifically states that local governments cannot regulate this. Purdon's clearly states that preemption still exists and the bottom line is that current codification of PA law says that the preemption language is alive and well and any municipality or subdivision cannot pass legislation regulating this. That is the County law department's position. There is an appeal over the denial of an agenda initiative petition regarding this, which will go to court. The Solicitor's position is clear that the county is not authorized to pass this Ordinance.

Chairman Finnerty asked how Philadelphia was able to enact a smoking ban. Mr. Borgoyne said that many exemptions exist in state law and in the Clean Air Act. The rules say that the exemption shall not apply to cities of the second class, which is Pittsburgh.

Councilman Gastgeb wanted to know exactly what Council can do, and suggested using Philadelphia as an example to be prudent. Mr. Borgoyne said there is a statutory appeal currently in progress and once that ruling is handed down we'll have a better understanding of where we stand.

Councilman Finnerty said we do not want to delve into legality issues right now... because no matter what we do, there will be an appeal.

Ms. Fillipini stated that she was surprised to be invited, because GASP has not taken a major role in smoking issues, but appreciates the invitation. She is in favor of the Ordinance, and feels that the Council and the Allegheny County Health Department have an obligation to protect people's health. She said it's not wise to wait for the state to act because it may never happen. She urged Council to pass this Ordinance and be proactive.

Councilwoman Rea requested Attorney Cambest to write a legal opinion regarding this.

Councilman Robinson mentioned that Council Members need to be mindful that there is a law suit pending and they need to be careful what we ask for. He said we might want to discuss this with Mr. Cambest in private. He cautioned the Chair and Ms. Rea that this kind of subject matter might be handled in an Executive Session. Councilwoman Rea withdrew her request.

Dr. Dixon said we are all on the same page, in favor of doing something on the state level first and if this fails, we may want to try it on a local level. The Health Department is in favor of a total ban, one with no exceptions, an absolute ban.

President Fitzgerald asked whether that was just Dr. Dixon's opinion or the consensus of the board. Dr. Dixon said the board would like to see the ban enacted statewide, but if they don't proceed, they are prepared to try it at the local level. If the state failed to do something then the board would like to move forward locally.

Councilman Gastgeb asked Dr. Dixon whether or not he agreed with the bill in its current form. Dr. Dixon said there are some differences, but the basic principal is the same. He said he would like to see Council and the Board of Health work together on a regulation and then it would come back before you in ordinance form.

Councilman Robinson asked whether the Board of Health is a party to the lawsuit. Dr. Dixon said no. Mr. Borgoyne said that Council is but not the Health Department.

Councilman Robinson said these proceedings are public and asked whether the public would have access to transcript or record and if they could be utilized in a lawsuit. Attorney Cambest said any statement made at this meeting could be used and that is why he would rather discuss this in Executive Session.

Councilman Robinson asked Council to be cognizant of the fact that they are parties to a lawsuit and whatever they say or do today can be used. If you want to recess or go to executive session, he said that would be a good idea. We are compromising our position

in the pending lawsuit.

President Fitzgerald said as policy makers we need to make the policy that we think is in the best interest for the people no matter what type of threat comes before us. The Health Board will have to follow the regulations that we pass. Our duty today is to debate this bill, vote and move on.

Chairman Finnerty summed up the discussion. Dr. Dixon asked that we form a small committee to meet and discuss the bill. Ms. Filippini and Mr. Joyce are on the same page, both are for it. Everyone seems to be saying "no exceptions". We should discuss the legal aspect in Executive Session.

Chairman Finnerty would like to call an Executive Session immediately following this meeting to discuss certain legal aspects of the bill.

The next committee meeting is scheduled for Tuesday, August 15th at 5:15 p.m.

Action: **Held in Committee**

V. Adjournment

Summary: *Meeting adjourned at 5:10 p.m.*