

Allegheny County Council

*County of Allegheny
436 Grant Street
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Meeting Minutes

Wednesday, December 6, 2017

4:00 PM

Conference Room I

Committee on Health & Human Services

*John Palmiere, Chair; Thomas Baker, James Ellenbogen, Nick Futules, Cindy Kirk,
Paul Klein, Ed Kress, Robert Macey, Sue Means*

I. Call to Order

The meeting was called to order at 4:02.

Invited Guests:

William D. McKain, CPA, Allegheny County Manager or designee(s)
Andrew Szefi, Allegheny County Solicitor

Mr. McKain was present from the Office of the County Manager.

Mr. Szefi was present from the Law Department.

Mr. Barker was present from the Office of County Council.

II. Roll Call

Members Present: 3 - Cindy Kirk, Ed Kress and John Palmiere

Members Absent: 5 - Jim Ellenbogen, Nick Futules, Paul Klein, Bob Macey and Sue Means

Members Phone: 1 - Tom Baker

Members 1 - Dimitrios Pantzoulas

Non-Members:

III. Approval of Minutes

[10416-17](#)

Motion to approve the minutes of the November 29, 2017 meeting of the Committee on Health and Human Services.

A motion was made by Kress, seconded by Baker, that this matter be Passed. The motion carried by a unanimous vote.

IV. Agenda Items

[10409-17](#)

Motion of the Council of Allegheny County directing the Allegheny County Law Department to prepare research into the feasibility of filing one or more lawsuits against major drug manufacturers and/or distributors in order to recover current and future damages to the County taxpayers resulting from the detrimental effects of opioid pharmaceuticals.

Sponsors: Council Member Kress

At the request of the Chair, the clerk read the title of the bill.

Mr. Szefi thanked everyone for their interest in the topic, and noted that the County had been looking into this issue for a period of time, as well. Mr. Szefi indicated that the County would be releasing a Request for Qualifications on Friday, pursuant to which law firms could submit their qualifications for researching the legal arguments, feasibility, and potential damage calculations relating to a suit of this nature. Mr. Szefi noted that the deadline for responses is in January, after which the qualifications of responsive law firms would be reviewed and a decision made about how to proceed. Mr. Szefi stressed that the goal is not simply to get some sort of monetary settlement without remedying the

underlying problem but, rather, to try to find a comprehensive solution that addresses the underlying issue of opioid addiction and abuse.

In response to a question from the Chair, Mr. Szefi noted that the state of West Virginia recently settled a case against opioid distributors that had been in progress for approximately five years, so he does not anticipate a rapid process, and cannot give a specific timeline, as many factors play into complex litigation scenarios.

In response to questions from Mr. Kress, Mr. Szefi noted that the RFQ is structured to require a certain baseline of experience for the firm and involved attorneys, but that it is intentionally designed not to be overly restrictive in order to avoid limiting the field from the start. Mr. Szefi also noted that the litigation will have to be handled on a contingency fee basis, and that any responsive firm will have to have the resources to work in that fashion. Mr. Szefi also discussed how the RFQ will be published. Mr. McKain noted that the Purchasing Department has significant experience with this type of bid process, and Mr. Szefi indicated that the County had already received unsolicited calls regarding the issue from at least a few firms. Mr. Szefi noted that it is impossible to predict how long it will take to review submissions at this time, and that there necessarily will be some give and take between the County and firms that express an interest, because they will have no way of knowing what the factual basis or potential damages might be without doing their own due diligence.

Mr. Kress noted that published reports indicate that Perdue Pharma is currently in negotiations, and that he does not want to see the County miss an opportunity to preserve its claims and ability to recover by delay, and Mr. Szefi agreed.

Mr. Kress discussed some of the older media materials that appear to understate the addictive qualities of opioids, and indicated that his understanding is that a limited number of published materials appear to have had a significant impact upon the evolution of opioid prescription and addiction.

Ms. Kirk noted that the prescription of pain medication has undoubtedly evolved, and that she sees the effects of opioid addiction on a daily basis, but that she also sees the benefits of pain medications - even opioids - used in an appropriate fashion. Ms. Kirk expressed concerns that pursuing litigation in the context of opioids may create a slippery slope regarding litigation in other contexts like alcohol.

Mr. Kress suggested that the misrepresentation of the characteristics of opioids is the key difference in his view, and that, to the extent that misrepresentations led to overprescription and a lack of adequate supervision, that is the blameworthy behavior. Mr. Kress noted that his intent is to seek an equitable remedy for the damages that were caused, rather than forcing the County's taxpayers to foot the bill for remedial action, and that he regards the legitimate use of pain relievers as an issue separate from the misrepresentation issue.

Ms. Kirk indicated that the balance is difficult to strike, and that she is profoundly concerned that patients might not have access to the pain management assistance that they need, and that she would not want to disincentivize opioid production, because they do have important uses in her view.

In response to a question from Ms. Kirk, Mr. Szefi discussed what the County's damages theoretically may be, but noted that investigating what the potential arguments, damages, and strategies for addressing the underlying addiction may be is part and parcel of the

process of determining whether to litigate or pursue some other strategy. Mr. Kress described some of the costs that might potentially play into a damage calculation.

Mr. Pantzoulas noted that he has been taking an interest in the opioid epidemic for quite a while, and stressed that he agrees with Mr. Szefi's position that the goal is not simply seeking monetary compensation but, rather, seeking a solution to the underlying problem of extensive opioid addiction. Mr. Pantzoulas expressed support for the concept.

Mr. Kress suggested an amendment to accomplish a slight modification to accommodate some concerns that Mr. Szefi had expressed, largely relating to phrasing, and consisting of altering the motion's use of "directing" to "requesting" action by the Law Department, and also revising the language relating to encouraging similar action by other municipal governments and other entities.

A motion was made by Kirk, seconded by Baker, that this matter be Returned Without Recommendation. The motion carried by a unanimous vote.

V. Adjournment

The meeting was adjourned at 4:36.