

COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

STEVE LEVY  
COUNTY EXECUTIVE

October 30, 2008

Mr. Timothy Laube  
Clerk of the Legislature  
Suffolk County Legislature  
Veterans Memorial Highway  
Hauppauge, New York 11788

10/30/08 4:49

**RE: - October 14, 2008 - Legislative Meeting**

**Vetoed Resolution: #817-2008 - Amending the 2008 Operating Budget to Provide Funding for the Smithtown Alumni Association**

Dear Mr. Laube:

Attached please find the above resolution, which have been acted upon as indicated.

Very truly yours,

Ben Zwirn  
Deputy County Executive

Received by D. Howard Date 10/30/08 Time 4:49P.

BZ:gg  
Enclosure

Intro. Res. 1847 Res. No. 817

October 14, 2008

**Motion:**

Romaine, Schneiderman, Browning, Beedenbender, Losquadro  
 Eddington, Montano, Alden, Lindsay, Viloría-Fisher, Barraga,  
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

**Co-Sponsors:**

Romaine, Schneiderman, Browning, Beedenbender, Losquadro  
 Eddington, Montano, Alden, Lindsay, Viloría-Fisher, Barraga,  
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

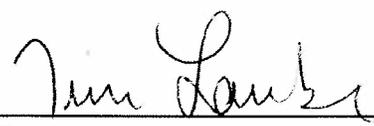
**Second:**

Romaine, Schneiderman, Browning, Beedenbender, Losquadro  
 Eddington, Montano, Alden, Lindsay, Viloría-Fisher, Barraga,  
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE					
2	Jay H. SCHNEIDERMAN					
3	Kate M. BROWNING					
4	Brian BEEDENBENDER					
6	Daniel P. LOSQUADRO					
7	Jack EDDINGTON					
9	Ricardo MONTANO					
10	Cameron ALDEN					
11	Thomas F. BARRAGA					
12	John M. KENNEDY, JR.					
13	Lynne C. NOWICK					
14	Wayne R. HORSLEY					
15	DuWayne GREGORY					
16	Steven H. STERN					
17	Lou D'AMARO					
18	Jon COOPER					
5	Vivian VILORIA-FISHER, D.P.O.					
8	William J. LINDSAY, P.O.					
	Totals	18				

MOTION
<input checked="" type="checkbox"/> Approve
Table: _____
Send To Committee
Table Subject To Call
Lay On The Table
Discharge
Take Out of Order
Reconsider
Waive Rule _____
Override Veto
Close
Recess
APPROVED <input checked="" type="checkbox"/> FAILED _____
No Motion _____ No Second _____

RESOLUTION DECLARED
<input checked="" type="checkbox"/> ADOPTED
NOT ADOPTED

  
 Tim Laube, Clerk of the Legislature

Roll Call \_\_\_\_\_ Voice Vote

COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

Steve Levy  
COUNTY EXECUTIVE

October 30, 2008

Presiding Officer William J. Lindsay and  
Members of the Suffolk County Legislature  
William H. Rogers Legislative Building  
725 Veterans Memorial Highway  
Smithtown, New York 11787

**RE: RESOLUTION NO. 817-2008, AMENDING THE 2008 OPERATING  
BUDGET TO PROVIDE FUNDING FOR THE SMITHTOWN ALUMNI  
ASSOCIATION**

Dear Presiding Officer Lindsay and Members of the Legislature:

I am returning herein **Resolution No. 817-2008, AMENDING THE 2008 OPERATING BUDGET TO PROVIDE FUNDING FOR THE SMITHTOWN ALUMNI** vetoed for strong legal reasons and policy concerns.

First, the legal issues.

Notwithstanding whatever the notable cause of the Smithtown Alumni Association may be, theirs is clearly work that is not a core county function and is best funded through private, charitable donations and not taxpayer dollars. **And, in fact, the county may be legally barred from granting public funds to this organization**, depending on proposed use.

I.R. 1847-2008 contained no backup information from the bill's sponsor about the organization or its specific intentions for the \$5,000 of taxpayer dollars. The organization's website states its goal to "... create a dynamic organization in which our 31,000+ alumni may have the opportunity to network with each other, assist with current educational programs and donate resources to these endeavors."

As spelled out in *Schulz v. State of N. Y.*, 160 Misc.2d 741 (Sup. Ct Albany Co., 1994), municipal funds can not be spent by a Not-for-Profit **where there is no corresponding public benefit or consideration**. (Op. St. Comp. 9-2002.) There is no exception to this rule for not-for-profits (NFP), even if the activities of the NFP serve a laudable purpose. (Op. St. Comp. 16-2002.)

A public or municipal purpose has been identified as “something necessary for the common good and general welfare of the people of the municipality, sanctioned by its citizens (and) public in character.” (*Schultz v. Warren County Bd. Of Super.* 179 A.D. 2d 118, 122 3d Dep’t 1992.) In short, public services supported by County funds cannot be restricted and must be open to all residents of Suffolk County, within reason, and not just a small group of alumni of a certain school.

I.R. 1847-2008 states that the Association promotes education through a Hall of Fame, publication of an Alumni Directory and a scholarship fund. **None of these activities can be legally supported by County money.**

Beyond the legal restrictions, there are serious policy issues at play – especially in these toughening economic times.

This type of spending is called different things at different levels of government; in Albany they call it a “member item;” in Washington it is called an “earmark.” Here in Suffolk, they are Community Support Initiatives.

There are 69 public school districts in Suffolk County, not to mention private and religious schools, as well as numerous colleges. Each no doubt has an alumni association of some form. Were we to begin to fund every alumni organization with taxpayer money, we would soon be talking about several hundreds of thousands of dollars annually.

As I already noted, this resolution was submitted without any backup material indicating what the group did and what they intended to do with the \$5,000.

Days before this I.R. was to be voted on, I asked various legislators to oppose this resolution on the grounds that it was very likely illegal. The response I got was that there is an informal agreement among legislators not to question each others’ member item grants.

**The “I’ll look the other way on your member item if you look the other way on mine” concept is no way to manage taxpayer dollars.**

After the bill passed, my office attempted to contact the organization to inquire about the purpose of the money. **The President of the Association said he was unaware that the bill’s sponsor had requested the funding and could not provide any insight as to what the purpose of this additional funding would be.** Three phone calls to the Association’s budget director have yet to yield a return phone call.

While some may argue the amount of dollars in this resolution is miniscule, it is a microcosm of the problems with the “member item” process on every level of government, and an indication to me that the system, even after our attempts at reform, is not yet working as an adequate protection for our taxpayers.

Resolution 401-2007 established certain requirements on contract agency funding. I remain concerned, as I hope you do, by a recent report from Suffolk County Comptroller Joseph Sawicki. The Comptroller's report showed that of 656 contracts for 2007 or 2008, 50 organizations have not properly returned disclosure documentation, 16 have administrative expenses over 20% of their agency budget and 83 have administrators on staff making more than \$150,000 annually.

We must move further on member item reform than was accomplished by Resolution 401-2007 and include tougher requirements on funding agencies with large administrative expenses and salaries over \$150,000.

We must carefully adhere to Resolution 401-2007 which requires a stand alone resolution, passed by 2/3rds majority, to fund any agency with administrative expenses greater than 20%.

And we should implement the same stand-alone scrutiny for any agency with salaries in excess of \$150,000 for an individual.

I will be submitting legislation shortly to tighten up this process and look forward to working with the Legislature to further our reforms.

But for now, when a \$5,000 grant sails though the Legislature and lands on my desk with no backup material, no intended use and not even an awareness of the need for the money from the organization's own President, the resolution must be vetoed.

For these legal and policy reasons, I urge you to sustain my veto.

Sincerely,



Steve Levy  
County Executive of Suffolk County

SL:mls

cc: All Suffolk County Legislators  
Tim Laube, Clerk of the Legislature  
Christine Malafi, Esq., Suffolk County Attorney  
Lynne A. Bizzarro, Esq., Chief Deputy County Attorney  
James A. Morgo, Chief Deputy County Executive  
Frederick B. Pollert, Deputy County Executive for Finance and Management  
Jeffrey W. Szabo, Deputy County Executive and Chief of Staff  
Ben Zwirn, Deputy County Executive

Connie Corso, Budget Director  
Dan Aug, Director of Communications  
Mark Smith, Deputy Director of Communications

**RESOLUTION NO. 817 -2008, AMENDING THE 2008  
OPERATING BUDGET TO PROVIDE FUNDING FOR THE  
SMITHTOWN ALUMNI ASSOCIATION**

**WHEREAS**, The Smithtown Alumni Association is a not for profit organization that promotes education through the establishment and sponsorship of an Alumni Directory, the formation of a Hall of Fame for outstanding students and teachers, and a scholarship fund for deserving students; and

**WHEREAS** it is the desire of this Legislature to assist the Smithtown Alumni Association in its efforts to promote education by providing funding in 2008; and

**WHEREAS**, Section 4-31(G) of the Suffolk County Charter now allows amendment of the County Operating Budget by County Legislators four times during the fiscal year as long as the amendment reduces, lowers, terminates or cancels appropriations; abolishes positions of employment; terminates contract agencies; terminates or reduces the size of County programs or departments, or makes transfers of appropriations that are offset by reductions in other programs; now, therefore be it

**1<sup>st</sup> RESOLVED**, that the 2008 County Operating Budget is hereby amended as follows and that the County Comptroller and the County Treasurer be and hereby are authorized to transfer the following funds and authorizations.

**APPROPRIATIONS:**

**FROM:**

<u>FD</u>	<u>AGY</u>	<u>UNIT</u>	<u>ACT</u>	<u>OBJ</u>	<u>ACTIVITY NAME</u>	<u>AMOUNT</u>
001	EXE	7320	JCM1	4980	Smithtown Educational Foundation	-\$5,000

**TO:**

<u>FD</u>	<u>AGY</u>	<u>UNIT</u>	<u>ACT</u>	<u>OBJ</u>	<u>ACTIVITY NAME</u>	<u>AMOUNT</u>
001	EXE	7320	XXXX	4980	Smithtown Alumni Assoc., Inc.	+\$5,000

and be it further

**2<sup>nd</sup> RESOLVED**, that the County Executive's Budget Office is authorized to assign an activity (pseudo) code for the Smithtown Alumni Association Inc.; and be it further

**3<sup>rd</sup> RESOLVED**, that the moneys appropriated pursuant to this resolution shall be used for the sole and exclusive purpose of funding the Smithtown Alumni Association Inc.

DATED: ~~OCT 14 2008~~

APPROVED BY:

**VETOED**

\_\_\_\_\_  
County Executive of Suffolk County

Date: