

**CONSUMER PROTECTION and GOVERNMENT OPERATIONS
of the
SUFFOLK COUNTY LEGISLATURE**

Minutes

A regular meeting of the Consumer Protection and Government Operation Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, Veterans Memorial Highway, Smithtown, New York, on Thursday, **May 8, 2003.**

MEMBERS PRESENT:

Legislator Cameron Alden - Chairman
Legislator William Lindsay - Vice-Chair
Legislator Lynne Nowick
Legislator Angie Carpenter

ALSO PRESENT:

Paul Sabatino - Counsel to the Legislature
Ed Hogan - Aide to Legislator Nowick
Warren Green - Aide to Legislator Alden
Meghan O'Reilly - Aide to Presiding Officer Postal
Charles Gardner - Director of Consumer Affairs
Alexandra Sullivan - Deputy Clerk of the Legislature
Pat Brodhagen - Food Industry Alliance

MINUTES TAKEN BY:

Donna Catalano - Court Stenographer

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(* THE MEETING WAS CALLED TO ORDER AT 9:35 A.M.*)

CHAIRMAN ALDEN:

We'll get started with the Consumer Protection Committee, and we will start with the Pledge led by Legislator Lynne Nowick.

SALUTATION

CHAIRMAN ALDEN:

Thank you. Okay. Today we're going to do things just a little bit different. We have a couple of presentations, but I think we're going to go through the agenda and vote on it. I think we have three resolutions.

INTRODUCTORY RESOLUTIONS

(P) 1227-2003. Adopting Local Law No. -2003, to establish County website page for retail store violations of item pricing law.
(CARPENTER)

LEG. CARPENTER:

We did close the public hearing on this, correct?

CHAIRMAN ALDEN:

I think we did.

LEG. CARPENTER:

Yeah, at the last General Meeting. So I would like to make a motion to approve. And really just as a way of sort of recognizing all of those stores that do cooperate and do the item pricing, this is a way for consumers to have that information.

CHAIRMAN ALDEN:

So we have a motion, I'm going to make a second. Now it's before us, it's live before us. Charlie, come on up. Good morning.

DIRECTOR GARDNER:

Good morning. Thank you, Mr. Chairman. Yes, I appreciate the opportunity to get some comments on the record about the proposal. It's certainly not -- the concept is not anything that we have a problem with. As a matter of fact, it's already on, we already do that. If anybody has seen our website, it's already posted and has been for a while now. This is a copy of the -- of the actual website. We have a -- there's a link called, "item pricing, know your rights as a consumer." And we list -- first of all, we list the basics of the item pricing law, what it requires, and then we actually list -- a following is a list of stores that have received violations from the Office of Consumer Affairs for failing to properly item price commodities offered for sale since January of 2002. And there's a complete list of business name, town, the violation date and the penalty. But beyond that, the wording, the way that the amendment -- the proposed legislation is written, if we were to go by the way it is written, there wouldn't be anything on the website, because we didn't have any input into how it was written.

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The parameters as defined in the resolution, A) would require that any store -- let's just use plain English -- any location that has been cited at least three times by the County Office of Consumer Affairs -- first of all, we don't -- we don't use that. If you are cited once, you are on here, that's number one. But still in paragraph A) and for which a formal hearing has been scheduled by the County Office of Consumer Affairs. I call your attention to that language, for which a

formal hearing has been scheduled. First of all, 99 and a half percent of all our violations are settled without a formal hearing. We very rarely have formal hearings. We have gone to informal hearings, administrative meetings or just out and out acceptance of an offer of settlement.

If we were reading this correctly, only stores that would be cited for a fourth time, since it only applies to stores that have already been cited three times, would be listed. The formal hearings are generally reserved for license revocations or suspensions or very serious violations of the County Code. If we were to have formal hearings for all of the violations that we issued, we would in no way be able to adjudicate those, we just wouldn't have time. Number two, it says a retail store that has violated a Suffolk County order issued after a formal hearing. Well, we go right back to the fact that we don't hold formal hearings, therefore, there are no orders that are issued as a result of a formal hearing. So there would still be no listings on this website.

And the last parameter says that a store that has been cited at least three times for a violation, but has been exonerated because the violations did not occur. Well, we really don't issue violations unless something has occurred. And we are confused as to how you would cite a store three times and then find that there were no violations. So just the way that the resolution is written really doesn't make any sense. We understand the intent behind it, we fully agree with the intent. As I said, we do it, and we do it much better and more specifically with a lot more information. The way that this is written just makes no sense.

CHAIRMAN ALDEN:
Legislator Carpenter.

LEG. CARPENTER:
I'm sure Counsel would appreciate your analysis that it makes no sense. I happen to disagree, because I think that if you were doing something to a higher standard, this does not preclude you from continuing doing what you are doing. However, I have a question for you, Charlie. Are your phones not working?

DIRECTOR GARDNER:
Are what?

LEG. CARPENTER:
Are your phones not working?

DIRECTOR GARDNER:
Not as far as I know.

LEG. CARPENTER:

They working? Your telephones are working?

DIRECTOR GARDNER:

Sure.

LEG. CARPENTER:

Oh, because I find it very interesting that you didn't pick up the phone and call me. We've already had a public hearing on this, and this is the first -- did we not have the hearing on this? Let's just double check.

MR. SABATINO:

This was one was not a local law, so there was no public hearing, but it's been out there for two weeks.

LEG. CARPENTER:

Right. It was tabled, right. So, you know, that's really a problem for me that you didn't pick up the phone and call.

DIRECTOR GARDNER:

The last conversation that we had was at this committee meeting a couple of months ago when I came up. And we said on the record at the time that we had the ability to do certain things on website now, and that item pricing was in fact one of them. That was the last conversation.

LEG. CARPENTER:

Right. I said I was going to move forward and codify it to make sure that perhaps in the unlikely, you know, event that someone might hold the position that you now hold in the future who might not be as proactive as you, this sort of codifies it to make sure that it is done, you know, in the future. I will table this resolution, and I will, you know, speak with you and work on something that --

DIRECTOR GARDNER:

If you could take this, Angie. This is what we have on it right now.

LEG. CARPENTER:

Fine. I'll take, but I'll table it and we'll --

CHAIRMAN ALDEN:

Okay. We have a motion by Legislator Carpenter to table, I'll second that motion. All in favor? Opposed? Resolution stands
TABLED. (VOTE: 4-0-0-0)

(P) 1242-2003. Adopting Local Law No. -2003, A Local Law to toughen and graduate fines for item pricing violations within Suffolk County.
(ALDEN)

CHAIRMAN ALDEN:

That's -- I'm going to make a motion to table, seconded by Legislator Nowick. All those in favor? Opposed? That stands
TABLED (VOTE: 4-0-0-0)

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DIRECTOR GARDNER:

Mr. Chairman? By tabling it, what is the status of that as far as the --

CHAIRMAN ALDEN:

That bill --

DIRECTOR GARDNER:

Has it gone before the full Legislature yet at all?

CHAIRMAN ALDEN:

Well, it was in a public hearing, and the public hearing was closed. So that legislation is now just back before us in the committee, and I'm going to work on -- there's a couple of little glitches and things like that and a couple of changes that I'm making. And we're going to actually discuss the bill, because we have Pat Brodhagen here today. And we're going to do that in a few minutes though.

(P) 1347-2003. Adopting Local Law No. -2003, a local law updating regulations for precious metal exchanges and dealers in secondhand articles. (CARPENTER)

LEG. CARPENTER:

Believe it or not, we are one meeting away.

CHAIRMAN ALDEN:

You want to table it again?

LEG. CARPENTER:

Yes. We're going to table it this one last meeting, and we'll move it at the next meeting.

CHAIRMAN ALDEN:

Motion to table by Legislator Carpenter, seconded by Legislator Lindsay. All those in favor? Opposed? It stands
TABLED (VOTE: 4-0-0-0)

DIRECTOR GARDNER:

I have a comment on it. Angie, you know, that sentence that we spoke about is still not out. I mean as far as --

LEG. CARPENTER:

Did I not say I was tabling it? Okay.

DIRECTOR GARDNER:
Oh, for that?

LEG. CARPENTER:
I'm tabling it, yes.

DIRECTOR GARDNER:
Thank you.

CHAIRMAN ALDEN:
Okay. We don't have any Sense or Subject to Call or any other things,
so that ends the agenda portion of the -- or actually the voting

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portion.

LEG. CARPENTER:
Mr. Chairman, I just want to thank you for your courtesy of moving the
agenda forward. I do have a funeral to go to, so thank you.

CHAIRMAN ALDEN:
You're welcome. Charlie, now, if you could give us an update on
gasoline. Heating oil is really not an issue anymore, but gasoline,
the stocks and the prices and any other issues that you have with
Consumer Protection.

DIRECTOR GARDNER:
Gasoline has been decreasing for the past couple of weeks. The low is
now down to -- in the County the low is about \$1.57, which is almost
12 cents a gallon less than it was just -- less than it was about six
week ago. Heating oil season, the one -- the good news about heating
oil is we only had less than ten complaints this year about the
contract price and oil companies trying to get out of it. If you
remember last year, we had that rash of complaints. A lot of
companies that had contracted with customers for a set price, a
ceiling price, and then basically, the oil companies broke their
contracts and raised the prices. This year, we've only had, as I
said, less than ten complaints. We have two hearings scheduled for
companies that did in fact do that. Their excuse was that the price
of diesel fuel went up, so they had to add X amount of pennies, you
know, four and five cents to the price of the gallon, for which we
told them, look, you have a contract for price per gallon, you have a
ceiling price, and that encompasses all of your expected, anticipated,
and unanticipated charges. The fact that diesel fuel went up, you
can't just break the contract, and now say we're going to add a nickel
to the price per gallon. They put it right on the ticket. Instead of
a dollar -- for instance, instead of \$1.29, they just made it \$1.34,

even though the contract clearly state that the cap price was \$1.29. But very much better this year anyway than last year. So I think they got the message last year.

CHAIRMAN ALDEN:

Legislator Nowick, did you have a question?

LEG. NOWICK:

Yes. I just wanted to try to understand about home heating oil. I happened to be looking at my contract prices, and I'm curious as to how within the last month the prices went up so much. Weren't they going down or was that my imagination?

DIRECTOR GARDNER:

Home heating oil?

LEG. NOWICK:

I noticed a year ago, it was \$1.29, then it went up to \$1.49, then it went up to 59, and the last delivery was \$1.79. Now, that was last week. I thought those were going down a little bit.

DIRECTOR GARDNER:

Are you talking about where you had a contract with capped prices?

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LEG. NOWICK:

There were no capped prices, just whatever the market.

DIRECTOR GARDNER:

I mean, I can't speak for the individual vendor, but the oil prices have certainly declined.

LEG. NOWICK:

The highest price was the past month and a half, \$1.79 as opposed to two or three months ago. How does -- that surprised me a little bit.

DIRECTOR GARDNER:

Well, that does not -- that doesn't jive with the County figures overall.

LEG. NOWICK:

That's what I thought.

DIRECTOR GARDNER:

We're back down under a dollar for low. You know, we actually went back to .99.9.

LEG. NOWICK:

And on the COD, that's usually what?

DIRECTOR GARDNER:

The COD is anywhere from 99 to \$1.15. But now we still have high prices of \$1.79 and \$1.89 in the County. The range is tremendous.

LEG. NOWICK:

How do -- how do they get away with \$1.79?

DIRECTOR GARDNER:

It's because of -- it's really the market place. And the -- more than 200 companies that sell oil in the Suffolk County. They just -- you know, have all different kinds of reasons. How can one company -- for instance, we peaked out -- this season, we peaked out in the first week of March. The average price was \$1.84, and at that time the high was 2.20 and the low was a buck 50. That's a 70 cent spread; \$1.50 to 2.20, and the average was \$1.84. That was the peak of the season. Since then it has progressively -- the average now, has gone from \$1.84 to \$1.79 to \$1.55. That was in two weeks it dropped significantly down to \$1.49 down to know \$1.40 is the average.

LEG. NOWICK:

That's what I can't understand.

DIRECTOR GARDNER:

But the range -- but even with that \$1.40 average, the low is ninety-nine nine. You know what the high is? \$1.99.9.

LEG. NOWICK:

Now, do you have a list of the different companies and what their ranges are from month to month?

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DIRECTOR GARDNER:

Yes. We have a concern base. We have 51 companies. So that's why our survey is really so good, because we have a very high fiscal average. And yeah, we have a list of 51 companies, both COD and full service.

LEG. NOWICK:

I mean, I understand some companies have prices because of contracts and service contracts, but mine --

DIRECTOR GARDNER:

Other companies -- just as an aside, we know for a fact that some companies, many of the contracts expire in the -- either in middle of March or the end of March, and some companies -- I mean, they took a bath. In other words, let's say they contracted with a high price of \$1.39. So for October, November, December, January, February, they were capped. Well, as soon as that contract expired, those prices

went up. Why? To recover what they lost selling to their contract customers. So there are that reason and there are a whole plethora of reasons why, you know, the COD companies what would -- people always infer that the quality of the oil is somewhat less than the full service, but it's not. They all get the oil from the same place, but they don't deal with billing. They don't deal with ten days net, 15 net, 30 days, you pay right there. There are no billing expenses. They don't have service contracts. People who get their oil from COD companies, if you run out at three in the morning, good luck trying to find somebody to deliver oil for you that night. Where if you have a full service contract and you run out, they will at least have a service person come that night in the -- usually the contract is within an hour and they bring a five gallon can and put five gallons of fuel oil just to get you started, then make a delivery the next day. You don't get those kinds of things with COD. So it's a balance. But as far as the range, I mean, a dollar, that's a big range. So everybody's anywhere from -- you know, you can say, you're paying \$1.70, I'm only paying \$1.29. Well, some people are only paying ninety-nine.

LEG. NOWICK:

I was absolutely shocked, because if you have thousand gallons of gasoline in a year and it's 70 cents more per gallon, you are talking about a lot of money.

DIRECTOR GARDNER:

We don't get into the whys an wherefores of each individual --

LEG. NOWICK:

But you do agree that the prices should be coming down?

DIRECTOR GARDNER:

Absolutely. Since the first week of March, so that's what, two months. Basically for the last two months, they have been steadily decreasing from the high of a \$1.84 to a current of \$1.40.

LEG. NOWICK:

Some have been increasing.

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DIRECTOR GARDNER:

Some have been increasing. And gasoline by the way, is we peaked about the end of March, about two weeks after oil, and we're down now to the average of about \$1.71 right now in the County. Again, the lows for regular as low \$1.57.

CHAIRMAN ALDEN:

Charlie, just one other quick question. At the last meeting we talked about gasoline and the bootlegging and things like that. I did

contact some of our state representatives. I understand that a few weeks after I contacted them, in their budget discussions it came up that they're losing millions of dollars in revenues. Has anybody from the state contacted you with that task force?

DIRECTOR GARDNER:

No, sir.

CHAIRMAN ALDEN:

Okay. So internally they might be reviving it, but they haven't reached out to us yet. Okay. Thanks, Charlie. Pat, I think you wanted to make a couple of comments.

MS. BRODHAGEN:

Thank you, Mr. Chairman. I don't have any comments on the first bill, 1227, Legislator Carpenter's bill. She tabled that. Intro 1242, you tabled today. So I'm pleased that you did that, because I do think that it needs additional work. And we've talked, and I understand that you are considering some changes. And I did submit comments for the record, which I believe you have. What I didn't address in those comments is some specifics about the penalty structure in here and how the numbers don't exactly work out. And I'd be happy to keep working on that. I'm not prepared to really go into that chapter and verse at the moment. So if we could perhaps meet, since you have tabled the bill and you are working on it, and we could talk about maybe refining that structure so that it's a little clearer and relevant.

CHAIRMAN ALDEN:

Very good.

MS. BRODHAGEN:

Okay. Thank you.

CHAIRMAN ALDEN:

Okay. Thanks a lot, Pat. Does anybody else have anything they want to bring before this committee? If not, thank you, we stand adjourned.

(* THE MEETING WAS ADJOURNED AT 9:50 A.M. *)

{ } DENOTES BEING SPELLED PHONETICALLY

