

CONSUMER PROTECTION COMMITTEE

of the

SUFFOLK COUNTY LEGISLATURE

Minutes

A regular meeting of the Consumer Protection Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, 725 Veterans Memorial Highway, Smithtown, New York on July 28, 2009.

MEMBERS PRESENT:

Leg. John M. Kennedy, Jr., Chairman
Leg. Ricardo Montano, Vice Chair
Leg. Brian Beedenbender
Leg. Lou D'Amaro
Leg. Edward P. Romaine

ALSO IN ATTENDANCE:

George Nolan Counsel to the Legislature
Sarah Simpson, Assistant Counsel
Joe Muncey, Budget Review Office
Barbara LoMoriello, Deputy Clerk
Paul Perillie, Aide to Majority Leader
Linda Bay, Aide to Minority Leader
William Shilling, Aide to Presiding Officer Lindsay
Denis McElligott, Commissioner, Consumer Affairs Department
Ali Nazir, Aide to Legislator Kennedy
Kaitlin Boyd, Aide to Legislator Beedenbender
Justin Littell, Aide to Legislator D'Amaro
Debra Alloncius, Legislative Rep for AME
And all other interested parties

MINUTES TAKEN BY:

Diana Flesher, Court Stenographer

MINUTES TRANSCRIBED BY:

Kim Castiglione, Legislative Secretary

(THE COMMITTEE WAS CALLED TO ORDER AT 1:13 PM)

CHAIRMAN KENNEDY:

Let's begin the Consumer Protection Committee and we will have the Pledge of Allegiance led by Legislator Beedenbender, please.

SALUTATION

Okay, we have no cards to speak. Is there anybody who is before us today who wants to address the committee? Okay. Seeing none, we have our Commissioner from Consumer Affairs, Commissioner McElligott, here today. I had asked him to join us just to speak a little bit about some of what we're experiencing with our fuel pricing and just briefly as to how things are going in the department these days. Denis, how are you?

COMMISSIONER McELLI GOTT:

Very well, thank you.

CHAIRMAN KENNEDY:

Good.

COMMISSIONER McELLI GOTT:

After we spoke yesterday I made a few notes and I thought I'd touch on a few different issues, one that would lead to another. And I know that some of them you had expressed some interest in, some of them that Legislator Beedenbender had expressed some interest in.

CHAIRMAN KENNEDY:

Wonderful. Thank you.

COMMISSIONER McELLI GOTT:

I thought you wanted to know about certain of the issues about how Weights and Measures is doing --

CHAIRMAN KENNEDY:

Yes.

COMMISSIONER McELLI GOTT:

-- as compared to last year.

CHAIRMAN KENNEDY:

Yes.

COMMISSIONER McELLI GOTT:

I have that information. In terms of the numbers of visits that my investigators make to the various what we call devices, whether they be pumps, gas station pumps, meters or scales, we do have records regarding how many individual visits are made, but they are difficult to collate because the main -- the main criteria we use is the income per month relative to each of the different types of inspections. We do inspect scales, all the deli scales, laundromat scales. We are behind by about \$19,000 for the scales. For the meters, the meters of the home heating oil were up by about \$8,000, 38,000 as compared to 30 last year at this time. And the numbers I'm giving you are the numbers from the end of June. They are the best numbers I have right now. For gas distributors, we're -- we have done about twice as well as we did last year. For gas stations we're up a couple of thousand dollars. Those are the inspections of the pumps.

Probably the important change is the addition by this body of the Item Pricing Waiver Program. The

Item Pricing Waiver Program, as of the end of June, had brought in \$567,000 and it is hoped that by the end of -- we are right now in negotiation with CVS. CVS wants to get involved in the program, but they are debating the size of each store with us, and the size of the store depends on the cost of the waiver in the registration. We have had this debate with a bunch of other stores. We have -- it has never been as intense as it is right now with CVS, but it is clear they are going to come on board.

Our goal during the negotiations is not only getting them on board, but being fair to all the prior stores. The argument is in many cases, you know, is the bottle return room or is the pharmacy portion of the store really part of the same business. This body has told -- has used the word gross square footage in the legislation. We've made that very clear and we're sticking with that.

Another change that we see is the precious metals licenses. That is governed by our Weights and Measures people. With the economy being so difficult, more folks are looking to get precious metal licenses in order to get into the secondhand jewelry and gold melting business.

CHAIRMAN KENNEDY:

Denis, before we leave that there is just one thing I think that I would like to either ask you for clarification on or perhaps maybe something with the precious metal licensing. I don't know if it was a merchant who's actually in the business or somebody who mentioned to me that it would seem kind of inherent in our regulation that a merchant must maintain a fixed place of business or someplace where they receive mail or are able to display, I guess, whatever the requirements are. And I say that because I have seen, as matter a matter of fact, at Smithtown Day, there was a merchant set up with a booth asking or inviting patrons to sell jewelry.

COMMISSIONER McELLI GOTT:

This Department has not taken the position that you've just described, that there needs to be one place of business. There are numerous licensed merchants who travel from gold party to gold party. It's like a reverse Tupperware party where folks get together and sell their gold. If they are licensed and they keep the appropriate records, my department is taking the position that that fulfills the statute. We really haven't had a problem with the folks that move around.

CHAIRMAN KENNEDY:

Okay.

COMMISSIONER McELLI GOTT:

The problem we have are with a couple of different locations where there is more than one, and actually we work very closely with the Suffolk County Police Department. My guys do the scale inspections, but when it comes to making the purchases or I should say making the sales, the Suffolk County Police Department does that undercover and they provide the information for us and then we have the hearing or if the offense is so egregious they will go to the District Attorney's Office with it.

CHAIRMAN KENNEDY:

Yes. We've heard from the sergeant who runs the property recovery there that actually the program seems to be working fairly well at this point, so that's a good thing to know.

COMMISSIONER McELLI GOTT:

The one other issue I would tell you that we're doing well I think, as compared to last year, is the Octane Testing Program. The Octane Testing Program is a program run by the State where my investigators collect samples, it is sent to a lab. The lab gives us the results. The lab -- or the State gives us the results. My department is allowed to bring whatever enforcement action. My department is allowed to keep, or the County is allowed to keep, whatever finds there are, but we are allowed to ask the State for a proportion of the cost of doing that.

What we have done and I have done this year is we have taken a second look at the formula that

we're using and we have included a few more of the costs of each employee in the request that we make for reimbursement from the State, so that's up about \$4,000 from last year. We do about 50 octane tests per month. So that's where we are with Weights and Measures.

We are down in terms of the scales. We're up in terms of total revenue from \$299,000 last year to 872,000, mostly because of the item pricing waiver. The reduction in the number of scales that we're able to do is occasioned by the fact that when we receive an item pricing waiver application it's one of the few times that my department has a time limit by which they have to get out there and do inspections of the stores that have requested the item pricing waiver in order to be sure that their scales are accurate.

In addition to that, we have instituted a policy whereby if we are doing an item pricing waiver inspection in Commack and in the same neighborhood there is a store that has not bought into the item pricing waiver, we have insisted that a regular item pricing inspection be done because it really isn't fair to put all your resources towards somebody who's trying to come into the 21st century and ignore the old law. That's where -- that's one of the reasons that the scales are down. We're going to work to complete what we need to do by the end of the year, and I think we'll be able to because the item pricing waiver requests are reducing. I mean, they have gone down almost every month since January. January and February were very big, March was not, April was up a little, May was down, and this last month was down, too.

CHAIRMAN KENNEDY:

Okay. I appreciate that update. There is just one other thing I guess that I'd like to ask and then if anybody on the committee has a question I'll be happy to, you know, have them go forward with it. Legislator Romaine forwarded me the letter of concern from the gentleman who was the head of the Mobile and Manufactured Homeowners Association regarding the variances and propane rates.

COMMISSIONER McELLI GOTT:

Yes.

CHAIRMAN KENNEDY:

And we had talked a little bit about that and where your department gets involved.

COMMISSIONER McELLI GOTT:

Yes. Upon receipt of your request to me I went to my office and I obtained the file -- and just a brief history. This was a complaint from that individual, the President of the Mobile Homeowners Association came into my office and within three weeks to a month it had been resolved. It had been resolved and to his satisfaction and our file was closed with his understanding that the file was going to be closed.

When it comes to the sale of propane or liquid natural gas my office has a couple of different possible jurisdictions. The first and the clearest is as a Weights and Measures Bureau, and in that case it's not about the price, it's about the accuracy of the -- of the meter. It doesn't matter whether it's a dollar a gallon or it's \$5 a gallon. If they've you sold 100 gallons --

CHAIRMAN KENNEDY:

Are you actually receiving that.

COMMISSIONER McELLI GOTT:

That's our concern. Secondly, just like the home heating oil this past winter, we have received complaints regarding the sale of liquid propane. In each case the consumers felt that they had been wronged, but when you went and looked at the written agreement in almost every case they were receiving the benefit of the deal they had signed off on. The most egregious -- I know Legislator Romaine, your constituent's letter was about a delivery charge. The most egregious of them are the cancellation charges, or at least those are the ones that the constituents get most upset about. In both the delivery charge and the cancellation fee, they're contained in the contract usually, and they

do seem onerous, especially when they are imposed when gasoline is very high and now gasoline is low, or they are imposed when oil heat is high and then the price drops, but they've got a guarantee that they are being held to.

I know that my office has been able to negotiate a few of them, but that's where -- that's what my office has been charged with doing. If there is a consumer who is being charged inappropriately, not in accordance with a contract, of course we want to hear about that and it's got nothing to do with the business, the type of business, it's just that we always want to hear about that and we've got clear jurisdiction with regard to that.

CHAIRMAN KENNEDY:

All right. Well, I appreciate that, Denis. Anybody have any questions? Legislator Romaine.

LEG. ROMAINE:

Yes. Commissioner, let me ask you about propane. Now, your Weights and Measures Division is responsible for checking to insure that the volume purchased is the volume delivered; is that correct?

COMMISSIONER McELLI GOTT:

That is correct.

LEG. ROMAINE:

And how often do you do these inspections of these -- I assume each propane dealer has a tank where they fill them up or they have a delivery truck that fills up the tank of the person getting it.

COMMISSIONER McELLI GOTT:

Right. The truck has a meter on it. The meter is measured by a -- what they call a prover, which we have out in Yaphank.

LEG. ROMAINE:

Right.

COMMISSIONER McELLI GOTT:

The prover can be moved to various propane locations.

LEG. ROMAINE:

How many propane dealers have you put your seal on as far as the fact that their trucks have been calibrated, their delivery trucks. Propane is a heating element and used mainly by people in mobile homes. Where your truck has been inspected, these trucks have been inspected, what percentage of the trucks delivering propane in Suffolk County have been inspected by your Weight and Measures Division?

COMMISSIONER McELLI GOTT:

Our requirement is to do that once per year.

LEG. ROMAINE:

And have you met that requirement?

COMMISSIONER McELLI GOTT:

My understanding is we have. And my is understanding is we have, but we are coming up on a time when the office is going to have to spend a lot more time because most of the inspections were done during September, October, November of last year.

LEG. ROMAINE:

Right. Let me ask you this about Weights and Measures. How many budgeted positions do you have in Weights and Measure currently?

COMMISSIONER McELLIGOTT:

Ten.

LEG. ROMAINE:

How many of those are vacant?

COMMISSIONER McELLIGOTT:

Three.

LEG. ROMAINE:

Okay. Is there a reason for them being vacant? Is that a policy in terms of savings? Is that a policy that you had turnover? I don't understand why you have 30% of your Weights and Measures force are vacant when you have difficulty checking on propane dealers and gasoline stations and things of that nature.

COMMISSIONER McELLIGOTT:

One of the positions is vacant because it was held for almost a year by an employee out on either disability or Worker's Compensation. His exiting from the department happened before I arrived. That -- we've just recently, I believe, reached the one year mark so if it's -- my understanding is we needed to get to the one year mark before he could be formally separated. The other one -- or one of the other ones was a young man who started January one, I believe, and during the course of --

LEG. ROMAINE:

His probation.

COMMISSIONER McELLIGOTT:

His probation he was deemed to be not an appropriate employee. Legislator Romaine, we have a situation where these guys are out there alone with badges and we have to be careful and we were. So he did not make it through his probation. And the other one, I don't know the reason why the other spot is vacant.

LEG. ROMAINE:

I'll talk to you about the one that left at another time because that's a personnel matter and you gave a statement that would mislead, I think, the true content of what happened there, but we'll have that conversation another time. Let me ask you, are you behind in your schedules of appointments by Weights and Measures?

COMMISSIONER McELLIGOTT:

We are interviewing right now for one spot, and my understanding --

LEG. ROMAINE:

No, no, I understand. But are you behind in your scheduled appointments of inspections by your Weights and Measures staff? Is there a backlog?

COMMISSIONER McELLIGOTT:

Yes.

LEG. ROMAINE:

And how large is that backlog?

COMMISSIONER McELLIGOTT:

For the scales we're probably talking about -- probably talking about 200 to 300 visits.

LEG. ROMAINE:

You're about two or three hundred businesses behind in measuring their scales.

COMMISSIONER McELLAGOTT:

No, I'm sorry. Two or three hundred scales.

LEG. ROMAINE:

Two hundred or three hundred scales behind.

COMMISSIONER McELLAGOTT:

I believe.

LEG. ROMAINE:

How long would it take an average Weights and Measures inspector to inspect those scales?

COMMISSIONER McELLAGOTT:

It would depend on their particular location. If you had a large supermarket where there were 30 of them in one, it could be done in a day.

LEG. ROMAINE:

Right.

COMMISSIONER McELLAGOTT:

My guys have to travel, though, between one and the other --

LEG. ROMAINE:

So would it be reasonable to say you're somewhere between one and two, one and three months behind in your schedule of inspections? Would that be a reasonable statement or --

COMMISSIONER McELLAGOTT:

Yes.

LEG. ROMAINE:

Okay.

COMMISSIONER McELLAGOTT:

And the reason is because this body has added the inspections of the item pricing waivers.

LEG. ROMAINE:

But if the three vacancies were filled that would not be a problem. Would that be your contention?

COMMISSIONER McELLAGOTT:

I think any Commissioner who sits before you would suggest that more work could be done with more people.

LEG. ROMAINE:

Okay. Thank you. The item pricing waiver that you mentioned, as you know, no one is perfect, certainly not the Legislature. When we drafted that with the best of intentions, we did include the language gross square footage, but you make an excellent point with CVS stores because obviously the pharmacy isn't what we intended or the bottle recycling center. Would you recommend amendments to clarify what gross square footage, considering we deal with various types of stores, some of which have space set aside for bottle recycling, some of which has space set aside for pharmacy, which the -- obviously the item pricing law is not applicable to. Would you make a recommendation of that?

COMMISSIONER McELLAGOTT:

I would leave that up to the Legislature. I would just simply explain that this body has set the price for the waiver based on gross square footage, and if you take Stop and Shop and you carve out the

bottle room and you carve out the pharmacy, there's going to be less income.

LEG. ROMAINE:

I'm not interested in income; I'm interested in fairness. I think everyone in government, while income is significant, it's not the only driving factor. Being fair in determining gross square footage, if you would make that recommendation I certainly would introduce an amendment to the current legislation. But I'm not going to introduce it without the support of the Commissioner because obviously it may not be successful.

COMMISSIONER McELLI GOTT:

I would suggest that there's another issue of fairness. And the other issue of fairness is being fair to the folks who've already paid based on total gross square footage.

LEG. ROMAINE:

It's called rebate and that also can be put into an amendment. If we are going to establish a standard that's going to be fair, and some people have already paid under a different standard, they are certainly entitled to a rebate. I'd be willing to put that amendment in as well.

In any event, Commissioner, if you want to make that recommendation in terms of creating a level playing field and insuring that this legislation is more equitable, I'd be happy to do that. Thank you again.

CHAIRMAN KENNEDY:

Any other questions for the Commissioner? Okay, Commissioner, thank you very much. I appreciate you being here today to give us these updates and certainly anything that we can do to help, you know, with the process going forward, we will be happy to communicate.

COMMISSIONER McELLI GOTT:

I thought you wanted to hear about the oil price survey.

CHAIRMAN KENNEDY:

Yes, as matter of fact, there is one other item that we had spoken about and you were going to let me know where you are at at this point in compliance with the survey of the oil prices or not.

COMMISSIONER McELLI GOTT:

Well, the Department is in compliance. I just wanted to make it clear -- I wanted the Legislature to understand what the -- the industry's response. We have 207 home heating oil vendors. We have been in touch with them. We're in touch with about 50% of them by e-mail, the other 50% we have to use regular mail. Only 40 of them have responded with their prices. The rest have refused and they have refused either by saying we cannot respond because we don't sell that way, or they simply don't respond.

We have received approximately 30 form letters that the industry has spun out, and they're clearly being copied, and they are we are a full service -- a full service oil seller and we don't sell 200 gallons cash ever. We have received 166 hits on our website regarding this survey. I have received one response from a citizen and she complained about the survey because there were so many non-responses and she liked the old one better that had the averages.

CHAIRMAN KENNEDY:

Okay. Well, maybe we have to take a look at it then, maybe there is a need to kind of retool what we had done. Certainly we want to try and get the information in. But, again, thank you. As always, I appreciate you being here and keep up the good work. Thank you.

COMMISSIONER McELLI GOTT:

Thank you.

CHAIRMAN KENNEDY:

All right. Let's turn to the agenda, then, if we can.

Tabled Resolutions

On the tabled resolutions we have ***1113, A Local Law specifying procedures and requirements for the use and acceptance of Electronic agreements for the purchase and sales of home heating oil (Presiding Officer, on request of the County Executive).***

LEG. D'AMARO:

Motion to table.

CHAIRMAN KENNEDY:

Motion to table by Legislator D'Amaro. I'll second. All in favor? Opposed? The resolution is tabled. ***(Vote: 5-0-0-0).***

IR 1415, Adopting Local Law No. 2009, A Local Law banning the sale of drop-side cribs in Suffolk County. (Horsley).

That's got to be tabled for a public hearing. I'll make a motion to table.

LEG. D'AMARO:

Second.

CHAIRMAN KENNEDY:

Second by Legislator D'Amaro. All those in favor? Opposed? The resolution stands tabled. ***(Vote: 5-0-0-0).***

Introductory Resolutions

And now under new resolutions we have ***IR 1604, Adopting Local Law No. 2009, A Local Law requiring retailers of swimming pools to post signs regarding State pool alarm requirements. (Romaine)***

LEG. ROMAINE:

We have to table this for a public hearing, so I'll make that motion.

CHAIRMAN KENNEDY:

Okay. Legislator Romaine makes the motion to table.

LEG. D'AMARO:

Second.

CHAIRMAN KENNEDY:

Second by Legislator D'Amaro. All those in favor? Opposed? The resolution stands tabled. ***(Vote: 5-0-0-0).***

No other business before the committee, motion to adjourn. Second. All in favor? Opposed? We stand adjourned. Thank you very much.

(THE MEETING CONCLUDED AT 1:39 PM)