

PUBLIC SAFETY COMMITTEE

OF THE

SUFFOLK COUNTY LEGISLATURE

A regular meeting of the Public Safety 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 Thursday, April 22, 2010, at 9:30 a.m.

MEMBERS PRESENT:

Legislator Jack Eddington, Chairman
Legislator DuWayne Gregory, Vice-Chair
Legislator Kate Browning
Legislator Tom Cilmi
Legislator John Kennedy

ALSO IN ATTENDANCE:

Presiding Officer Lindsay, Legislative District No. 8
Legislator Tom Muratore, Legislative District No. 4
George Nolan, Counsel to the Legislator
Sarah Simpson, Assistant Counsel
Renee Ortiz, Chief Deputy Clerk, Suffolk County Legislature
Bobby Knight, Aide to Presiding Officer Lindsay
Kara Hahn, Aide to Presiding Officer Lindsay
Mike Pitcher, Aide to Presiding Officer Lindsay
Marge Acevedo, Aide to Presiding Officer Lindsay
Linda Bay, Aide to Minority Caucus
John Ortiz, Senior Budget Analyst, Budget Review Office
Ben Zwirn, County Executive's Office
Robert Moore, Chief of Department, Suffolk County Police Department
Mike Sharkey, Suffolk County Sheriff's Office
Bob Kearon, District Attorney's Office
Noel Digerolamo
Christine Malafi, County Attorney
Dennis Brown, County Attorney's Office
Gilda Avram, Probation Officers Association
Gail D'Ambrosio, Probation Officers Association
Laura Ahearn, Parents for Megan's Law
Jack Bancroft, FRES
Rose McCormick, SDA
Louis J. Molinari, Treasurer, SCPBA
Anthony Prudenti, DSPBA
Artice Hale, Public Safety
Dot Kerrigan, AME, 4th Vice President
Tom Harrington
Ann Marie Harrington
All other interested parties

MINUTES TAKEN BY:

Lucia Braaten, Court Stenographer

MINUTES TRANSCRIBED BY:

Lucia Braaten, Court Stenographer

Kim Castiglione, Legislative Secretary

(THE MEETING WAS CALLED TO ORDER AT 10:11 A.M.)

CHAIRMAN EDDINGTON:

Good morning. I'd like to start the Public Safety Committee meeting and Legislator DuWayne Gregory will lead us in the Pledge.

(Salutation)

CHAIRMAN EDDINGTON:

Please remain standing for a moment of silence for all those who have served our Country, both domestically and abroad.

(Moment of Silence)

CHAIRMAN EDDINGTON:

Thank you. All right. I'm almost afraid to say I have no cards. Is there anybody that would like to talk to us during the public portion? Okay. Seeing none, I'll close the public portion. Okay. And we'll go right to the agenda.

Tabled Resolutions

IR 1029, A Charter Law to provide fixed terms for Public Safety Appointments. (Cooper)

CHAIRMAN EDDINGTON:

This has to be tabled for public hearing. I'll make that motion.

LEG. GREGORY:

Second.

CHAIRMAN EDDINGTON:

Second by Legislator Gregory. All those in favor? Opposed? Abstentions? ***(Vote: 5-0-0-0)***.

IR 1228, A Local Law to expand Suffolk County's Law against bias acts. (Gregory)

LEG. GREGORY:

I'll make a motion to approve.

CHAIRMAN EDDINGTON:

Motion to approve by Legislator Gregory.

LEG. BROWNING:

Second.

CHAIRMAN EDDINGTON:

Second by Legislator Browning. All those in favor? Opposed? Abstentions? ***(Vote: 5-0-0-0)***

IR 1231, A Local Law requiring owners of private residential communities to ensure emergency access to roads after snowfall. (Romaine)

This has to be tabled for Public Hearing. I'll make that motion.

LEG. BROWNING:

Second.

CHAIRMAN EDDINGTON:

Second by Legislator Browning. All those in favor? Opposed? Abstentions? ***(Vote: 5-0-0-0)***.

Introductory Resolutions

IR 1323, Approving the appointment of John Carney as a member of the Suffolk County Fire, Rescue and Emergency Services Commission. (Co. Exec.)

Is Mr. Carney present? Would you just come forward for a second? If you could just introduce yourself to the committee.

MR. CARNEY:

Good morning. My name is John Carney. I'm the Ex-Chief of the Brentwood Fire Department. I'm a second generation firefighter. I've been in the fire service for over 20 years plus. Currently I am employed by the Town of Islip at MacArthur Airport Fire Rescue, and I'm also the Assistant Hazmat Team Leader for the Town of Islip.

CHAIRMAN EDDINGTON:

Thank you. Do I have a motion?

LEGISLATOR CILMI:

Motion.

CHAIRMAN EDDINGTON:

Motion by Legislator Cilmi. I'll second that. All those in favor? Opposed? Abstentions? **(Vote: 5-0-0-0).**

Congratulations and thank you for your service.

MR. CARNEY:

Thank you, sir.

LEG. BROWNING:

Remind them they don't need to come on Tuesday.

CHAIRMAN EDDINGTON:

Okay. Yeah. Any of the appointments today do not have to come to our General Meeting on Tuesday. Thank you.

IR 1324, Approving the appointment of John Bancroft as a member of the Suffolk County Fire, Rescue and Emergency Services Commission. (Co. Exec)

Sir, if you could come forward and introduce yourself.

MR. BANCROFT:

Good morning. I'm John Bancroft. Professionally I did 26 years as an Air Force Firefighter. I'm retired. Currently I'm a Chief out in Westhampton Beach. Was the Chief of the Westhampton Ambulance for seven years, I'm incident commander certified hazmat-wise. That's pretty much it in a nutshell.

CHAIRMAN EDDINGTON:

Thank you.

LEG. BROWNING:

I'll make a motion.

CHAIRMAN EDDINGTON:

A motion to approve by Legislator Browning. I'll second that. All those in favor? Opposed?

Abstentions? Thank you very much, sir. **(Vote: 5-0-0-0)**

IR 1325, Approving the reappointment of Anthony LaFerrera as a member of the Suffolk County Fire Rescue and Emergency Services Commission. (Co. Exec.)

I'll make a motion to approve.

LEG. GREGORY:

Second.

CHAIRMAN EDDINGTON:

Second. All those in favor? Opposed? Abstentions? **(Vote: 5-0-0-0).**

IR 1326, Approving the reappointment of Norman Reilly, Jr., as a member of the Suffolk County Fire, Rescue and Emergency Services Commission. (Co. Exec.)

I'll make a motion to approve.

LEG. BROWNING:

Second.

CHAIRMAN EDDINGTON:

Second by Legislator Browning. All those in favor? Opposed? Abstentions? **(Vote: 5-0-0-0).**

IR 1327, Approving the reappointment of Edward Tully, Jr., as a member of the Suffolk County Fire, Rescue and Emergency Services Commission. (Co. Exec.)

I'll make a motion to approve.

LEG. BROWNING:

Second.

CHAIRMAN EDDINGTON:

Second by Legislator Browning. All those in favor? Opposed? Abstentions? **(Vote: 5-0-0-0)**

IR 1328, Approving the reappointment of Craig Zitek as a member of the Suffolk County Fire, Rescue and Emergency Services Commission. (Co. Exec.)

I'll make a motion to approve.

LEG. BROWNING:

Second.

CHAIRMAN EDDINGTON:

Second by Legislator Browning. All those in favor? Opposed? Abstentions? Thank you. **(Vote: 5-0-0-0).**

IR 1331, Accepting and appropriating 100% Federal pass-through grant funds from the NYS Office of Emergency Management of the NYS Division of Military and Naval Affairs in the amount of \$53,449 for the Suffolk County Citizens Cops Council (SC CCC) FY 2009 and to execute grant related agreements.

I'll make a motion to approve and put on the Consent Calendar.

LEG. GREGORY:

Second.

CHAIRMAN EDDINGTON:

Second by Legislator Gregory. All those in favor? Opposed? Abstentions? *(Vote: 5-0-0-0)*.

IR 1332, Appropriating funds in connection with improvements to the Fire Training Center (CP 3405). (Co. Exec.)

I'll make a motion to approve.

LEG. GREGORY:

Second.

CHAIRMAN EDDINGTON:

Second by Legislator Gregory. All those in favor? Opposed? Abstentions? *(Vote: 5-0-0-0)*.

IR 1334, A Local Law to strengthen the County's Crack House Statute. (Browning)

LEG. BROWNING:

Motion to table for Public Hearing.

CHAIRMAN EDDINGTON:

Legislator Browning, motion to table for Public Hearing, and I'll second that. All those in favor? Opposed? Abstentions? *(Vote: 5-0-0-0)*.

IR 1343, Appropriating funds in connection with updating microwave radios (CP 3233). (Co. Exec.)

I'll make a motion to approve.

LEG. GREGORY:

Second.

CHAIRMAN EDDINGTON:

Second by Legislator Gregory. All those in favor?

LEG. KENNEDY:

Mr. Chair, on the motion.

CHAIRMAN EDDINGTON:

Legislator Kennedy.

LEG. KENNEDY:

Right. Can I just ask with BRO, this is something that we have within the Capital Program this year?

MR. ORTIZ:

That is correct, everything is funded in 2010. It's an ongoing project.

LEG. KENNEDY:

Okay. And this is an update that we're doing in order to be compliant with State or Federal requirements? What's the nature of the update?

MR. ORTIZ:

Basically we're updating a system that was first installed in 1999. We're just keeping up with technology --

LEG. KENNEDY:

Technology improvements, things like that?

MR. ORTIZ:

And trying to keep current with what FRES is doing and other PSAPs are doing.

LEG. KENNEDY:

Okay. Thank you very much. Thank you, Mr. Chair.

CHAIRMAN EDDINGTON:

Okay. We have a motion and a second. All those in favor? Opposed? Abstentions? **(Vote: 5-0-0-0).**

IR 1371, Removing Richard Dormer as Commissioner of the Suffolk County Police Department. (Cooper).

I've had a request by the County Attorney, Christine Malafi, to come forward. Thank you.

MS. MALAFI:

Good morning. There are several legal problems with this IR, 1371. The first basis for this bill being tabled is that the section of the Charter which is quoted in the IR, Section C 23-9A is no longer effective. That section of the Charter was passed in 1958 and then updated in 1968 to reflect the words County Legislature. But in 1980, Section 13-2 of the Charter was passed. In that resolution, changing Section 13-2 of the Charter, the Legislature at the time specifically said that they were changing Section 13-2 of the Charter, which is how you appoint the Police Commissioner, under Section 13-2 of the Charter, to say that the Local Law -- the Local Law, which was 1022 of 1980, adopted in 1981, says, and I'm quoting from the resolution.

"This Local Law will enable the County Executive to appoint all department heads to serve at the pleasure of the County Executive, thereby ensuring and improving accountability and maintaining professionalism within the Executive Branch." Since that section of the Charter was passed after Section 23-9, it renders Section 23-9 inapplicable and ineffective.

In addition, the resolution, which appointed Commissioner Dormer as Police Commissioner in 2004, specifically states that he's being appointed under Section 13-2 of the Charter and that resolution specifically states that he is to serve his term at the pleasure of the County Executive.

To say that the Legislature at this point has the authority to fire Commissioner Dormer violates those principles and it also violates the doctrine of separation of powers. He's a member of the Executive Branch of government, and to take away the County Executive's power to retain him violates the Separation of Powers Doctrine.

Further, the resolution as it stands now does not even contain a signature line for the County Executive. The only resolutions of this body which cannot contain a signature line for the County Executive are Procedural Motions, and this is not a Procedural Motion.

If anyone has any questions or anything I'm more than happy to answer them.

CHAIRMAN EDDINGTON:

Let me ask you, did you reach out to the sponsor, Legislator Cooper, to explain what you just explained to us?

MS. MALAFI:

No, because due to the lateness of the hour, we went through everything last night, I didn't have time. I didn't know he wouldn't be here this morning.

CHAIRMAN EDDINGTON:

So you just -- this just came to a light. You just realized this now.

MS. MALAFI:

No. We just finalized it late last night.

CHAIRMAN EDDINGTON:

Okay. So you didn't reach out, but you did already have this information.

MS. MALAFI:

Yes.

CHAIRMAN EDDINGTON:

I'm just saying things seem to happen like everything's like immediate and I think this could have been resolved. The other thing is -- then basically what you're saying, or what I'm hearing you say, is that we need to have a new Charter Law. We'd have to pass a law to give us the power.

MS. MALAFI:

Yes.

CHAIRMAN EDDINGTON:

Okay. Okay. That sounds like a good thing then. All right.

LEG. KENNEDY:

Mr. Chair.

CHAIRMAN EDDINGTON:

Yes. You know what? I'd like to have our attorney maybe comment.

LEG. KENNEDY:

The County Attorney brings up some points about statutory interpretation and construction, and with all due respect to her in deference, our resolution was drafted by our Legislative Counsel and the whole process of statutory interpretation and what, in fact, actually continues to exist, this body has actually passed legislation for the better part of 40 years. And as a matter of fact, each time we pass a resolution, it does not implicitly obviate everything else that's been done by all the Legislatures that have come before us. So I think it's critical that the drafter speak a little bit about what Legislative history and statutory residence or implication is regarding what was drafted here. What say ye, Counsel?

MR. NOLAN:

Well, it's in the Charter. It's in black and white that this Legislature has the authority to remove any appointed official, even though he was appointed by the County Executive. I do agree with the County Attorney that there is some tension, obviously, because parts of the Charter say commissioners are appointed to serve at the pleasure, yet we retain the authority through the Charter to remove those persons. I think -- I was talking to Legislator Cooper last night. I think this is an area that we probably should look at to clarify, but it's my opinion, based on the clear language of the Charter, that we retain the authority to remove people.

LEG. KENNEDY:

Well, so then let me see if I can go one step further with you on this. If we were to act on this resolution as it sits before us right now, are we acting on a piece of legislation that in your opinion is valid?

MR. NOLAN:

I believe it's valid. I think there probably is a legal issue, but I think we certainly by the clear language in the Charter have the authority, but I think the County Attorney raises some valid points

about other language in the Charter that says that these commissioners serve at the pleasure. But I still believe that the clear language of the Charter gives us the authority to remove those people.

LEG. KENNEDY:

Okay. Well, then let's go to one more step, and as a matter of fact, I don't want to monopolize it, Mr. Chair, but I think your first comments to the County Attorney were very poignant. We're discussing something that perhaps the sponsor may want to go ahead and move into and be willing to modify or alter. But then procedurally let's talk about -- and I do not want to go ahead and suppose that he would want to do anything with this reso other than the way it stands. But let's just say for argument's sake he was of a mind to modify. Could we take an action today to get it out of the committee, have it be modified and then still be allowed before us on Tuesday.

MR. NOLAN:

No, no. It can't be amended now and be voted on Tuesday in the absence of a CN. The other thing I'll mention, it was an issue raised by the County Attorney about the signature line for the County Executive. I spoke with the sponsor last night. We are going to add a signature line for the County Executive so he will have a pass at it.

LEG. KENNEDY:

I don't understand what is -- so in other words, if the sponsor has already agreed that he'll substantively alter it, then we can't take an action.

MR. NOLAN:

Well, I don't consider that a substantive change because we're adding a signature line, we're not changing the text of the resolution. And that issue came up one other time when the County Attorney had raised that issue about a signature line for the County Executive. We added it to a resolution after the amendment deadline and we voted on it at the next meeting.

LEG. KENNEDY:

But, clearly, if the resolution is drawn without a signature line, then the implication is, is that there's no need to have the Executive's action. The resolution is self-executing. Was that the intention when this was drawn?

MR. NOLAN:

Originally it was drafted without the signature line. But it was an issue that was open, whether or not it needed to go to the County Executive -- the Charter says every resolution has to go to the County Executive for a signature. There are a number of non-controversial resolutions that never go to the County Executive for signature, like in terms of appointments to commissions and boards that are clearly with the Legislature, but this is obviously a controversial issue and we believe it should go to the County Executive for his signature if it is passed by the Legislature.

LEG. KENNEDY:

Okay. I don't want to keep beating this dead horse, but why not take another whack? The signature line was omitted intentionally or was it just a drafting issue?

MR. NOLAN:

It was not just a drafting issue. It was originally the section of Charter we're relying on says that the County Legislature may remove --

LEG. KENNEDY:

Good.

MR. NOLAN:

-- which would indicate that we could do it without the County Executive's input.

LEG. KENNEDY:

Excellent.

MR. NOLAN:

But there is another section of the Charter that says that every Local Law resolution that's passed by this Legislature has to go to the County Executive. So weighing out those two sections of the Charter we think it's the best -- the best idea is to give him a signature line and send it to him if it's approved by the Legislature.

LEG. KENNEDY:

Okay. One more, if you will. So then that means we would have to substantively modify the resolution as it's before us now and therefore there'll be no ability to address this on Tuesday for any action we would take now.

MR. NOLAN:

That's -- it's my opinion, Legislator Kennedy, that is not a substantive change or an amendment to the resolution. It's adding a signature line for the County Executive. We had this issue come up once before. The County Attorney raised the same issue in terms of a signature line for a County Executive. We made that change. After the amendment deadline we proceeded with it.

LEGISLATOR KENNEDY:

Okay. I appreciate that, Mr. Chair. Thank you.

CHAIRMAN EDDINGTON:

Let me ask Mr. Nolan a question, then. If we pass this out without recommendation, would the sponsor have time -- he has until Friday afternoon to put in another resolution or?

MR. NOLAN:

We're past the amendment deadline, we're passed the filing deadline, so not for this cycle, no.

CHAIRMAN EDDINGTON:

Okay. Okay. All right. Legislator Gregory.

LEG. GREGORY:

Christine, the -- so the section of the Charter that you're referring to, does that specifically apply to the Police Commissioner or all commissioners?

MS. MALAFI:

The specific Section 13-2 of the Charter applies to the Police Commissioner, but the resolution of the Legislature from 1980 applied to -- it changed all of the department heads; the County Attorney, the Police Commissioner. I'm trying to think of the other department heads, the Parks Department head. It said that all -- it made a fundamental change to the structure of Suffolk County government in 1980 by specifically stating that all of the department heads serve at the pleasure of the County Executive.

It's Resolution 1022 of 1980, and it specifically says, "It is the judgment of the Suffolk County Legislature, in accordance with the recommendations of the County Charter Revision Commission, that an elected County Executive should have the power to appoint officials to implement and carry out his administrative policies. Accordingly, this Local Law will enable the County Executive to appoint all department heads to serve at the pleasure of the County Executive, thereby ensuring and improving accountability and maintaining professionalism within the Executive Branch".

It's the Section of the Charter that changed as a result of that resolution, Section 13-2, that is cited in the resolution approving Commissioner Dormer as the Police Commissioner in 2004, and in the resolution approving the Police Commissioner, Commissioner Dormer, to serve, it specifically says that he is to serve at the pleasure of the County Executive. Those words are in the resolution from January, 2004.

LEG. GREGORY:

Okay. I was just curious that I wanted to make sure if it applied to all commissioners or just the Police Commissioner, because what, a year ago when we went through the whole DeMarzo reappointment and Legislator Cooper authored, sponsored, and passed the bill to give six months after -- it was a six month overlap in her term, that the Legislature were to approve it, we didn't hear any arguments of this sort at that point.

MS. MALAFI:

The head of the Department of Social Services is different than a County Executive department head, because the department head of the Department of Social Services is also a State appointee. They have fixed terms under State Law. That's why she's different and that department is not mentioned in Resolution 1022 of 1980 for that reason.

LEG. GREGORY:

Oh, okay. All right. I just wanted to make sure what the differences are, if there are any differences or just --

MS. MALAFI:

That's the difference.

LEG. GREGORY:

Okay. All right.

CHAIRMAN EDDINGTON:

Legislator Cilmi.

LEGISLATOR CILMI:

I guess the question that comes to my mind is exactly what is the definition of at the pleasure of? Is it exclusively at the pleasure of or is it at the pleasure of, but taking into consideration that the Legislature does have the right to remove those commissioners who are not termed by State Law.

MS. MALAFI:

It's at the -- I would read it as at the pleasure of. Once the County Executive's appointment is appointed, it's just at his pleasure and there's no authority of the County Legislature to remove someone who's been appointed to serve at the pleasure of the County Executive.

LEGISLATOR CILMI:

Do you know, or Counsel do you know, of any instance where that language is used either in this County or any other body where a Legislature has removed or some other body has removed an appointee who is serving at the pleasure of another elected official?

MR. NOLAN:

I am not aware of any case like that, no.

MS. MALAFI:

I'm not aware of any, either.

CHAIRMAN EDDINGTON:

Okay. You know, I disapprove of scapegoating, and to a degree I feel part is what's happening here. However, I think you've helped me out because you said probably five or six times the Commissioner serves at the pleasure of the County Executive. And so if we discharged this without recommendation and then if we do approve it, it probably is not going to be legally binding, but it will make a statement that the Police Commissioner serves at the displeasure of the Legislature. So that now I'm seeing that even if it can't be enforced, it certainly sends a very strong message, because I think you've helped me with that because you emphasized that he serves at the pleasure,

the pleasure, the pleasure of the County Executive, and that's what we've been trying to say in this committee for four years, that we're not really happy with that. So I'm going to make a recommendation to discharge this without recommendation and see how this shakes out.

LEG. KENNEDY:

I'll second the motion, Mr. Chair, for the purposes of discussion, but I would like to ask the County Attorney. You know, not seeing the section of the Charter in front of me, there is a confirmation process that goes on with commissioners when they come in or when they are reappointed. As a matter of fact, perhaps, I don't know, there might be some process that goes on with our Parks Department, our incumbent Commissioner has been dismissed, I guess, apparently. So there's great significance, I guess, in the fact that the Commissioner's non-state termed serve at the pleasure of the County Executive, but then what role does the Legislative confirmation process play when that Commissioner is in, and towards the Chair's comments, what is the role when a Commissioner is deviated so far from what we assess to be, I guess, acceptable performance?

MS. MALAFI:

I believe that your role, the Legislature's role when you are unsatisfied with an appointment made at the pleasure of the County Executive, is to do just what you've been doing. I don't think anyone who reads Newsday would think that Legislator Eddington and some others of you are happy with Commissioner Dormer in putting -- and voicing your concerns to the County Executive and letting him consider whether he wants to retain his appointment. And I think you've all made that very clear on many occasions over many months, it could even be a couple of years now, to the County Executive and it's still his choice to keep Commissioner Dormer as his Police Commissioner, and that's the way it should remain.

LEG. KENNEDY:

And I appreciate you articulating what you sense the process is, and I'll go with you right up to the point where we talk about expressing displeasure about particular actions and then we move into something that clearly I think you would -- you would agree is not just a difference between implementation or delivery, but embracing policy. And among the many things that have been expressed as far as concern, one of the largest issues that we confront, even as we sit right now, is the policy determination that was made by this body, as manifested by the budget, which is probably the most significant resolution that we adopt, which included the funding for 200 Police Officers. And the fact that the Commissioner and the County Executive have elected to steadfastly refuse to go forward with that policy, where then does this body go forward to implement that previously adopted and signed policy?

MS. MALAFI:

I do not have an answer for you. As I stand here I'll think about it for you, but what I can say is that you have do have the budget authority. You've stated that budget authority. I believe that there is -- I remember it being -- reading -- I think it was Newsday I read it in -- that the County Executive's Budget people say that there isn't enough funded for the 200. I'm not here to argue that, and you have every right to put in the budget what you want and to voice what you want to happen in the Police Department, but the fact is that as the Charter has been drafted, the Police Department is part of the Executive Branch of government. Budget -- I can't answer the budget question, but --

LEG. KENNEDY:

And in some respect it was rhetorical, but it was also designed to try to ferret out the difference between implementation and delivery, which is clearly an Executive function, and establishment of policy, which is clearly and exclusively a Legislative function, and therein lies much of what the crux is right now.

CHAIRMAN EDDINGTON:

Jack.

(The following was transcribed by Lucia Braaten, Court Stenographer)

LEG. KENNEDY:

I'll yield.

CHAIRMAN EDDINGTON:

Ask John.

LEG. KENNEDY:

Well, perhaps maybe I need to turn to BRO. John, maybe my recollection is, you know, off color a little bit, or, you know, November seems like it was decades ago. What happened in November of 2009?

MR. ORTIZ:

To state it clearly, we included in the Operating Budget a class of 100 in April and a second class in the Fall of 100, and we included enough funding for those two classes.

LEG. KENNEDY:

And we projected revenues? As a matter of fact, my recollection is we actually reduced some of the projected sales tax revenue that the County Executive had put in in his proposed 2010 budget. But, nevertheless, we made the adjustments, we did the cuts, we did the hard work that was necessary to make sure public safety was going to be addressed; correct?

MR. ORTIZ:

That is correct. We reduced the sales tax revenue from 58 million to 54 million, and we increased Police District tax by 3% to cover the cost of the new class.

LEG. KENNEDY:

So, in other words, our constituents have already paid for it.

MR. ORTIZ:

Correct. The --

LEG. KENNEDY:

Okay.

CHAIRMAN EDDINGTON:

So let me ask you a question, then. I mean, now I'm hearing -- are we talking about a misappropriation of funds?

MR. ORTIZ:

Projections for sales tax, you know, they were projections back last year. The PBA arbitration award has an affect on the Police District as well. Right now, we're on schedule to hire the 70 Police Officers in June and there should be sufficient funding for that.

MS. MALAFI:

Excuse me. I just --

CHAIRMAN EDDINGTON:

Yes, go ahead.

MS. MALAFI:

-- wanted to remind everyone that in order to have a class, a Police class, SCIN forms have to be signed. Commissioner Dormer has no power to sign SCIN forms, that's solely with the County Executive. So blaming him for a class size that's less than you had anticipated is unfair, he's not the one who signs SCIN forms.

CHAIRMAN EDDINGTON:

I didn't hear anybody blame the --

LEG. KENNEDY:

Yeah, right. Through the Chair.

CHAIRMAN EDDINGTON:

Go ahead.

LEG. KENNEDY:

I did not go to that level, Counselor, to place blame with the Commissioner. However, you've made it abundantly clear that the Commissioner is the County Executive's agent exclusively. So it seems to me, then, despite what the policy was that was adopted here, the agent is advising the principal it's of no consequence. I'm going to yield.

CHAIRMAN EDDINGTON:

Legislator Cilmi.

LEGISLATOR CILMI:

Thank you, Mr. Chairman. And just to delve a little further into Legislator Kennedy's questions or remarks, although it's somewhat off topic, I think it's important enough to discuss.

John, are you aware that from what I've heard, the County Executive's Budget people dispute the fact that we appropriated enough money to put in the classes that we're talking about now?

P.O. LINDSAY:

Let Robert answer.

MR. LIPP:

We did back in March in Budget and Finance Committee, March 16th, we presented jointly, based upon what the Charter requires, to the Budget and Finance Committee projections through 2011. Part of that, John and I had worked on the Police budget portion of the projections. And, yes, as John had said, it is a projection, but what we found was, even though back in the Fall we put sufficient funding in for a class, as it turned out, though, the arbitration award was higher than we had implicitly budgeted for. In particular, implicit in the budget was enough for a 3% increase; we had a 3 1/2% increase. Now part of our budget projections assumes that -- which is a high-probability scenario that the two other Police unions also agreed to a contract, which is a likely scenario. So what's the point? The point is we had sufficient funds for hiring the two classes that would add up to 200 new recruits, but because of the contract award, that difference or additional monies are proving to be less than sufficient for that reason. And it is speculative when we adopted the budget what the contract negotiated award would be, or arbitrated award.

LEGISLATOR CILMI:

Have you looked at the numbers to determine how much less than sufficient it is? What was the -- what's the difference between what we expected the award to be, if anything, and what the award was?

MR. LIPP:

We think we'll come in fairly close to literally spending the entire appropriations for the Police District for this year with, A, a class of 70 in June, and, B, we assumed the class of 100 in the last week of December; that was part of our projection. I can't speak for the Budget Office, but for Budget Review, that was part of our projection.

LEGISLATOR CILMI:

Would you be able to take the time to speak directly with the County Executive's Budget people and see if you can reconcile your opinions of where we're at budgetarily with this and their opinions of where we're at budgetarily with this and ceding it back to us at the next meeting --

MR. LIPP:

We actually --

LEG. CILMI:

-- or maybe through the Chair.

MR. LIPP:

I don't want to put words in the mouth of the Budget Office, so the -- in that sense, the answer is yes. But we have spoken with them and we're pretty much in agreement as to what the cost of the arbitration award will be. And, admittedly, you know, there are -- you know, it is somewhat a projection, but, you know, we're pretty close to the pin in terms of our numbers. We looked at it a couple of different ways, and probably the Executive looked at it a little differently. So it's always good to have estimates, looking at it differently, and we're coming up to a pretty similar number.

LEG. CILMI:

Okay. Thanks.

MR. LIPP:

We're pretty confident in our numbers.

CHAIRMAN EDDINGTON:

Presiding Officer Lindsay.

P.O. LINDSAY:

I guess this is an ongoing discussion or disagreement, but probably disappointment, Robert. When we put the budget together last November, we were assured that there was enough money there to fund the class. And, at that time, we didn't know that the starting salary for a rookie cop would be dropped pretty dramatically, so the cops that we're hiring, we're hiring cheaper than you projected last year. And, again, these are replacement police officers. We're funding police officers now in this budget that aren't going to be here at the end of the year. What happens to that money? I don't know what you guys are doing.

MR. LIPP:

There's an explanation for that. When you're talking about new recruits, you're talking about 100, 200 recruits -- well, 200 recruits for partial year. But when you're talking about the arbitration award, there are over sixteen hundred police officers and over twenty-four hundred, if you include the other two Police unions. So, the higher contract award wallpapers over any savings that we're getting with the lower starting salary.

P.O. LINDSAY:

Well, I'm disappointed; okay? I'm disappointed, and here's why I'm disappointed. The 3.5% that was awarded to the Police unions, if I'm not mistaken, that's in the same range as the last award. You now --

MR. LIPP:

I don't have a problem with what you're saying, I understand what you're saying. The problem was we thought there was sufficient money for only 3% in the budget. That number was not changed. Our conversations with the Executive's Office was that they were convinced that they had enough money in there. I'm not sure what percentage they thought that was equivalent to. I can only say that we thought that the dollars that were put in the budget were according to 3%, not 3 1/2, and we were not in a position to say how the arbitration award was going to come down. The Executive, from our understanding, was confident enough that there was sufficient funds in there, and we

don't -- and I think, in hindsight, that clearly wasn't the case.

P.O. LINDSAY:

Let me throw something else into the mix that was never officially in any of these documents, but everybody knew about it. The 12 million dollar give-back of the deferred payments by the Police Unions was all part of this equation, and everybody knows that, including the County Executive, but that isn't even equated here at all either. Now we suddenly hear we don't have enough money?

And let's just go into the political arena. The County Executive had a press conference a month ago that said, "If this Legislature agrees to sell the nursing home, we'll find the money for the cops." What the hell has that got to do with anything?

CHAIRMAN EDDINGTON:

Thank you. Legislator Gregory.

(The following was transcribed by Kim Castiglione, Legislative Secretary)

LEG. GREGORY:

Okay. What I'm hearing from the County Attorney is, you know, I think, you know, it's very concerning and I think as a Legislator from this Legislative body, you know, the message pretty much is we don't have any power. We, you know, acquiesce to the County Executive, and his appointees can do whatever they want and we have oversight, but no enforcement or anything of that nature. And that tomorrow we need to -- if what the County Attorney is really saying is true, we need to fix the law, the Charter Law, do it expeditiously, because if we have oversight with really no ability to enforce our displeasure, you know, what's the sense of having oversight?

Personally I don't agree with this resolution. I have disagreements with the -- with the Commissioner, but, you're right, you know, he's -- you know, he's been appointed by the County Executive. He has the right to appoint whoever he wants. If he's not a criminal or doing something illegal, I think he deserves to serve in that post. I told him that privately; I'm saying it publicly. I agree -- I'm of the philosophy that we can agree to disagree. That doesn't mean that you should be fired. And I don't think it addresses the underlying problem.

The underlying problem is the County Executive in my eyes, and his oversight in management of a department of which he has -- doesn't have the professional background, expertise to manage. That's why he has a Police Commissioner. And I would hope that he would use his 20, 30 years experience to execute his duties to the best of his ability, and not manage it in a way as a tool to lash out against the PBA to get contract concessions and some of the other things that we can allegedly say that have happened.

But I don't support this resolution, but certainly -- you have certainly brought up something in my mind that we should address that should apply to all appointees, because we, you know, we -- yes co-equal branches of government and what you're saying to us is we're not equal to the County Executive's Office branch of government. We're not empowered. You know, you cut off our arms and our legs and you throw us in the ocean and expect us to swim. That's what you're telling us, and I don't like that. I don't like that at all.

You know, your comment that well, you know, everyone knows, you can voice your displeasure through Newsday, we shouldn't voice our displeasure through press releases and statements. We should have something concrete and that should be in the Charter Law, and I think we should fix that right away.

CHAIRMAN EDDINGTON:

Thank you. Legislator Cilmi.

LEGISLATOR CILMI:

Thank you, Mr. Chairman. Through the Chair to Legislator Gregory's point. I filed a bill recently that would amend the Charter to require all commissioners and department heads who are not -- who do not have State mandated terms, to come before this Legislature every four years to be reconfirmed, so that we as a body, a representative body of our constituents, can have some mechanism of holding commissioners accountable to the people that they're serving and not just to the County Executive. So I would urge my colleagues to have a serious look at that bill and when it comes up for a vote to pass it.

CHAIRMAN EDDINGTON:

Thank you. I just would add that the oversight issue is, I think, imperative and that's why I put the policy bill in and I've taken out a resolved that was -- looked micromanaging, so I think we're on the road to getting back some more oversight. And, you know, in the British government they have a vote of no confidence, and initially I had a problem with this legislation because I saw it as scapegoating, and I don't believe in that, I've never. But maybe if we discharge it without recommendation, it in fact, because if it does come that it can't be legally enforced, at the very least, we've said that we're not happy with the way it's going. So that I look at it as we may come upon a procedure that we have to try to figure out what we can vote on a non-confidence and give the County Executive an opportunity to listen to that, and then maybe alter it. Because I don't feel like he's listening, and this might, it might change things. So, okay. Legislator -- who, Kennedy?

LEG. KENNEDY:

Mr. Chair, you summed it up well, and I think that, you know, we're coming close to the time to vote on this, in whichever fashion we choose to go. But I applaud my colleague for putting forward that legislation as I do for yourself with the measures that you've tried to put in. But I think there's a common theme here around the table and perhaps I'll try to work with Legislative Counsel.

You know, the working men and women of this County, whether they're in uniform or are White Collar or Blue Collar, are the ones that ultimately implement the policy that we set. Yes, they're directed by commissioners who serve at the pleasure of the County Executive, but we can pass all the policies that we want to, and without the hands and feet to implement it, it goes nowhere. And so therein the issue lies, four simple letters, SCIN. An outright refusal to hire the working men and women to implement the policies or to keep the public safe gets at what we also must absolutely look at and try to remedy. So I'll work with Legislative Counsel to see if that's an area that we can have those policies be manifested to the way that we implement them. Thank you.

CHAIRMAN EDDINGTON:

I would just, to respond to that, that I've already spoke to our Counsel about this very thing, because I think we're all -- and he's telling me six or seven people have already approached him, that we're all looking at the underlying problem, and -- but Counsel, could you tell us what approach do we have? Or recourse.

MR. NOLAN:

Well, right now, in terms of the filling of budget positions or not filling of budget positions, I believe our only remedy is to go to court to try to force the County Executive to fill the vacancies. I will say that, you know, there have been many cases from the late '80's and early '90's having to do with this issue of filling vacancies, and the courts always said, you know, the County Executive's the Chief Budget Officer. In a deficit situation, his powers are at a maximum. You know, he can do what he needs to do to balance the budget. I think it's a different question if there is sufficient funds in the General Fund or in the Police District Fund to fill budget positions. Then I don't know that he really has the authority to say "Well, I'm just not going to fill those positions". But right now that's the recourse the Legislature has.

CHAIRMAN EDDINGTON:

Okay. Thank you. I hear silence. Legislator Kennedy.

LEG. KENNEDY:

Again, I would just say to Counsel, I appreciate your read on the law, George, and obviously all our acts have to be mindful of what can withstand challenge. But, you know, at the same time, the irony here is, is in a budget deficit situation we make the hard choices as to where we will look to hire individuals and it is just not responsible to acknowledge the normal cycle of retirements that go on, particularly in our uniformed areas. And I'll ask Budget Review one more question. What's our on board count of officers now? Are we below 2500?

MR. ORTIZ:

Yes.

LEG. KENNEDY:

Okay. So, you know, we are reaching a level unheard of in recent times here in this County, yet we see challenges on a law enforcement side day in and day out. I hear a number of \$24 million in overtime that the department is burning up at this point in order to go ahead and put officers in sector cars to do what our constituents agreed to pay an additional 3% tax in out of the special districts. And like the Presiding Officer, I don't necessarily agree that we got blind sided or whacked with this 3.5 percent arbitration award. Yeah, we budgeted for three, the delta is a point five. There's normal retirements. We also reduced substantially several other areas, and we pushed back the start date for the class from March to June. So there's been savings all over the landscape. I don't understand why we're still looking at less is going to even bring us to 2500. I'll yield.

CHAIRMAN EDDINGTON:

Miss Malafi, I'm sorry. I know this isn't really concerning you. If you wanted to sit or -- be comfortable, whatever.

MS. MALAFI:

I'll sit. If you need me, I'm here.

CHAIRMAN EDDINGTON:

Thank you. Well, I have a motion and a second to discharge without recommendation.

LEG. GREGORY:

I make a motion to table.

CHAIRMAN EDDINGTON:

I have a motion to table by Legislator Gregory.

LEG. BROWNING:

I'll second that.

CHAIRMAN EDDINGTON:

Second by Legislator Browning. Okay. The tabling goes first. So I have a motion and a second to table. All those in favor? Opposed? I'm opposed.

LEG. KENNEDY:

I'm opposed.

CHAIRMAN EDDINGTON:

Two opposed. Abstentions? Okay. The motion is tabled. ***(Vote: 3-2-0-0 Opposed: Legislators Eddington and Kennedy)***.

All right. Thank you for your attention today. And I will adjourn the meeting.

(THE MEETING WAS ADJOURNED AT 11:05 A.M.)