

Easton, Pennsylvania

June 2, 2016

A regular meeting of the Northampton County Council was held on the above date with the following present: John Cusick, President; Seth Vaughn, Vice President; Mathew M. Benol; Matthew H. Dietz; Margaret L. Ferraro; Glenn A. Geissinger; Kenneth M. Kraft; Hayden Phillips; Robert F. Werner; Linda M. Zembo, Clerk to Council, and Philip D. Lauer, Solicitor to Council.

Prayer

Mr. Cusick led County Council in a moment of silence.

Pledge of Allegiance

Mr. Cusick led County Council in the pledge of allegiance.

Approval of the Minutes

Mr. Werner made the following motion:

Be It Moved By the Northampton County Council that the minutes of the May 19, 2016 meeting shall be approved.

Mr. Geissinger seconded the motion.

The minutes were approved by voice acclamation.

Courtesy of the Floor

Ms. Laura DiLiello, 517 McCartney Street, Easton, PA - stated she and her husband owned the Lafayette Inn and she was a board member of the Pennsylvania Association of Bed and Breakfast Inns. She further stated they were thrilled that the issue of collecting hotel tax from people who rent from online sites like AirBnB had come to County Council's attention, but they were concerned about how the County would collect those taxes.

Ms. DiLiello stated the majority of properties in question were operating illegally or outside existing legal structure for lodging properties. She further stated it was critical that lawmakers required hosts or owners providing short term rentals are held to the same standards as professional innkeepers and hoteliers.

Ms. DiLiello advised if the County accepted lodging taxes from these properties without ensuring they met all local, County and State requirements, it would be granting them validity and the impression they were operating legally. She further advised many Counties and cities have entered into agreements whereby AirBnB and other online agencies collected the taxes and remitted them to the County who received no information as to who the hosts were or where the properties were located so they were able to operate illegally under the radar.

Ms. DiLiello stated for the safety and protection of owners, visitors, neighbors and the community at large, they were asking County Council to consider all facets of this issue and provide a fair and level playing field that supported small businesses in the County.

#### Controller's Report

Mr. Cusick advised Controller Stephen Barron was not present, but had provided information with regard to the issue of collecting taxes for short term rentals so he wanted to know if the Administration or any member of County Council wanted to comment on it.

Mr. John A. Brown, County Executive, stated due to the volume of information and the complexity of the issue they have not been able to do an analysis of it, but would do so and come back with a recommendation.

Mr. Werner advised these people could not be taxed until a check was done to make sure they were in compliance and if they were doing things illegally then they should be put out of business and not be legitimized by taxing them.

County Executive's Report

Mr. Brown stated they submitted the 2017 budget request to the department heads, noting it was usually sent out in July.

In answer to Mr. Cusick's question as to whether there was an update regarding the Management Letter from CliftonLarsonAllen, Mr. Hunter replied it was in draft form.

Consideration of Confirming Acting Director of the Department of Community and Economic Development Resolution

Mr. Cusick advised the following resolution was introduced by Mr. Kraft at the meeting held on May 19, 2016, but was tabled via a motion by Mr. Phillips and seconded by Mr. Dietz by a vote of 6-3:

Number ??-2016

RESOLVED, By the Northampton County Council that Tim Herrlinger shall be confirmed in his appointment as Acting Director of the Department of Community and Economic Development, effective May 19, 2016.

Mr. Phillips made a motion to remove this resolution from the table.

Mr. Benol seconded the motion.

Mr. Cusick called for the vote on the motion.

The vote: Phillips, "yes"; Benol, "yes"; Dietz, "yes"; Ferraro, "no"; Geissinger, "no"; Kraft, "no"; Vaughn, "yes"; Werner, "no" and Cusick, "yes".

The motion passed by a vote of 5-4.

Mr. Lauer stated he concluded County Council had the ability to either confirm or not confirm the position of Director or head of any agency that was under the County Executive's power and control and that the provision in the Employees Policy Manual (Manual) did not change that. He further stated under the Home Rule Charter (Charter) if County Council took no action within a period of 60 days then the appointment became a confirmed appointment. He noted there was

no provision for Acting Director in either the Charter or Administrative Code (Code) so it could be approved or not.

Mr. Lauer advised the only concern he had was if this individual was placed in this position without County Council's approval and the County Executive subsequently decided that individual should not be retained at the end of the six months the individual could have a case because it was never rejected nor confirmed by County Council.

Mr. Ryan Durkin, County Solicitor, stated there was a second memorandum sent out by Mr. Lauer this week and he did not have an opportunity to review it so he felt it was inappropriate to act on this without the Administration submitting a formal response. He further stated he disagreed with Mr. Lauer's opinion and could answer to some of his argument, but he would like an opportunity to present something in more detail.

Mr. Cusick advised he believed County Council had the power to accept or reject appointments whether it was in an acting or permanent capacity. He further advised he felt the individual being appointed was well qualified for the position and intended to support his appointment.

When Mr. Durkin remarked he understood the argument was the Manual only applied to career service employees, Mr. Lauer stated his position was there were specific provisions in the Charter and Code and at the last meeting it was noted the County Executive was relying upon a provision in the Manual that permitted the appointment without County Council's approval. He further stated the Career Service Regulations (Regulations) provided for the creation of the Manual that was to provide an interpretation of what the policies were and was issued by the County Executive.

Mr. Lauer advised while he understood County Council from time to time had approved it or certain provisions in it that did not change the fact it was created by the County Executive and in this case, one of those provisions was in conflict with the Charter and Code.

Mr. Durkin stated under Section 3.203 of the Manual, "Acting" Pay, it indicated an employee shall have no expectation of, or guaranteed to permanent continuance in the position beyond the six months unless he/she successfully completed the Regulations for regular or unless the position was Exempt Service so he would argue this policy allowed for the County

Executive to place someone in that position for six months and at the conclusion of that period the position could then move to County Council for approval within 60 days. He further stated for County Council to jump ahead of this policy was subverting the intent of the Manual.

Mr. Durkin advised the essential part of Mr. Lauer's argument was the Manual only applied to career service employees, but that did not hold because when they use the word exempt service that took it outside the realm of career service people and expanding it to all the employees. He further advised in the Manual there were 58 of 65 contemplated considerations that applied to exempt and career service employees.

Mr. Lauer stated his argument was not based upon whether the Manual applied only to career service employees, but it was that the Manual never trumped the Charter that specifically stated without any question that appointment of heads of any agency or administrative body that the County Executive had control over must be approved or rejected. He further stated whatever the Manual referred to it was a document created by the County Executive and did not trump the Charter or Code.

When Mr. Durkin remarked that Mr. Lauer's position was the Regulations garnered the Manual and they all have to be consistent, Mr. Lauer advised that was not correct, noting he said the Manual was permitted and created by the Regulations, but it had to be consistent with the Charter that could not be any clearer when it said the County Executive shall have the power to appoint the head of any agency under his direction and supervision and that an appointment shall not be effective unless the County Council, by resolution, confirmed it or failed to reject it within 60 days after the appointment.

Mr. Durkin advised the concern he believed was that in 60 days this position would turn into a permanent position if County Council did not do anything, but that was not the case. He further advised he did not understand why this individual could not take the position for six months in accordance with the Manual.

Mr. Cusick stated his concern was that people had been appointed in an interim position that never came to County Council and one person held the position for almost two years. He further stated failure to act on County Council's part could lead to a failure for the Administration to come back to County

Council to make the position permanent.

Mr. Durkin advised the Manual indicated after six months, County Council had 60 days to act, but he had not fully explored the issue so he felt County Council should give the Administration time to properly respond to it. He further advised this person was already in the acting position because someone had to be in charge of the department, but he felt the bigger issue was one of who had the power to do what.

Mr. Werner stated County Council's track record on appointments had been terrible and that had cost the County money. He further stated he was not saying the person was not qualified, but there was no provision for Acting Director and County Council should have the last say in it.

Mrs. Ferraro advised it was her understanding that County Council would approve an individual for this interim position and then in six months they would have to approve him again in six months for the permanent position so they would receive two approvals and she could not remember that ever happening.

In answer to Mr. Vaughn's request that Mr. Lauer explain the difference between his opinion and Mr. Durkin's, Mr. Lauer stated he did not believe there was any quarrel with what the Charter said and that document created this government and trumped everything and the Code was in agreement. He further stated there was the Manual that was created by the County Executive and supposedly approved by County Council indicating he could create acting appointments.

Mr. Lauer advised if an acting appointment was created by the County Executive and that appointment just continued then the power of County Council was avoided and that was not what the Charter provided. He further advised he was not saying County Council had to do it, but the point being made by Mr. Durkin was the acting process provided something beneficial namely it gave the person an opportunity to look at the position, gave County Council an opportunity to see how the person was doing and then at the end of a time period make a decision.

Mr. Lauer stated this resolution did not state this person was being hired for six months, but he felt the real decision was whether the County Executive had the authority to do what he did and if it was something County Council wanted to address.

Mr. Vaughn advised if County Council took no action it would allow what had been taking place to go on and if it did take action that asserted its authority.

Mr. Durkin stated since there was no Acting Director position if County Council approved this resolution it basically created a permanent Director. He further stated he did not want to make this issue more complex, but he felt it was something that had to be looked at in more detail before a decision was made. He added allowing time for him to review both of Mr. Lauer's opinions was the fairest way to put this to the Administration.

Mr. Lauer advised in July 2009 the then County Council Solicitor was asked the same question and came to the same conclusion that there was no ability to appoint an Acting Director of a department.

Mr. Benol stated part of the confusion was that this issue had been handled two different ways in the past so he would like to see County Council and the County Executive work together to clarify it so future County Councils and County Executives did not have to debate it.

In response to Mr. Dietz's question as to what the result was in 2009, Mr. Lauer replied he did not know what the outcome was, but it dealt with whether the appointment of an Acting Director at the Department of Corrections had to be confirmed by County Council and the conclusion was they did.

Mr. Lauer advised if County Council wanted to approve this appointment consistent with the County Executive's request to have someone in the position for a period of time and preserve County Council's approval then the resolution should be modified to indicate that it was for a limited period of time.

Mr. Durkin stated he would like to review that resolution to make sure the language from the legal side was absolutely perfect before it went for a vote.

Mr. Kraft advised Mr. Lauer was right with his interpretation of the Charter, but he agreed the County Executive could temporarily appoint someone until he found someone he wanted to appoint to the position. He further advised there was no position of Acting Director, but they have been approved in the past so he agreed the resolution should be changed to include a time limit. He added if County Council

decided to change the resolution, it should go through the Personnel Committee in two weeks.

In answer to Mr. Lauer's question as to when this person was appointed, Mr. Brown replied the document was signed May 11, 2016.

Mr. Phillips made a motion to table this resolution, amend it to include a term limit of six months and have it go through the Personnel Committee.

Mr. Kraft seconded the motion.

Mr. Cusick called for the vote on the motion.

The vote: Phillips, "yes"; Kraft, "yes"; Geissinger, "no"; Vaughn, "no"; Werner, "no"; Benol, "yes"; Cusick, "yes"; Dietz, "yes" and Ferraro, "yes".

The motion passed by a vote of 6-3.

#### Economic Development Committee Report

Mrs. Ferraro stated the Economic Development Committee met earlier this evening and received a report from Mr. Mike Stershic from Discover Lehigh Valley regarding the new hotel tax law. She further stated there was a report from the City of Easton that provided an update on their programs and how the money the County awarded them was being used. She noted the Department of Community and Economic Development provided an update on what they have been doing.

#### Capital Projects and Operations Committee Report

Mr. Phillips advised the Capital Projects and Operations Committee would be meeting at 6:30 p.m. on June 9, 2016.

#### Gracedale - NTT Report

Mr. Philips stated NTT was making good progress and had come up with a good solution for some performance issues they had with the business office. He further stated he would no longer be attending these meetings because the major issues have been resolved.



Gracedale - Intergovernmental Transfer

Mr. Cusick advised the Intergovernmental Transfer documents have been executed and was moving forward, however, they were still waiting on House Bill 1062.

County Clerk's Report

Mrs. Zembo stated the County Commissioners Association of Pennsylvania conference would be held in August and if a member of County Council planned to attend the deadline for the discount was June 30, 2016.

Adjournment

Mr. Kraft made a motion to adjourn the meeting.

Mr. Dietz seconded the motion.

The motion to adjourn passed unanimously by acclamation.

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Linda M. Zembo  
Clerk to Council

