

**WAYS & MEANS COMMITTEE MEETING MINUTES**  
**MONDAY, JUNE 26, 2023**  
**1:30 P.M.**

PRESENT: D. Knapp, D. DiSalvo, E. Gott, D. LeFeber, D. Pangrazio, G. Deming, M. Falk, M. Walker, D. Wester, I. Coyle, A. Ellis, S. Hillier  
ABSENT: W. Wadsworth, D. Fanaro,

Ways & Means Chair Dwight Knapp asked Amy Davies to lead the Pledge of Allegiance.

**COUNTY TREASURER – AMY DAVIES**

**Pre-approved Informational Item(s) To Be Reported**

1. DECEMBER 31, 2022 AUDITED FINANCIAL STATEMENTS – Bonadio will present the final 12/31/22 audited financial statements

Ms. Davies introduced Randy Shepard from Bonadio to give a summary of the 2022 audited financial statements. Mr. Shepard reviewed the required communications letter highlights. There were no significant difficulties in performing the audit. Mr. Shepard gave an overview of audit historical analysis highlights. There will be a new accounting standard related to subscription based IT arrangements for 2023. In comparison with all other counties, Livingston County is spending 68% of their funds on local sources compared to 78% for all counties in the state. On the state and federal side we are higher at 31% compared to 21% for the rest of the state. On the expenditure side, we are able to spend ~96% of our expenditures on current operations with ~2.7% on debt service, whereas most counties tend to be higher at 6.8% spent on debt service compared to 85% on operations. Bonadio hopes to issue final audit next week and DOT single audit next month. There was discussion on the impact to us and how to reconcile the overdue funds (2021/2022 IGT money) that we have been expecting once we actually receive it.

**CLERK OF THE BOARD – MICHELE REES**

**Action Item(s) To Be Reported**

1. AMENDING RESOLUTION NO. 2023-150 (2023 EMPLOYEE RECOGNITION-PARTYMAN CATERING & RENTAL)

WHEREAS, Resolution No. 2023-150 authorized the Chairman of the Livingston County Board of Supervisors to sign a contract with Partyman Catering & Rental for the 2023 Employee Recognition event. Said contract was for an amount not to exceed \$5,000.00; and

WHEREAS, due to a higher attendance response than anticipated, there is now a need to increase the contract amount by \$1,000.00; now, therefore, be it

RESOLVED, that the Chairman of the Livingston County Board of Supervisors is hereby authorized to sign a contract amendment with Partyman Catering & Rental to increase the contract amount to an amount not to exceed \$6,000.00; and be it further

RESOLVED, that Resolution No. 2023-150 is hereby amended.

The Clerk explained that she is requesting a contract amendment because the final cost was more than the contract resolution amount this year due to higher foods costs and the increased attendance response. We usually have about 75 and this year we have 130 attending.

*Motion: Mr. Pangrazio moved and Mr. DiSalvo seconded to approve the foregoing resolution Carried.*

**COUNTY ATTORNEY – SHANNON HILLIER**

**Action Item(s) To Be Reported**

1. RESOLUTION AUTHORIZING LIVINGSTON COUNTY TO INVESTIGATE, ENGAGE COUNSEL, AND COMMENCE LITIGATION TO ENJOIN IMPLEMENTATION AND ENFORCEMENT OF THE 2023 MODIFICATION TO SECTION 502 OF THE NEW YORK STATE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW

WHEREAS, in July of 1973, New York State enacted Chapter 346 of the Laws of 1973 to create regional off-track betting corporations in an effort to curb unlawful bookmaking and other illegal wagering and to provide an added source of revenue for participating local governments and the State; and

WHEREAS, when originally enacted, Section 502 of the Racing, Pari-Mutuel Wagering and Breeding Law required regional off-track betting corporations to “be administered by a board of directors....one member from each...participating county.” Said members were to be appointed by the county governing body. The mayor of a city was also permitted to appoint a single member to the board with the approval of the city’s legislative body. Each appointed member had one vote and all votes were allotted equal weight thereby giving each participating jurisdiction equal control over the operations of the regional off-track betting corporation; and

WHEREAS, in response to the newly enacted legislation, the Western Regional Off-Track Betting Corporation (“WROTB”) was established in September 1973 as a public benefit corporation with headquarters in Batavia, New York. Eleven counties and two cities initially chose to participate in the management and administration of WROTB. Between 1976 and 1979 four additional counties elected to take part in the corporation. The participating counties included: Cattaraugus, Cayuga, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Orleans, Oswego, Schuyler, Seneca, Steuben, Wayne and Wyoming. The two participating cities were the City of Rochester and the City of Buffalo; and

WHEREAS, as for Livingston County, on July 11, 1973, the Board of Supervisors passed Resolution No. 73-158 authorizing the County to participate in WROTB. Said Resolution specifically provided that it was being adopted subject to permissive referendum and would become effective in accordance New York State Municipal Home Rule Law Section 24; and

WHEREAS, on May 2, 2023, as a part of the New York State Budget, Section 502 of the Racing, Pari-Mutuel Wagering and Breeding Law was amended to create Section 502-a specific to WROTB. It terminated the appointments of all existing members of the WROTB Board of Directors and required vacant board positions to be replaced with new appointments. Newly appointed members now vote according to the newly established weighted voting procedures found in Section 502-a. This weighted voting system no longer allows for the founding counties to exercise equal operational control over WROTB as voting power is now concentrated among the board members from Erie County, Monroe County, the City of Buffalo, and the City of Rochester; and

WHEREAS, Article IX, Section 2(b)(2) of the New York State Constitution restricts the State Legislature’s ability to act in relation to the "property, affairs or government" of any local government. It specifically states the Legislature:

(2) Shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only (a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership, or (b), except in the case of the city of New York, on certificate of necessity from the governor reciting facts which in the judgment of the governor constitute an emergency requiring enactment of such law and, in such latter case, with the concurrence of two-thirds of the members elected to each house of the legislature.

and,

WHEREAS, it is unknown whether the Governor's message of necessity comported with the New York State Constitution, in particular Article III, Section 14. That provision requires bills to be “printed and upon the desks of the members” of the Legislature at least three calendar legislative days before final passage. This mandate may be circumvented if the Governor “certifie[s]...the facts which in his or her opinion necessitate an immediate vote” on the bill. It is unknown whether the Governor stated any facts in a certificate of necessity that form the basis of her opinion that necessitated an immediate vote; and

WHEREAS, in *Matter of Moran v. La Guardia*, 270 N.Y. 450 (1936), the New York State Court of Appeals recognized that “To repeal or modify a statute requires a legislative act of equal dignity and import.” Essentially, a law can only be amended by the same procedures that were used to enact it originally. Nothing less than a Home Rule Message from a majority of the founding counties would have satisfied “the doctrine of Legislative Equivalency”; and

WHEREAS, none of the founding counties, including Livingston County, enacted Home Rule Messages requesting Section 502 of the Racing, Pari-Mutuel Wagering and Breeding Law be modified and/or amended, and certainly never authorized a relinquishment of control of WROTB to Erie County, Monroe County, the City of Buffalo, and the City of Rochester; now, therefore, be it

RESOLVED, that the Livingston County Board of Supervisors hereby authorizes all necessary litigation

to enjoin implementation and enforcement of the 2023 modification to Section 502 of the Racing, Pari-Mutuel Wagering and Breeding Law passed on May 2, 2023 and to name the following as potential Defendants in such legal action: New York State, the Governor of New York State, the New York State Assembly, the New York State Senate, and any other party deemed necessary to bring full relief to the residents of Livingston County. Ms. Hillier gave a brief history of this particular statute in 1973. At that time, the state passed a law that allowed the creation of Regional Off Track Betting Corporations and then locally there were numerous counties that joined together to create the Western Regional Off Track Betting Corporation that we participate in. The third Whereas clause list the counties specific to our region that participate in that corporation and it also included the cities of Buffalo and Rochester. At the time the Corporation was created it was specifically understood by all involved that it would be one member, one vote, equal participation and equal say in how the operation of the Corporation functions. This past budget cycle when the state passed the budget, there were changes made to the enabling statute that were unexpected and certainly input was not sought from the counties that make up that Corporation. The changes essentially required all existing members to be immediately terminated from the Board of Directors. Each county and the cities through the Mayor were asked to appoint a new member and then the newly created board would be voting by weighted voting system. This disrupted the equal voting participation process of the Corporation. What you have now is essentially a concentration of power among Erie County, Monroe County and the cities of Buffalo and Rochester. Erie County now has 25 votes given to its members, Monroe County has 20, Buffalo has 10 and Rochester has 8. The Genesee County Attorney reached out to Ms. Hillier to determine if we would be interested in joining together to pursue possible litigation against the State of New York as well as the Assembly, the Senate and specifically, the Governor. There seems to be question about whether or not the changes made to the Statute were proper under the Home Rule Law. Genesee County has contacted Dennis Vacco from Lippes Mathias LLP. This particular partner from that firm has a history with governmental operations. He is a former New York State Attorney General that served from 1994-1999. Ms. Hillier is asking if the Supervisors are interested in pursuing litigation against the state in regard to changes made to the Corporation. The understanding would be each participating county would be equally divided for the cost of the litigation. If all 15 counties join the litigation the cost would be ~\$5,000 per county. Mr. Pangrazio stated that it would be worth spending the money and Mr. DiSalvo agreed. Mr. Gott stated that it is his belief that the weighted vote makes a difference but he does not believe they are taking our funds away. Mr. Coyle stated that the changes to the board should not affect the proceeds that Livingston County will receive at this time. Moving forward, there would be some concern because of the constitution of the Board, whether or not that would continue in its present state. Ms. Hillier explained that it is anticipated that Genesee, Niagara, Orleans and Wyoming will all be taking action this week to begin this but it is still unknown what other counties of the fifteen will be on board. On principle, it is the right thing to do. Mr. Coyle explained that the history may be on our side in that bills were presented in a normal democratic process and failed twice. The only way to get this done was in a "within the budget" deal and to insert it in the budget process as an add-on with a message of necessity. There was no reason to do that, which is why Mr. Coyle believes this may have some good traction and good legs to stand on as a challenge to the process.

*Motion: Mr. Gott moved and Mr. DiSalvo seconded to approve the foregoing resolution..... Carried.*

**COUNTY ADMINISTRATOR – IAN COYLE (Attachments)**

**Action Item(s) To Be Reported**

**1. APPROVING ABSTRACT OF CLAIMS #6B-JUNE 28, 2023**

RESOLVED, that the Livingston County Board of Supervisors approves the Abstract of Claims #6B dated June 28, 2023 in the total amount of \$1,966,932.26.

*Motion: Mr. DiSalvo moved and Mr. LeFeber seconded to approve the foregoing resolution.. Carried.*

**2. AMENDING 2023 LIVINGSTON COUNTY BUDGET: DEPARTMENT OF HEALTH, PLANNING & SHERIFF**

RESOLVED, that the Livingston County Treasurer is authorized and directed to make the requested Budget Amendments per the Budget Amendment entries that have been approved by the Livingston County Administrator.

*Motion: Mr. Gott moved and Mr. DiSalvo seconded to approve the foregoing resolution..... Carried.*

3. **ESTABLISHING AN ACCOUNT: PLANNING**

RESOLVED, that the Livingston County Treasurer is authorized and directed to establish a new account per the electronic entries that have been approved by the Livingston County Administrator.

This relates to mobility management services.

*Motion: Mr. DiSalvo moved and Mr. Gott seconded to approve the foregoing resolution..... Carried.*

**Pre-approved Informational Item(s) To Be Reported**

1. Administrative Updates
2. 2024 Budget Planning

The shared services plan will be coming out again this summer. There are a couple of changes to the plan structure coming out from the state. Mr. Coyle reviewed the impact items out there awaiting Governor Hochul's signature. There is a tentative agreement for the LCCOPS CBA that will be on the next Ways and Means Committee meeting in addition to a NYS Retirement related resolution to prepare for consideration. Work on the 2024 budget will begin shortly. Mr. Coyle reviewed some items that will need to be watched closely, i.e. tax rate, tax levy, Medicaid changes and sales tax. We do still have the remaining \$4.4 ARPA dollars remaining to spend.

There was discussion on future planning for green energy and vehicles. Mr. Coyle explained that we haven't seen any impact on this yet but we are going to.

**ADJOURNMENT**

Mr. Pangrazio moved and Mr. DiSalvo seconded to adjourn the meeting at 2:00 p.m.

Respectfully submitted,  
Michele R. Rees, IIMC-CMC  
Clerk of the Board