

**Laws & Rules, Governmental Services Committee
Special Meeting Minutes**

DATE & TIME: March 13, 2019 – 6:00 PM
LOCATION: KL Binder Library, 6th Floor, County Office Building
PRESIDING OFFICER: Chairman Donaldson
LEGISLATIVE STAFF: Jay Mahler, Deputy Clerk
PRESENT: Legislators Roberts, Rodriguez & Ronk
ABSENT: Legislator Heppner
QUORUM PRESENT: Yes

OTHER ATTENDEES: Legislators Archer, Delaune, Nolan, & Petit, Legislative Counselors Gordon & Ragucci, Deputy Comptroller Evan Gallo – UC Comptroller’s Office, Eric Gullickson – Mohonk Mountain House, Steve Turk and Andrew Chafatelli – Rocking Horse Ranch, Tamara Murray – Emerson Resort & Spa and UC Lodging Coalition, CJ Heartwell-Kelly – Buttermilk Falls Inn & Spa and UC Lodging Coalition, Mark Dorr – NYS Hospitality & Tourism Association, Conor Gillis – NYS Assoc. of Realtors, Supervisor Robert Stanley – Town of Shandaken, Tom Kadgen – League of Women Voters, John Quigley & John Parete – Citizens

Chairman Donaldson called the meeting to order at 6:03 PM.

Chairman Donaldson thanked everyone for attending and explained to those in attendance that the meeting was a working session of the Laws & Rules, Governmental Service Committee to discuss:

Proposed Local Law No. 1 Of 2019, A Local Law Amending The Code Of The County Of Ulster In Relation To Local Law No. 5 Of 1991 (A Local Law Adopting A Hotel And Motel Room Occupancy Tax) To Clarify The Tax Law’s Application To Short-term And Vacation Rentals

Chairman Donaldson advised the attendees that the committee has been reviewing the proposal for quite some time, adding that many in the Legislature feel money is being left on the table, while others seem less concerned. He explained that while it was an open meeting he would entertain comments from members of the committee before opening up the floor to the public.

Legislator Ronk stated that he has had the same issue for the past three or more years that the proposal has been discussed. He explained that the state law does not allow the county to collect occupancy tax from a third-party vendor. He advised those present that the Executive’s Office has contracted with a company to data mine the various home rental platforms to identify those operating in Ulster County. He stated that the arrangement has been very effective in expanding occupancy tax collection and also allows the county the ability to share information with the towns to aid in their local code enforcement efforts. Legislator Rodriguez complimented the Chair for organizing the meeting and stated that he was not sure if the proposal before the committee was the most effective course of action to address the concerns that have been raised regarding short term vacation rentals.

Chairman Donaldson asked if Deputy Comptroller Gallo had any comments for the members. Mr. Gallo advised the members that historically the county has accepted occupancy tax from essentially a third-party vendor, My Avalara. Legislator Archer stated that there were few counties left in the state who did not have an agreement with Airbnb. Mr. Gallo stated that there are currently 28 counties that have the agreements. Legislator Ronk stated that Airbnb is adding a fee to their rates commensurate with the occupancy tax, not charging the tax. He added that he felt that did not create parity with other hospitality providers, nor did the lack of agreements with the many other online rental platforms. Legislator Ronk stated that he did not accept the argument that it was acceptable to collect the tax contrary to provisions of NY Law just because other counties do it.

Chairman Donaldson asked if anyone from the hospitality industry in attendance would like to speak. Tamara Murray from the Emerson Resort & Spa in Shandaken and Co-Chair of the Ulster County Lodging Coalition (UCLC), thanked the Chair and members for the opportunity to address them. She explained that the Lodging Coalition has been working on this issue for a number of years. She informed the members that the UCLC met with Comptroller's office a year ago and stated that while they appreciated the effort, they felt it did not go far enough to address parity. She added that they agreed that occupancy tax collection from third parties was not lawful under current state regulations, they were concerned that the agreement does not allow auditing of collections by Airbnb, and does not require any regulatory provisions. She advised the members that the UCLC supports the County Executive's comprehensive plan. She informed the members that she has been approached by a number of counties at state conferences for information on the methods used in Ulster County and has been asked for advice on how to withdraw from agreements they entered into. Chairman Donaldson commented that the comprehensive plan was not share with the Legislature.

Supervisor Stanley from the Town of Shandaken informed the members that he was concerned that Airbnb provides no backup data to confirm the amount remitted is truly what is owed. He added that the information the county is collecting on who is renting their properties in the town is immensely helpful in protecting the public and enforcing code ordinances. He informed the members that the town intends to reciprocate information sharing as they move forward with permitting processes which may identify additional properties behaving as short-term rentals.

Chairman Donaldson reiterated that a primary concern from many people has been the money being left on the table by continuing to do nothing. Mr. Stanley agreed and said that the short-term rental craze came on quickly and everyone is trying to play catch up. Legislator Ronk stated that having a database of locations providing rental opportunities is keeping people safer by allowing the county and the town the ability to enforce code and safety provisions. He added that simply collecting a fee through a third-party agreement does not create that database. Mr. Gallo stated that there is a registration component in the proposed law. The ability, or lack of ability, to audit locations and fees collected based on restrictions required by Airbnb was discussed at length.

Legislator Ronk asked if the current law was drafted by the Comptroller's Office. Mr. Gallo responded that it is principally the same as the previous version except for the exclusion of the section requiring a portion of the occupancy tax collected be allocated to the towns. Legislator Ronk asked Mr. Gallo how, from an auditing prospective, would the Comptroller's Office be comfortable with the county not receiving copies of what exactly is due and what is received. Mr. Gallo

responded that they have not seen exactly what Airbnb provides. Legislator Ronk stated that he was not comfortable moving forward without knowing if Airbnb is willing to share operator information. Chairman Donaldson said that would be part of the agreement negotiation process.

Mr. Dorr, President of the NYS Hospitality & Tourism Association informed the members that his association FOIL'd all of the agreements that Airbnb has with counties in the state and advised the members that they are all exactly the same. He stated that Airbnb does not negotiate on their terms. He added that there is a clause in the agreement that Airbnb cannot be audited for three years. He informed the members that he sends his members to Ulster County when they reach out for direction on how to handle short-term rental issues. He advised the members that there was a recent article in the Times Union newspaper about the issues that Lake Placid has encountered with their agreement with Airbnb. He added that Ulster County is farther along than any other county in the state. Legislator Rodriguez stated that there seems to be general consensus that the county is moving in the right direction, but felt there was room for improvement.

Chairman Donaldson stated that it is less onerous to collect from one entity as opposed to a couple thousand. Legislator Ronk advised the members that a couple of years ago he proposed a home rule request to allow the county to collect from third party vendors, but it was blocked by a powerful Hotel Motel union out of New York City. He added that should be evidence that the county does not have the legal authority to collect the tax. The identification of properties through the current county process versus the Airbnb agreement, and the enforcement of town permitting and code requirements was discussed.

Legislator Ronk expressed his concerns with the effect of the tax liability calculation language on the all-inclusive resorts operating in the county. Chairman Donaldson acknowledged that it was not the intention of the law to change the way the occupancy tax is applied to those businesses, and said he believed there was support for amending the language. Mr. Turk from the Rocking Horse Ranch thanked the members for the opportunity to address them. He advised the members that his establishment employs hundreds of Ulster County residents who provide services that are not part of a standard room rate, such as barn staff, snow makers, horticulturists, etc. Mr. Chafatelli, Rocking Horse Ranch CFO, added his concerns with the change to the room rate equation. Chairman Donaldson repeated that the language will be amended before moving forward. Mr. Gallo stated that the law as currently written was incredibly complicated. He added that an audit conducted by the Comptroller's Office revealed that many proprietors were calculating the tax incorrectly and advised the members that the language change was an attempt to make the calculation easier. He acknowledged that the effect on the all-inclusive resorts was an unintended consequence. He suggested modeling the calculation after the approach in Sullivan County. He was asked if there are any all-inclusive operators in Sullivan County. None were named.

Legislator Ronk brought the members attention to Section 5 Subsection 3 of the proposed law, referring to permanent residency. He asked if the way the law was currently written may provide a legal hole that could allow for no collection of taxes in certain circumstances. Chairman Donaldson commented that was not the intention of the law and language could be reviewed later. Legislator Roberts thanked Mr. Turk for attending the meeting and asked Chairman Donaldson what his plan was for action on the proposed law at the regular meeting of the committee the following week. Chairman Donaldson responded that he was hoping to have the members motion to have the law referred to the Ways & Means Committee. Legislator Archer stated that the Ways & Means

Committee will certainly review the law, as well as past and present collection methods, etc. Legislator Ronk stated that changes to the 1991 law will require state approval.

Chairman Donaldson asked if the members had any other questions for the guests from the hospitality industry, and hearing none thanked them for their time.

Chairman Donaldson moved on to the discussion of the proposed Rules change to move Resolution deadline one week earlier. Legislator Archer appreciated everyone's consideration of the change. She added that the change will give legislators almost a full week to review resolutions, backup documentation and connect with Executive staff for answers to questions before committees begin to meet. She acknowledged that there will be occasions that create late resolutions and informed the members that there is amended language that would provide for a committee of original jurisdiction to consider a late resolution in committee if they have not already met. Legislator Ronk stated that he believed there was an opportunity to compromise on the deadline day, and added that in his experience, most questions come up in the Ways & Means Committee which meets more than a week after resolutions are made available.

Legislator Archer stated that the intent is to allow all committees time to delve deeper into the matters put before them and the current system does not allow for that. Legislator Rodriguez stated that there are problems with the amount of time the Clerk is given to turn around a final product for the members to review. He added that the current internal process in the executive's office requires resolutions be submitted to them a week before they are sent to the Clerk. He added that the Legislature has a habit of shortchanging themselves. The members discussed past requests made to the administration for more information which were met with exaggerated excuses. Legislator Archer mentioned that Executive staff is not available on the weekends to answer questions. Legislator Petit commented that she serves on a committee which meets on Monday after resolution deadline and found the time to review before the meeting challenging.

Legislator Nolan stated that the change would create a number of challenges for the administration. Legislator Rodriguez stated that he supported the Legislature's request for more time to more thoroughly review matters before them. Legislator Ronk commented that one of the reasons the county went to an Executive form of government was to give the county the ability to move quickly. Legislator Archer advised the member that the previous offer of the Executive to hold a meeting with Committee Chairs and Deputies was now off the table, making the extra week essential to be able to call Executive staff and department heads for information in advance of meetings. Legislator Ronk stated he belief that there is room to compromise on an earlier deadline.

Chairman Donaldson commented that the legislature is a deliberative body which requires time to get things done. He stated that the administration has a different way of looking things. The members briefly discussed having a set day in the month as the deadline and possible changes to when the legislature schedules committee meetings. Chairman Donaldson advised the members that he would like to have a vote on the Resolution at the Monday meeting.

Chairman Donaldson moved the discussion on to the requested change to the Charter to address the calling of a special election to fill a vacancy in the office of Executive. He added that there seemed to

be a consensus that a vacancy should be filled at the next General Election. Mr. Kadgen cautioned the members to account for vacancies which occur immediately prior to a General Election. The members discussed the various filing deadlines dictated by State Election Law which should be considered. Chairman Donaldson asked Legislative Counsel Gordon to work on the amendment language. The members discussed trigger dates in the election process which should be considered when drafting the language and suggested that Mr. Gordon work with Counselor Ragucci to craft the language. Chairman Donaldson advised Mr. Gordon to also apply the language to the section of the Charter pertaining to vacancies in the Legislature. Legislator Ronk advised the members that the Governor has often co-located Special Elections with General Elections. Legislator Rodriguez suggested looking at language for special elections conducted in New York City.

Chairman Donaldson asked the members if there was any other business, and hearing none;

Adjournment

Motion Made By: Legislator Rodriguez

Motion Seconded By: Legislator Ronk

No. of Votes in Favor: 3

No. of Votes Against: 0

TIME: 8:10 PM

Respectfully submitted: Jay Mahler, Deputy Clerk

Minutes Approved: April 15, 2019