

## WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: FINANCE

DATE: SEPTEMBER 12, 2017

---

**COMMITTEE MEMBERS PRESENT:**

SUPERVISORS SOKOL  
SEEGER  
DICKINSON  
MERLINO  
STROUGH  
BEATY  
FRASIER  
MCDEVITT  
SIMPSON  
GERAGHTY  
VACANT

**OTHERS PRESENT:**

DONALD BOYAJIAN, FOUNDING PARTNER, DREYER BOYAJIAN, LLP  
ATTORNEYS AT LAW  
DR. KRISTINE DUFFY, PRESIDENT, SUNY ADIRONDACK  
RONALD CONOVER, CHAIRMAN OF THE BOARD  
BRIAN REICHENBACH, COUNTY ATTORNEY  
MARY ELIZABETH KISSANE, FIRST ASSISTANT COUNTY ATTORNEY  
BENJAMIN BOTELHO, SECOND ASSISTANT COUNTY ATTORNEY  
AMANDA ALLEN, CLERK OF THE BOARD  
FRANK THOMAS, BUDGET OFFICER  
SUPERVISORS BROCK  
MACDONALD  
MIKE SWAN, COUNTY TREASURER  
ROBERT LYNCH, DEPUTY COUNTY TREASURER  
JACKIE FIGUEROA, COUNTY HUMAN RESOURCES DIRECTOR  
TRAVIS WHITEHEAD, TOWN OF QUEENSBURY RESIDENT  
DON LEHMAN, *THE POST STAR*  
SARAH MCLENITHAN, DEPUTY CLERK OF THE BOARD

---

---

*Please note, the following contains a summarization of the September 12, 2017 meeting of the Finance Committee; the meeting in its entirety can be viewed on the Warren County website using the following link: <http://www.warrencountyny.gov/gov/comm/Archive/2017/finance/>*

Mr. Sokol called the meeting of the Finance Committee to order at 11:02 a.m.

Copies of the meeting Agenda were distributed to the Committee members and a copy of same is on file with the meeting minutes.

Commencing the Agenda review, Mr. Sokol offered privilege of the floor to anyone present wishing to address the Committee on any matter. There being no response, he extended privilege of the floor to Donald Boyajian, *Founding Partner, Dreyer Boyajian, LLP Attorneys at Law*, to discuss the County's potential for entering into an opioid litigation. Mr. Boyajian apprised he was an Attorney from Saratoga County whose lawfirm was based in Albany, New York. He said his firm was working with Simmons Hanly Conroy, *a National Law Firm*, on a lawsuit pertaining to what had been deemed "the opioid crisis". He said he was present today to provide information on the topic and inquire whether the County was interested in participating in litigation that had already been filed in New York State and was currently pending. He informed there was a consolidated action that was pending in Suffolk County which included participation by at least eleven Counties and was on hold until they determined how many other Counties would like to join the lawsuit.

Mr. Boyajian stated the opioid crisis encompassed about \$80 billion being expended on an annual basis, mostly by municipalities fighting the cost associated with this problem such as social services, substance abuse treatment and care, police care, etc. provided to residents. He remarked the purpose of the lawsuit was to try and make those responsible for the problem accountable for some of those expenses so it was not all borne by the taxpayers. He explained the litigation which has commenced on behalf of municipalities was the second wave of litigation that had occurred with regard to this problem. He apprised the first litigation which commenced on the opioid crisis was initiated by the Simmons Hanly Conroy Lawfirm in 2003, during which they brought forward a claim on behalf of 5,000 individuals who indicated they suffered harm because of the aggressive marketing of opioids to doctors who then prescribed them. He stated although this case was fought by the industry with a significant

amount of lawyers, the Hanly Conroy Law Firm was successful in settling the case for over \$75 million on behalf of the 5,000 claimants. He mentioned what was telling about the case was that it brought to fruition that the opioid crisis did not occur by accident or coincidence, but rather because of a concerted, aggressive and fraudulent marketing scheme that was perpetrated by the executives of these companies to the extent that three of these executives plead guilty to felonies for fraudulent marketing. He indicated the issue now was the opioid crisis had now snowballed to where it was today which was why the litigation was designed to hold those key manufacturers involved with oxycontin, percocet, fetanyl, etc. responsible. He informed an opioids proper use was for short-term acute pain management, but since the market for this type of use was limited, the drug manufacturers indicated as long as it was managed correctly the drugs could be used for long-term pain management purposes which there was a significant need for. He continued, the way the manufacturers commenced marketing opioids for this purpose was to hire prominent physicians to give lectures to other doctors and suggest that opioids be used for long-term pain management. He informed the issue with this was once an opioid was used for a long period of time its effectiveness continually decreased resulting in increased need thereby possibly leading to addiction. He added not only were opioids marketed to treat long-term pain but also to dentists and in sports medicine for high school and college athletes who sustained sports injuries. He apprised the National Institute of Health identified the drug companies aggressive marketing as a major contributor to the opioid abuse problem. He pointed out the 19,000 prescription opioid deaths on an annual basis was more than the 10,000 annual deaths relating to heroin use.

Mr. Boyajian outlined the financial aspects of the opioid crisis as follows: \$40 billion in lost productivity; \$26 billion in health insurance claims; \$7.6 billion impact on the criminal justice system; and slightly under \$3 billion for substance abuse treatment. He said the question was should the taxpayers bear all of the costs associated with the issue or should the drug companies involved with marketing these drugs be responsible for a portion of them. He mentioned ultimately it was up to the State Court to determine whether or not the drug companies should be held responsible.

Mr. Boyajian apprised Simmons Hanly Conroy had taken up the case on a contingency fee basis which meant if they were unsuccessful in obtaining money for their municipal clients there would be no legal fee. He added it was important to note their firm would also be incurring all of the out-of-pockets costs associated with the case which would be significant. He noted if the cases were dismissed there would be no cost to the municipal clients which meant there was no financial exposure for the municipalities in terms of any out-of-pocket expenses; however, he said, it was necessary for local firms such as his to work with the municipalities gathering the data pertaining to the local costs associated with the opioid epidemic. He advised much like the Tobacco litigation, the New York State Association of Counties was hesitant to support this litigation at first, but were now supportive of it. He added this particular litigation even at its current status had changed the way doctors prescribed opioids, as they were less likely to prescribe them in light of the associated issues.

Mr. Beaty asked whether he was correct to assume the process consisted of the County Departments impacted by the opioid epidemic working together to come up with the expenses incurred by dealing with the issue which would be forwarded on to Mr. Boyajian who would add them to the lawsuit and ask for an amount greater than this for damages and Mr. Boyajian replied in the affirmative. He explained all of these County's cases had been joined together, but each County's action would stand on its own; therefore, he said, a separate complaint would be filed on behalf of Warren County and would stay with what the demographics of the County were such as population, the nature of the expenditures, etc. which would in turn have to be proven.

Mr. Beaty explained normally when a law firm agreed to take a case on a contingency rate, the rate was based upon a percentage of the settlement received and he questioned what that rate would be in this case and Mr. Boyajian replied the rate was 25%. Mr. Beaty inquired whether the County would have the option to pursue a claim on its own if it chose not to participate with this particular lawsuit and Mr. Boyajian replied in the affirmative. He said he did not believe the County would lose standing if they

---

chose to pursue the matter on their own; however, he noted, from a practical standpoint, he did not feel this would be a good move in terms of achieving results.

Mr. Strough informed he had received emails from William L. Nikas, Esq., which he had shared with Chairman Conover and Mr. Geraghty, indicating he was working with Napoli Shkolnik PLLC, Attorneys at Law, on the same issue and he had made presentations to Washington and Saratoga Counties regarding such and would like to do the same in Warren County. He questioned whether this effort was a unified one or competitive and Mr. Boyajian responded that it was a little of both. He explained the Napoli Shkolnik Law Firm had come forward much later in the development of this litigation, but they would be working toward the same end. He said it was a separate complaint but the courts had consolidated them within Suffolk County to operate it more efficiently. He mentioned it was unity in the sense that both firms were seeking the same end results in favor of the Counties, but it was competitive because they would both like the County to join the lawsuit through their respective firms.

Ms. Seeber questioned whether there would be restrictions on what the money could be used for if a settlement was reached, similar to how there were restrictions associated with the funds received from the Tobacco Settlement and Mr. Boyajian replied he felt there would be, but this was something that would be managed by the Court through some sort of negotiation.

A lengthy discussion ensued following which it was determined the Committee would hold off making a decision to allow Mr. Nikas the opportunity to make a presentation regarding the lawsuit on behalf of the Napoli Shkolnik Lawfirm.

During the discussion Travis Whitehead, *Town of Queensbury Resident*, questioned whether this would be similar to the Tobacco Settlement, which was a national one where the County did not have any involvement in the litigation, but was allocated a share of the settlement. He said if the opioid litigation went to the same extent, the County's best option may be to hold off on participating. Mr. Boyajian apprised that there were many private law firms throughout the Country who pushed the Tobacco litigation. He mentioned the pace of litigation would not be the same if the private sector was pushing it versus the Attorney General doing so due to the different constraints and other limitations the Attorney Generals had to deal with. He remarked if there was going to be a resolution to this matter it would be reached through a combined effort on behalf of the Attorney Generals, the County Attorneys, Corporation Counsel, etc. all working with the private law firms who were pursuing these cases; however, he said, he did not believe it would occur with just one of these entities. Mr. Whitehead stated it was more likely to be similar to the Tobacco Settlement in which case the County was able to participate once it was all settled. Mr. Boyajian pointed out the difference with this case was that all of the Attorney Generals in the Country had not come together to bring forward litigation concerning the opioid epidemic yet, but in the case of the Tobacco Settlement they had.

Mr. Sokol informed due to time constraints they would be moving to Agenda Item 3 pertaining to the following referrals from the September 8, 2017 Personnel & Higher Education Committee Meeting:

- a) Request to approve collective bargaining agreements between SUNY Adirondack and SUNY Adirondack Education Support personnel for September 1, 2017 - August 31, 2020.

Mr. Strough disclosed he would be abstaining from voting on matters which involved SUNY Adirondack due to his membership on the SUNY Adirondack Board of Trustees.

Motion was made by Mr. McDevitt, seconded by Mr. Simpson and carried by majority vote, with Mr. Strough abstaining, to approve the Collective Bargaining Agreement between SUNY Adirondack and the SUNY Adirondack Educational Support Personnel as presented and the necessary resolution was authorized for the September 18<sup>th</sup> Board Meeting.

- b) Request to approve SUNY Adirondack 2018-19 Capital Request.

---

Motion was made by Mr. McDevitt, seconded by Mr. Simpson and carried by majority vote, with Mr. Strough abstaining, to approve a resolution in support of the Adirondack Community College Capital Improvement Plan for 2018-19 and the necessary resolution was authorized for the September 15<sup>th</sup> Board Meeting.

- c) Request to sponsor SUNY Adirondack culinary expansion project in the amount of \$1 million.

A motion was made by Ms. Seeber and seconded by Mr. McDevitt to bring the matter to the floor for discussion.

Ms. Seeber stated the Personnel & Higher Education Committee had discussed this matter at their September 8<sup>th</sup> meeting during which it was approved contingent upon review and approval by both the County Attorney and County Treasurer's Offices. She requested that Mary Elizabeth Kissane, *First Assistant County Attorney*, provide an update on her findings. Ms. Kissane informed it was not permissible for the County to loan the College money; therefore, she apprised, a resolution was required stating the County was sponsoring the project in the amount of \$1 million. She said in 2007 the County had sponsored a project at the College following which a resolution was adopted in 2008 accepting the State Grant to be reimbursed for the funds they provided for the Capital Project. She mentioned the technical term for this was the sponsoring of the Capital Project.

A discussion ensued following which Mr. Sokol called the question and the motion to establish a Capital Project for SUNY Adirondack Culinary Expansion and sponsoring same in the amount of \$1 million with the source of funding to be Unappropriated Surplus was carried by majority vote, with Mr. Strough abstaining. The necessary resolution was authorized for the September 18<sup>th</sup> Board Meeting.

During the discussion Ms. Seeber pointed out Dr. Kristine Duffy, *President, SUNY Adirondack*, had previously stated the County's financial contribution toward the NSTEM (*Nursing, Science, Technology, Engineering and Mathematics*) Project would count toward Capital Chargebacks if the formula change ever came to fruition and she inquired whether this contribution would count, as well and Dr. Duffy replied in the negative. She explained she did not believe this contribution would have any impact since the College would be reimbursing the County with the grant funding once it was received. Ms. Seeber said she understood what Dr. Duffy was stating, but felt it was imperative to determine whether it was applicable in case some unforeseen circumstances occurred which caused the College not reimburse the County. She added the County was also incurring a small cost for the administration which was not reimbursable. Dr. Duffy advised this was not a decision the College could make, but it was something they could pursue.

Returning to Agenda Item 2, Mr. Sokol offered privilege of the floor to Mike Swan, *County Treasurer*, who proceeded with a review the 2018 Budget Request for the County Treasurer's Office, a copy of which is on file with the minutes.

Prior to adjourning, Mr. Sokol announced an executive session was necessary and he asked Brian Reichenbach, *County Attorney*, to elaborate on the purpose. Mr. Reichenbach apprised the County had a Notice of Claim which would could turn into a lawsuit that they received a settlement offer on yesterday. He said he would like to brief the Committee on potential litigation and get a consensus of the Committee as to whether they would like to accept the settlement offer.

A motion was made by Mr. Simpson, seconded by Mr. Geraghty and carried unanimously to enter into an executive session pursuant to Section 105(d) of the Public Officer's Law.

Executive session was held from 12:06 p.m. until 12:15 p.m.

Upon reconvening Mr. Sokol announced no action was taken during the executive session.

---

---

Ms. Braymer entered the meeting at 12:15 p.m.

Mr. Sokol called for a motion to authorize a settlement on the Pagano case in the amount of \$5,000 with the source of funding to be an allocation from the DPW Budget. The necessary motion was made by Mr. Geraghty, seconded by Mr. Dickinson and carried unanimously to authorize the aforementioned settlement agreement and the necessary resolution was authorized for the September 15<sup>th</sup> Board Meeting.

There being no further business to come before the Finance Committee, on motion made by Mr. Dickinson and seconded by Mrs. Frasier, Mr. Sokol adjourned the meeting at 12:16 p.m.

Respectfully submitted,  
Sarah McLenithan, Deputy Clerk of the Board