

*Public Hearing
Local Law Introductory No. C of 2011
May 10, 2011*

The Public Hearing on Local Law Introductory No. C of 2011 A Local Law reapportioning the Tioga County Legislature was called to order by the Chair at 10:00 A.M. Seven Legislative members were present, Legislators McEwen and Sauerbrey being absent.

There were 7 people in attendance.

The Clerk read the legal notice as published in the official newspapers.

The Clerk has received a letter from Don Burns, Tioga County Democratic Party State Committee Representative and this will be made part of the record.

County Attorney Quigley did a presentation on reapportionment and explained how the boundaries of the seven districts were changed.

Don Burns spoke and read the following letter, which is part of the record.

“The Tioga County Democratic Party has been informed that the Tioga County Legislature is in the process of considering legislation to again create two double legislative districts in Tioga County. The Chair of the Tioga County Democratic Party has asked me to convey verbally and in writing the party’s opposition to this legislation.

“The original Tioga County Legislature created two double districts each with two representatives and five single districts each with one representative in the early 1970’s as a result of the 1964 “one man, one vote” ruling by the US Supreme Court. That ruling was extended to city, town, and county legislatures under the Equal Protection Clause of the 14th Amendment in 1968 by the same court. Essentially the court ruled that the voting power of each voter be as equal as possible to that of any other voter.

“Such is not the case in Tioga County. Voters in legislative districts one, two, three, five, and six each have one vote for one legislative representative in each of their respective districts. Voters in districts four and seven each have two votes for two legislators and thereby double the representation of voters in single districts. Put another way, if I live in Waverly, Barton/Spencer, the village of Owego, Apalachin or the route 17C corridor to Endicott in the town of Owego I have one vote and one legislator per the requirements of “one man, one vote”. If I live in the town of Tioga, Nichols and the south side of Owego minus the village (District 4) or if I live in Richford, Berkshire, Newark Valley and Candor (District 7) I get to vote twice and elect two representatives in each of these districts. In effect the “one man, two votes” concept and potential disproportionality in the influence of voters in these double districts with double the voting power of a voter in a single district.

“Some may want to argue that it is too difficult to draw legislative lines to comply with the court rulings. Larger and smaller counties have done it for over 40 years. Modern software and highly specific census data make it easy. In fact, this same process has been used by the county to “adjust” the boundaries of the double districts to ostensibly comply with the court’s decisions.

“So why the resistance to “one man, one vote” districts by the county. We suspect it has more to do with political power and control than difficulty in redistricting. A similar system was used in Australia in the early part of the last century. The result. Every seat in the national legislature was held by one party for 20 years until the courts stepped in. Some might argue that this is not Australia. True, however every seat in the county legislature is now occupied by a Republican and historically while Democrats and an Independent have been elected in the single legislative districts, the double districts have never elected anything but Republicans for 40 years.

“The reasons are simple. Double districts allow for double teaming of minority party candidates. For example, suppose in District 7 two Republicans are running for the two legislative seats that represent that district and a Democrat or an Independent has the interest in running as a challenger for the same seat. The odds of winning are stacked against him/her two to one. Suppose I am a voter and I live in Candor. I have two votes and I decide I want to vote for the Democrat. I cast my first vote for the Democrat. Then I cast my second vote against the Democrat

by voting for one of their opponents. If my desire was to elect the Democratic candidate I just canceled out my vote.

“It does not end there. A single minority candidate has to deal with the concentration of resources by the dominant party candidates. They can pool their costs for campaigning and mailings by running as a team. Only very wealthy candidates or parties would even consider such a contest. You either have to start out by trying to persuade voters to not cast one of their votes or hope one of your opponents expires on election day. Neither is a good option.

“As an added encouragement to not run, the county legislation requires that no two legislators in a double district can be from the same town thereby disenfranchising potential candidates. For example, District 7 which is the towns of Richford, Berkshire, Newark Valley, and Candor is a double district. Suppose by some unimaginable miracle a Democrat should come in second in a three person race against two Republicans. If the Democrat happens to be from the same town as the Republican who came in first they are automatically disqualified from taking office and the Republican who lost... wins.

“The Tioga County Democratic Party wishes to go “on the record” as being opposed to this undemocratic system of elections and wishes to put the Tioga County Legislature “on notice” as to the reasons for their opposition to this proposed legislation.”

Kevin Millar spoke. “I tend to agree with what Don said, but my primary concern was more of voter confusion about who they are voting for and who is going to get elected, and I also think there is confusion on the part of candidates about where they are running from and who is going to get elected. I also think that candidates from double districts, if I am not mistaken, have to get twice the number of signatures as in a single district, which I think is unfair to double district entities.”

“Barbara Heywood spoke. “I vote in the Town of Tioga, so I am in District 4. According to the population chart there, district 4 has 10,000+ citizens. District 7 has 11,000+ citizens. If you split those in half they all would be almost equal to the other towns. I do not see any reason for having only seven districts plus the fact that the law says you are supposed to have a proportionate vote.”

Legislator Andy Quinlan spoke. "I think Mr. Burns and a couple of these other people are right because this double district does not make sense to me, it really does not. As far as I am concerned it gives you a two to one regardless if your are a Republican or a Democrat on the plus side and I do not think that is fair for the voters. If they want to elect you they are going to elect you. I do not care what it is. If you are a Democrat, a Republican, or what, but this way here it seems to me it is based on two to one, which I think is unfair. If you do not win the election you go home, that is it."

"Kevin Millar spoke. "This opportunity only comes up once every 10 years so I think it is a time to look at it seriously if it is at all possible, to take the two districts and make them into single districts."

County Attorney Judy Quigley spoke. "I guess I want to clarify something just in terms of legally speaking. You mention that this opportunity only comes up every 10 years. That is not actually true because what this is, this is a reapportionment. It is not technically a redistricting because there is no change in the form of government. Municipalities are prohibited from changing their method of government more than every 10 years, but a simple reapportionment like this is not considered a change in government. We are still back to the 1994 benchmark, which was when the staggered terms went into effect, so this does not prohibit this body from redistricting and actually revamping the entire process just so everyone is clear about that. This is not a change in the form of government, which would require a mandatory referendum. It is keeping the staggered terms status quo, the local law for that is keeping that status quo. The reapportionment is keeping the multi-member district system status quo. While the census happens that frequently, the Legislature would be free tomorrow if they chose to consider an entirely different redistricting plan. I just wanted to make sure that everyone understood that."

Barbara Heywood spoke. "What does it take for the public to say that they want a redistricting?"

County Attorney Judy Quigley spoke. "The law provides that it is completely up to the Legislative body to decide the form of government, so I guess that would become a political issue of persuading the members of the Legislature to undertake a redistricting, which most communities do by forming a commission and having long-term studies, and that kind of thing. That is actually a political decision."

Barbara Heywood spoke. “Well then the law needs to be changed doesn’t it because it is not following the other law, one man, one vote.”

County Attorney Judy Quigley spoke. “Well the multi-member districts continue to be upheld as not unconstitutional. There are still lots of case law, you will notice one of those slides says if applicable in terms of the criteria, the courts have deviated from the criteria when it appears there is just no other way. There are a lot of different things that are supposed to happen, so they are a little flexible about deviating from the percentage or from the boundary lines of the towns and that kind of thing. I do not think you are going to see a change in the law because the law is pretty flexible in terms of the case law about how you can do it. It ends up ultimately being a legislative political decision what form of government to be had in a particular county. It is back to the politics.”

Bridget Callaghan-Kane spoke. What you are saying basically is that it is up to you, this body here. It is in your interest to keep it the way it is because those districts are getting two votes for every one person. Basically what you are saying is that a political solution would be that people need to run against all of you and that would change that, is that what you are saying?”

County Attorney Judy Quigley spoke. “That sounds more of a comment than a question. I said it is up to the legislative body. “

Bridget Callaghan-Kane spoke. “If I walked around with a petition and got signatures from a couple of thousand people that would not make a difference either because it is basically up to you guys.”

County Attorney Judy Quigley spoke. “As far as the redistricting issue, yes that is correct, it is up to the legislative body to decide. It is done through the forces of politics.”

“Barbara Heywood spoke. “So much for the rule of law.”

“County Attorney Judy Quigley spoke. “That is the rule of law.”

Chair Dale Weston spoke. "I would just make one comment in regards to that. We do have five districts at this point that have one man, one vote. If you want to change the complexion of this and if you are arguing about the one man, one vote, you have five districts and if you change that you certainly would end up with enough people to then change the other districts if that is what they so desire."

County Attorney Judy Quigley spoke. "In the one man, one vote, multi-member districts have been held to uphold the one man, one vote rule. That one man, one vote applies to any type of legislative scheme and that is my point, is the multi-member districts have been upheld. You have weighted voting has been upheld. There are a lot of different scenarios that have been used that the courts have looked at and have determined has satisfied the one man, one vote. It is kind of an interesting concept that they actually use mathematical formulas to determine that. Multi-member and weighted voting has been upheld as satisfying the one man, one vote criteria.

There being no further comments, the hearing was adjourned at 10:28 A.M.