

PROTECTIVE SERVICES COMMITTEE MEETING

Held In Room #318

PUTNAM COUNTY OFFICE BUILDING

CARMEL, NEW YORK 10512

Members: Chairman

Chairman Albano & Legislators Gross & Oliverio

Thursday

September 20, 2012

The meeting was called to order at 7:00p.m. by Chairman Albano. He led in the Pledge of Allegiance. Upon roll call, Legislators Oliverio, Gross and Chairman Albano were present.

Item #3) Approval of Minutes-Protective Svcs Committee Mtg. August 22, 2012

Chair Albano stated that the minutes were accepted as submitted.

Legislator Oliverio made a motion to waive the rules and accept the additional; Seconded by Legislator Gross. All in favor.

Item #4) Approval/Budgetary Amendment (12A077)/Sheriff Department/LETPP Homeland Security 2011 Grant

Legislator Oliverio made a motion to approve Budgetary Amendment (12A077); Seconded by Legislator Gross; All in favor.

Legal Counsel VanRoss stated for clarification that Budgetary Amendments are approved in concept and then are forwarded to the Audit & Administration Committee Meeting for approval of the financials.

Item#5) Approval/Budgetary Amendment (12A078)/Sheriff's Department/Jail-bullet Proof Vest Grant

Legislator Oliverio made a motion to approve Budgetary Amendment (12A078); Seconded by Legislator Gross; All in favor.

Item#6) Approval/Fund Transfer (12T214)/Sheriff's Department/Cover Temporary Line Due To Long Term Sick Leave of Full Time Employee

Legislator Oliverio made a motion to approve Fund Transfer (12T214); Seconded by Legislator Gross; All in favor.

Item#8) Other Business

8a.) Approval/Fund Transfer (12T227)/Sheriff's Department/Purchase Vehicle, Current Car Dead

Legislator Oliverio made a motion to approve Fund Transfer (12T227); Seconded by Legislator Gross; All in favor.

8b.) Approval/Budgetary Amendment (12A081)/Sheriff's Department/2011 Port Security Grant- Purchase Motor Vehicles

Legislator Oliverio made a motion to approve Budgetary Amendment (12A081); Seconded by Legislator Gross; All in favor.

8c.) Approval/Budgetary Transfer (12A082)/Sheriff's Department/Funding for Jail operations through the remainder of 2012

Legislator Oliverio made a motion to approve Budgetary Transfer (12A082); Seconded by Legislator Gross; All in favor.

Legislator Conklin questioned if the Video Arraignment program is being utilized in Putnam County.

Captain McNamara stated that this is not his level of expertise. He stated that he does know that it is still the defendants' option as to whether they would utilize the Video Arraignment option. He stated that his understanding is that there are some bills in Albany to amend the statute to make it the presiding Judges discretionary call as to whether or not he/she requires the defendant's actual presence or if a video appearance would be appropriate.

Sheriff Smith stated that the New York Sheriffs Association is going to meet with Elizabeth Glaser (Deputy Secretary for Public Safety) from the Governor's Office on Monday, September 24th. He stated that the matter of amending the current decision making power whether to utilize the Video Arraignment system is on the agenda to be discussed. He stated that it is his position to put the decision power in the hands of the presiding Judge. He stated that he believes that is the decision of the County Executive as well. The Sheriff's Association will push forward with this.

Item #7) Discussion/Financial Impact of Vehicle & Traffic Law Section 1806

a.) Corres To: Sheriff Smith Fr: Chair of Protective Albano D: 9/11/12 Re: Vehicle and Traffic Law Section 1806

b.) Corres to Chair of Protective Albano Fr: Sheriff Smith D: 9/13/12 Re: Overtime Expenditures/Sheriff's Deputies at Vehicle & Traffic Court

Sheriff Smith stated that he would like to thank Chair Albano for inviting him to appear at this meeting. He apologized for arriving a few minutes late; he had a previous commitment, which he was detained at. He stated that he does his best to keep the Legislature informed and appears in front of this body of government as often as needed. He stated that he believes that he has a good track record for keeping the current and the past County Executives informed of the workings of the Sheriff's Department and in respect to protective services within Putnam County. He stated that he would appreciate the opportunity to make his statement in its entirety.

Sheriff Smith stated that he is appearing tonight at this meeting, in response to a request sent to him by Chairman Albano on September 11, 2012. He stated that he would like to respond to some information that was presented to this Protective Services Committee last month, on this same subject matter, by District Attorney Levy. He stated that he believes based on comments made by District Attorney Levy last month, that he has finally made a decision, which he is empowered to make under the law, to designate Lawyers instead of Deputy Sheriff's to prosecute Vehicle and Traffic Infractions. He stated that in light of the County Executive's call for deep cuts in the County's overall budget and substantial reduction in all of the County Departments' submissions. He stated that the latest submission of the Sheriff's Departments budget includes a \$120,000 reduction in the overtime line. He stated that reduction was done, based on the fact that the District Attorney has made his decision to have

the Lawyers prosecute Vehicle and Traffic Infractions. He stated that we do all realize that the money taken from our budget will be spent elsewhere in the prosecution of cases. He stated in any event he believes that the issue being examined by this committee concerning Deputy Sheriffs' overtime for court appearances has been resolved in the budget submission. He stated having reviewed the minutes from the August 22, 2012 Protective Services Committee Meeting, he is deeply troubled that the District Attorney was not entirely truthful with the committee. He stated that the District Attorney made reference that unfortunately due to the fact that Sheriff Smith is not here, we will have to hear from one of his designees. He stated that he obtained a copy of the memorandum dated July 26, 2012 from District Attorney Levy to the Chairman Albano requesting that the topic of the financial impact of the Vehicle and Traffic Law Section 1806 be placed on the August 22nd Protective Services Agenda. He stated that memorandum was not copied to the Sheriff's Department and he was never requested to attend that meeting. He stated that the District Attorney told this committee that he refused to give him an answer about this issue. He stated that statement is false. He stated that he sent at least three (3) correspondences to District Attorney Levy informing him that he knew it was the prerogative of the District Attorney under the law to decide how traffic infractions would be prosecuted. He stated that the Sheriff's Office would abide by whatever decision was made. He stated that he urged the District Attorney to make a decision that would serve the citizens of Putnam County in the best way. He stated that District Attorney Levy would not communicate his decision. He stated that it was he who was left waiting for a definitive decision to be made by District Attorney Levy. There were continued statements made on this matter and the Sheriff's theory on why the District Attorney came to the Legislature on this matter. He stated that District Attorney Levy stated at the last meeting that he was seeking information from him that might justify the continuation of a long standing system of having Deputy Sheriff's prosecute their traffic tickets. He stated that it is not his responsibility, as Sheriff, to justify the prosecutorial system that has been in place in the County and throughout New York State for decades. He stated that no District Attorney has the power to demand that a Sheriff make the hard choices that are properly the District Attorney's choices to make. He stated that a Sheriff has enough of his/her tough decisions to make each and every day without having to take the decision making work of the District Attorney on. He stated that he will offer some input on the subject at hand seeing as how the District Attorney has sought it. He stated that he believes that the recent amendment to Vehicle and Traffic Law Section 1806 has been misrepresented by the District Attorney. He stated that District Attorney Levy stated that the change to the Law will operate to increase Deputy Sheriffs' court overtime unless the prosecutorial function is taken away from the Deputies and shifted to Lawyers. He stated that the Lawyers will be appointed by the Towns and Villages and approved by District Attorney Levy. He stated that District Attorney Levy has taken a very active role in which Lawyers receive such appointment. He stated it is the District Attorney's duty, by law, to make those appointments. The amendment to Vehicle and Traffic Law Section 1806 just brought the statute in-line with what the courts have been doing. The courts have long used the practice of sending out notices to Traffic Court Defendants requiring their appearance in Court. That appearance is used for the purpose of pre-trial conferences and plea bargain discussions. He stated that if no resolution is reached on the first appearance then the Courts would put the case on for trial on a second date. He stated that long standing practice was not authorized by the language of Vehicle and Traffic Law Section 1806. He stated that the purpose of the amendment this year was enacted to catch the statute up to what actually was going on in practice. He stated that the amendment essentially ratified the Court's practice and officially authorized the Courts to issue conference

notices in Traffic cases. He stated that this amendment was not a separate bill. He stated that it was attached to a State Budget bill. He stated that it did not include a bill sponsored memorandum. He stated that there is no record stating that this amendment had anything to do with Police overtime. He stated that the amendment has codified what has already been happening. He stated that the matter of billable hours for attorneys brings up another topic. He stated that the Lawyers selected to perform the prosecutorial duties will want to be compensated for their increase in work load. He stated that in the current practice with the Deputy Sheriff's appearing in Court for the first appearance, plea bargaining is done in the majority the Traffic Violation Cases. He stated that it is a rare number of Traffic Violation cases that go to a second appearance in Court. He stated that District Attorney Levy has requested that he give his opinion on this matter, therefore he will do that. He shared a scenario in which a Deputy Sheriff performed a Traffic Violation stop. During the stop the Deputy was verbally harassed, while maintaining a professional demeanor the Deputy issued the Traffic Violation. He stated now assume that the driver in this example pleads not guilty and appears in court for the preliminary conference. He stated under the current system the Driver would need to concur with the issuing Deputy. He stated that the Deputy has complete knowledge of the mitigating and extenuating circumstances surrounding the violation; which will be properly taken into account during the disposition of the ticket. He stated under District Attorney Levy's alternative system, the driver will meet with an attorney, who was sleeping comfortably in his/her bed during the night when the ticket was issued. The Attorney will have no knowledge when the driver claims that he/she did not run a red light, it was yellow, and besides the Deputy was rude to me. He stated to put it in a simpler manner, the Deputy Sheriff is always going to be more knowledgeable about the germane facts and circumstances relevant to a Traffic Stop than any Lawyer could ever be. He stated that fact speaks in favor of having the Deputy continue to prosecute the cases. He stated that, he believes, District Attorney Levy's plan is not really about saving Taxpayers money at all. He stated that he believes he wants to take pay away from the Deputies who take all of the risks in enforcing our Traffic Laws and divert the money to Lawyers who take no risk to life and safety in the issuing of those tickets. He made additional comments based on his personal opinion and his opinion of how the District Attorney's focus on the Sheriff's Department is hampering the work of his own office. He stated that he would like to thank the Legislature for inviting him to speak on this matter and to share his concerns on the matters at hand. In closing he thanked the members of this Committee and the Legislature for everything they do to help keep Putnam County one of the safest Counties in New York State. He stated that it is his strong belief that we all need to work as a team to keep this County safe.

Legislator Oliverio stated that the issue that was addressed at the last month's meeting by the District Attorney was not perceived, by him, as an attack against the Men & Women of the Sheriff's Department. He stated that the District Attorney addressed the specifics of the legislation pertaining to the Vehicle and Traffic Law Section 1806. He stated that he is not sure how the message got to Sheriff Smith that there was a verbal attack made against his department by the District Attorney at the August 22nd meeting.

Sheriff Smith stated that the message got to him by him personally listening to the Audio recording of the August 22, 2012 Protective Services Meeting. He stated that there were several references made by District Attorney Levy, "Don Smith is not here." He stated again that he was not copied on the District Attorney's memo requesting the opportunity to address the Protective Services Committee on August 22nd nor was he invited to attend the meeting.

He stated that he listened to the Audio recording and was offended by what he heard. He stated that District Attorney Levy stated that he did not respond – he has letters that prove that he did respond. He stated that he took that comment as a personal attack. He stated the misrepresentation by the District Attorney that he was bringing forward this new law that changes everything, was not the case. He read from the commentary associated with the law. He stated, as mentioned early this evening, in summary the courts were criticized for sending out a conference notification when there was nothing written in the Vehicle and Traffic Law Section 1806 to justify a conference of appearance. He stated that all this did was codify what was happening. He stated it was not a major breakthrough. There is no bill jacket on this nor are there any memorandums on this matter.

Mr. Sayegh, Confidential Advisor stated that the issue of who the District Attorney decides to prosecute cases, especially on Vehicle & Traffic matters is strictly within the powers of his office. He stated that the District Attorney does not need the Protective Services Committee or the Legislature's approval. He stated that the Sheriff is deeply concerned that the District Attorney came to this Committee without requesting that the Sheriff be here. He stated that additionally as you look at this new procedure you will have a private attorney at all of these Town Court appearances at least once, possibly twice. He stated with a Police Officer you would have the same situation. He stated by having a private attorney you are guaranteeing two attorney appearances at a trial and one Police Officer. He stated that he does not see how this will save money. He stated but that does not matter. If the District Attorney is seeking the Sheriff Department's opinion, that is their opinion. However that is not important. He stated that the Sheriff's Department fully respects the authority of the District Attorney to make the decision on this matter. He stated at the same time, the Sheriff's Department does not want it to appear that they have not involved themselves in this matter.

Sheriff Smith stated that essentially what was changed in Vehicle and Traffic Law Section 1806 was that the defendant was notified that their first appearance is an "Appearance" not a "Trial".

Chair Albano stated that the primary concern of the Legislature is the safety of the residents as well as looking at the cost impact to the Taxpayers. He stated that there are obviously some other underlining issues here. He stated that this Committee and the Legislature wants to stay focused on everyone doing the best job and working together for the good of the people. He stated that he would like to state that he did not interpret anything said at the August 22 meeting as a down playing toward the Sheriff's Department. The Legislature is proud of the County's Sheriff's Department and believes that they do a tremendous job. He stated that they are just concerned about the dollars and cents. He stated that he is aware that this is not a decision for the Legislature to decide.

Sheriff Smith stated that is the concern that he has. This is not a decision to be made by the Sheriff's Department or the Legislature. He stated that is why he is confused that the District Attorney came to the Legislature with this matter. He stated that the District Attorney and the Sheriff have entirely separate missions. He stated that he would like to state that he does not like spending money. However when it comes to keeping the citizens of Putnam County safe, it costs money. He stated that his department is always analyzing their procedures to see if things can be done differently to be more efficient and save money. He stated that if the

District Attorney believes he has a better way of doing something and he wants to make that decision, and then make the decision.

Chair Albano stated that he wanted to thank the Sheriff for attending the meeting. He stated that he wanted to clarify that the Sheriff was not asked to attend tonight's meeting to defend himself or his department. He stated that everything the Sheriff said about the Sheriff Department he fully agrees with. He stated that he believes that the Sheriff's Department does a great job. He stated that regarding the Vehicle and Traffic Law Section 1806 this committee just wanted to hear from both sides.

Legislator Gross stated that referencing the August 22, 2012 Protective Services Committee Meeting, District Attorney Levy was passionate about not making any disparaging remarks towards the Deputies at all. He stated that District Attorney Levy was very clear in stating that he was not implying that the Deputies would take advantage of overtime by postponing a case. He stated that he did not leave the August 22nd meeting with any negativity towards the Sheriff's Department whatsoever. He stated that he appreciates that both Sheriff Smith and District Attorney Levy attended this meeting. He stated that he believes each department does a great job for the residents of Putnam County.

District Attorney Levy stated that he too would like to thank the Sheriff and his four (4) staff members for attending tonight's meeting. He stated that he is concerned with respect to the reference of him making disparaging remarks about the Sheriff at the August meeting. He stated that the Sheriff claims to have heard it himself on the Audio Tape. He stated that the same Committee Members were here in August and the Audio Tape confirms the passion he had and appreciation that he has for the hard work done by the Men and Women of the Putnam County Sheriff's Department. He stated either the Sheriff in listening to the August 22nd Audio Tape recording heard things that were not there or his representative who was here went back to the Sheriff and told him things that he said, that were not true. He stated for the past four and half years (4 ½) he and his office staff have worked hand in hand with more terrific Law Enforcement Officers, Deputy Sheriffs and Investigators from the Putnam County Sheriff's Department. He stated that the claim by the Sheriff and the attempt of the Sheriff to force a wedge between him and the Sheriff's staff is offensive.

Legislator Oliverio stated that there could have been a misunderstanding on the part of the Sheriff when he heard the part on the Audio Tape when District Attorney Levy stated that the public perception could be that the Deputies just want to show up to Court for the overtime. He stated that he recalls that the District Attorney did clarify that statement by saying that it is not what I am implying, but that could be the perception of the public.

District Attorney Levy stated unfortunately this is not the first time that a statement he has made to members of the Sheriff's Department apparently get back to the Sheriff misconstrued as to what he actually said. He stated that he came to this Committee on August 22, 2012 to ask for help to get an answer from the Sheriff to a very simple question that he had asked, and had not been responded to. The simple question was "Sheriff what is the increase Public Service Benefit to having Deputy Sheriffs prosecute their own tickets now that 1806 is changed that justifies upwards to \$120,000 in overtime to be paid for by the Putnam County Taxpayers". He stated that as it was stated; ultimately he does give authority to a Town Attorney to prosecute the tickets for the State Police. He stated that he does not select the Attorney. He

stated that every representation made by Mr. Sayegh and Sheriff Smith is an absolute falsehood. He stated that all he does is receives a letter from an Attorney stating that he/she has been appointed/selected by the Town Board to act as Town Prosecutor and will he give him/her the authority to do so. He stated that every time he has received one of these letters he has replied yes. He stated that he has absolutely zero to do with the selection process of the Attorney. He stated that when he reported that he did not get a response from Sheriff Smith, he stated that he did not get a response to his question inquiring what the increase Public Service Benefit was to having Deputy Sheriffs prosecute their own tickets now that 1806 is changed. He stated that he would like to present a copy of the correspondence he received from Sheriff Smith on this matter to the Committee Members. He clarified that not one of the responses answers the question that was asked of the Sheriff. He stated that the Sheriff's response of continuing with the current procedure was, "that is the way it has been done for decades, do what you want". He stated that he tries, as a Public Elected Official, to make decisions based upon facts and credible information. He stated that in 2011, pursuant to the financial data presented to this Committee, the Sheriff's Department spent up to \$117,000 for overtime for Deputy Sheriff's to handle traffic matters that could otherwise be handled by Town Attorneys that are doing the job anyway for the State Police at no additional cost to the County. He stated that he was well aware of his authority to change the process; he was showing the Sheriff respect by deferring to him asking if there was a Public Service Benefit. He stated that if there was a Public Service Benefit, he would have kept the current process. He stated that instead he was accused of conspiracy and other false accusations. He stated as a result of not getting a response from the Sheriff to justify \$120,000 that the Putnam County Taxpayers were paying he came to this Committee for help. He stated as of August 22nd to today's date, September 20th he has still not received a response to his question from Sheriff Smith. He stated that on August 22 he presented to this committee the genesis for the modification to section 1806. He stated based on what the Sheriff presented it concerns him that the Sheriff does not understand the genesis of section 1806 being changed. He stated that the State Police, several years ago, were advised that they were no longer able to prosecute their own tickets. There were two (2) reasons for that. The official reason was because it was inherently unfair for a Trooper who issued a summons to a motorist to stand in a place of a prosecutor and force that motorist to negotiate with that same Police Officer who issued the ticket. He suggests that the real reason was finances-overtime. He stated that New York State was spending millions of dollars on overtime. He stated that every time a State Trooper or a Deputy Sheriff attends court they are guaranteed 3 hours of overtime, pursuant to their contract, at time and a half. He stated that the State Police said that the New York State Governor stated "no more with the State Police; we are going to have Town Attorneys do it". He stated that it has been being done like this for years. He stated when that took place, representatives from the Sheriff's Department came to him and asked that he not change the way that the Sheriff's Department prosecuted the traffic tickets. He stated at that time, he did not see a reason to change. However when 1806 was changed because State Troopers were not showing up on the first court date, per their directive. When the motorist was coming in on the old law and said to the Town Attorney "I do not want to take that plea I want a trial". He stated that there was no Trooper to call as a witness. He stated that the Town Attorneys were asking the Judges to adjourn so that they could subpoena the Trooper. He stated that some of the Judges adjourned the cases and some Judges refused to adjourn. There was no consistency because the statute did not call for two court appearances. He stated that this bill was not one that was just thought up out of thin air as suggested by the Sheriff. He stated that the New York State Legislatures wanted to modify the Law to create consistency in the

Courts. He stated back in June of 2012 there was a meeting in his office with Captain Gary Hosmer, Bill Sayegh, two Judges, his Administrative Assistant and himself. At that time there was an issue that was being discussed about the fact that there were some Deputy Sheriff's not showing up in court therefor the cases were getting dismissed. He stated a suggestion was made by the Sheriff's Department to have a Sergeant present at the court traffic appearances to take attendance. He stated that he did not support that recommendation for several reasons; one main one being is that it would be additional cost to the Taxpayers. He stated that he did recommend that this may be the time, now that 1806 had been changed, for Putnam County to take a look at how Putnam County deals with these tickets. He stated that he was told at that meeting, "that is not how the Sheriff wants it done". He stated without the Sheriff even hearing from the District Attorney himself, the recommendation was discounted. He stated that the people of Putnam County deserve better, the Taxpayers deserve better. He stated that he was very disappointed in the Sheriff when he failed to give him any explanation for the \$120,000 expense that he saw could be avoided. There were further comments by District Attorney Levy on the work of the District Attorney's office and their working relationship with the Sheriff's Department and other departments of the County. He stated that he has spent his entire professional life within the Criminal Justice System. He stated that he has worked as a Prosecutor, as a Defense Attorney and as District Attorney. He stated that he knows what there is to know about that system, the ins the outs, how it works, how to save money, how to improve, how to open up his office to criticism from Law Enforcement, Elected Officials, Probation and if he can learn something he will absolutely take that opportunity. He apologized that the Legislature had to get in the middle of what should have been a very simple response from the Sheriff regarding the \$120,000 overtime issue.

Legislator Oliverio stated that at this point in time there are obviously major bridges to cross between these two fine departments. He stated that he has been involved in County Government for seventeen (17) years. He stated that these issues must be resolved between these two critical departments. He stated that he has the highest level of respect for these two gentlemen. He stated this tension is not good for the people of Putnam County.

Sheriff Smith stated that the District Attorney stated that his answer wasn't good enough. He stated there is a big difference between not liking the answers versus the claim that he did not respond to him. He continued with further discussion on the matter that of persistent offenders. He stated that the comment made by the District Attorney that he needs to educate him on this matter is an insult. He stated for the District Attorney to claim that he is here to educate the Legislature and to get an answer from the Chair; the truth of the matter is that 1806 basically changed the word "trial" to "appearance". He stated that is the truth of the matter.

Mr. Sayegh, Confidential Advisor stated that he agrees that the differences between the District Attorney's Office and the Sheriff's Office need to be resolved, and they will be. He stated that the matter of 1806 is completely in the purview of the District Attorney's Office. He stated he believes either the District Attorney does not understand his duties or he doesn't want to do it. He stated that it is the District Attorney who has the say on how these tickets are to be handled, and that is not to be disputed. He stated again that it will take time, but these issues will be resolved.

Chair Albano stated that his and the Legislature's main concern is that the public is protected and protected in a cost effective way.

District Attorney Levy stated that after the August 22nd meeting of the Protective Services Committee he sent out letters to each of the Town Supervisors who have Town Attorneys handling the traffic matters and prosecuting cases where State Troopers are the issuing agency. He stated that he requested an opportunity to meet with each Supervisor to discuss how his decision to give a break to the Taxpayers of Putnam County can be accomplished. His goal is that the Taxpayers get that relief in the beginning of 2013.

Chair Albano stated in his opinion, he respects District Attorney Levy's opinion on moving forward with that.

Sheriff Smith stated that he would like to make one final statement: He respects the fact that District Attorney Levy spoke of how he helps fill the jail, he is part of the process. He wants to end tonight by reminding everyone that almost every arrest starts with a Police Officer – an Investigator; they are the ones who enforce the Law in Putnam County. He stated without them there would be no one in the jail.

Item #9) Adjournment

There being no further business at 8:20p.m. Legislator Oliverio made a motion to adjourn; seconded by Legislator Gross. All in favor.

Respectfully submitted, Deputy Clerk of the Legislature- *Diane E. Trabulsky*