

PENNSYLVANIA INTERGOVERNMENTAL COOPERATION AUTHORITY

Minutes of the Meeting of the Board

March 21, 2017

The meeting of the Board of Directors of the Pennsylvania Intergovernmental Cooperation Authority ("PICA") was held on Tuesday, March 21, 2017 in the PICA Board Room located at 1500 Walnut Street, 16th Floor, Philadelphia, Pennsylvania.

Attendees

Board: Kevin Vaughan, Joseph M. McColgan, Alan Kessler, and Robert A. Dubow (*ex officio*).

Staff: Harvey M. Rice, Konstantinos Tsakos, Dora Ward, Daniel Esposito, and Deidre Morgenstern.

Invited Guests: S. William Richter, Esq., Reed Smith, LLP; Anna Adams, Budget Director; Sozi Tulante, City Solicitor; Allan Domb, Councilman At-Large.

Call to Order

Mr. Vaughan called the meeting to order at 12:25 p.m.

Approval of Minutes

Mr. McColgan made a motion to approve the minutes from the meeting of January 18, 2017. Mr. Kessler seconded the motion. The motion passed 3-0.

Executive Director's Report

Mr. Rice updated the Board on PICA's latest bond rating from Fitch Ratings, which was AAA.

He explained that the City had submitted the Mayor's Proposed Five Year Financial Plan. PICA is conducting an initial review of this Plan and will draft questions for City agencies and schedule meetings with some of them after City Council completes its budget hearings.

Mr. Rice stated that he had testified in front of the City Council Committee on Fiscal Stability and Intergovernmental Cooperation on Resolution 170038, relating to federal and state funding to the City of Philadelphia, specifically in reference to Philadelphia's "sanctuary" status on February 27th.

Mr. Rice also provided an update on PICA's reports. He stated that PICA's staff report on the Quarterly City Managers Report was released yesterday. PICA will release an overtime report covering the first

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two quarters of the fiscal year, in early April. Staff is also compiling reports on monthly revenues and BRT data. The Boston College DROP study will produce an initial draft at the end of April. Boston College is still waiting on information from the Philadelphia Board of Pensions on historical salary data.

Mr. Rice informed the Board that PICA's US Bank investments declined slightly because of an increase in interest rates. However, since the bonds are secured, interest will be recovered upon maturity.

PICA's office lease will expire in August, 2018. Mr. Rice explained that staff is interviewing two agents to assist in obtaining a new lease, either at the current location, or in another office building.

PICA's printer/photocopier lease has also expired, and PICA has negotiated a new four year lease with the current vendor, Canon, after obtaining quotes from two vendors, for a new machine. The new lease will cost less than the current and will provide PICA staff with better printing, copying, and scanning capabilities. Mr. Rice informed the board that a resolution regarding this matter was prepared for consideration by the board for this meeting.

Mr. Rice informed the board members present that he has not yet received the remaining two appointments for the board. Mr. Kessler asked whether Mr. Karp has been in communication with Mr. Rice regarding his appointment. Mr. Rice explained he had talked to Mr. Karp a month prior, and Mr. Karp informed him he was scheduling a meeting with his appointing authority.

Resolution

Mr. Vaughan asked the board to consider PICA's resolution for a new four year lease with Canon for an upgraded printer/photocopier. Mr. Kessler made a motion to approve. Mr. McColgan seconded the motion. The motion passed 3-0.

Treasurer's Report

Mr. Rice explained to the Board that PICA's expenditures are currently at 70 percent of the budget, and are higher than last fiscal year due to increased personnel and rent costs.

Presentation by City Solicitor on Sweetened Beverage Tax

City Solicitor Sozi Tulante provided the Board with an update on the legal proceedings surrounding the Sweetened Beverage Tax (SSB).

- On April 5, 2017, the Commonwealth Court will hear arguments on the SSB in Pittsburgh. The court has expedited proceedings and will be hearing the case en banc, rather than as a three judge panel.

- The City has filed its brief, and appellants will file theirs this week. The timing of a decision cannot be predicted at this juncture.
- The Supreme Court has denied King's Bench petitions on two occasions regarding this case. Despite this, proceedings have been moving expeditiously, which is good for both parties. Once the Commonwealth Court issues a ruling, the Supreme Court will likely have another opportunity to decide whether to hear this case.

Presentation by City Solicitor on Proposed State and Federal Actions on Sanctuary Cities

City Solicitor Sozi Tulante provided the Board with an explanation on the potential legal issues and impacts surrounding potential state and federal government actions related to sanctuary cities.

Federal issues (executive order):

- Mr. Tulante began with a discussion on federal action. He stated that there have been federal lawsuits filed by several municipalities (San Francisco and Santa Clara) seeking preliminary injunctions on the President's executive order for cutting funding to sanctuary cities. The grounds for the lawsuits cited "budgetary uncertainties."
- This prompted the federal government's first articulation of its legal interpretation of the issue, which stated that the executive order does not change existing law, but that it provides steps for the Department of Justice (DOJ) and the Department of Homeland Security (DHS) to take with respect to sanctuary city funding. The federal government stated that it is premature to speculate what funding is at risk or what cities would even fall into the definition of "sanctuary" status. This determination will hinge on whether there is a "willful refusal" to comply with federal immigration laws, which is the main component of the formal definition of a "sanctuary" city.
- Mr. Tulante explained that the City of Philadelphia has hired outside counsel to assess the situation regarding the executive order. The City has weekly meetings on this topic and regularly speaks to counsel regarding potential impacts and developments. Together, they have determined that the funding most at risk is related law enforcement functions because that is the funding that has a direct nexus to the policy of the order. However, the City does not exclude other funding from being targeted by the order, as there could be other, less constitutionally sound arguments that the Trump administration could employ to cut other funding.
- The executive order presents 10th Amendment anti-commandeering issues that may impede the federal government's ability to compel municipalities to enforce federal immigration laws.
- Furthermore, the order provides the U.S. Attorney General with some discretion on what funding may be cut to sanctuary cities. There are timelines associated with each different type of grant.

- Mr. Kessler asked why the Mayor's definition of sanctuary status could be different from the federal government's definition. Mr. Tulante explained that it is unclear to what extent the two definitions overlap at this time. The legal definition includes two types of policies at the local level:
 - (1) Police policy: This involves local police not asking for immigration status and not sharing that status with federal authorities, as a policy.
 - (2) Prison policy: A city's refusal to turn over somebody in custody (already in custody for other reasons), unless federal authorities present a warrant to support an ICE detainment request (otherwise known as "detainer policy").
- Due to lack of clarity in the executive order, as well as legal concerns about committing to a certain interpretation of the order that could harm the City in potential future litigation, the City cannot speculate on the amount of funding at risk. The City is regularly discussing this issue with outside counsel and other cities, as previously mentioned.

State issues (SB10):

- SB10 focuses on "detainer policy" (explained above). Because this is a state action, it would not trigger the 10th Amendment violations discussed above.
- SB10 was passed in the state senate and is currently in the state house judiciary committee. Because it is pending legislation, it is difficult for the City to speculate on the outcomes and financial impacts of the legislation.
- Mr. Tulante explained that the bill seeks to cut funding to local governments who do not comply with its requirement of "certifying" that they are not sanctuary cities. There are two consequences for those local governments, pursuant to SB10:
 - (1) Losing state funding
 - (2) Broadened tort liability for injuries caused by undocumented immigrants (this could potentially include accidents that cause injuries, i.e. car accidents)
- The ACLU has stated that 33 counties in Pennsylvania, aside from Philadelphia, are at risk for losing state funding through SB10 because of their detainer policies.
- Mr. Tulante explained that the City has some strong legal arguments against SB10, including that there are legal constraints on what funding the Commonwealth may cut. Much of the funding the state provides to local governments is pass-through, federal funding, and states cannot impose conditions on federal grants.
- There are also potential constitutional violations that SB10 may prompt. Mr. Tulante explained that in the *Galarza* case, the court ruled that ICE detainment orders unaccompanied by a warrant are permissive rather than mandatory, and that a local government risks 4th Amendment violations for detaining individuals on ICE orders that are unsupported by a warrant. This brings up a larger question, according to Mr. Tulante: "Can a state government compel a local government to violate the constitution?" He concludes, "probably not."

- Mr. Tulante concluded by saying that the City is waiting for more information before it can quantify a financial impact. As with the federal action, the City does not want to harm itself in future proceedings by subscribing to a speculative quantification or legal rationale (often the two are interrelated) that could impact future legal arguments.
- Mr. Kessler asked for updates on a consistent basis regarding these issues.

New Business

Mr. Kessler asked City officials why the overtime report showed certain City agencies as exceeding their overtime budgets, such as Atwater Kent. Mr. Dubow responded that in the context of class 100 expenditures, overtime compensates for lack of hiring due to different factors. Mr. Domb suggested analyzing the financial impact of hiring on pensions versus overtime.

Public Comment

Councilman Domb made a public comment on several topics that were discussed during the meeting.

- Mr. Domb asked whether there is a way to cut down the amount of time required to get a warrant backing an ICE detentionment order, as a compromise measure for lessening legal risk to local governments, while also enforcing federal immigration laws.
 - Mr. Tulante responded that it is not within the City's purview to determine federal immigration procedures or related timing. This would require federal action. He also stated that beyond the legality, there are political issues surrounding immigration enforcement, and he could not comment further on a solution.
- Mr. Domb asked why PICA's bond rating was upgraded.
 - Mr. Rice responded that it is due to the fact that PICA's bonds are nearing maturity and because PICA tax revenue is projected to be strong.
- Mr. Domb asked for the current rate of return on the pension fund.
 - Mr. Dubow responded that year-to-date, it is 8.5 percent.
- Mr. Domb asked for PICA's comment on the City's plan to reach an 80 percent funded ratio by 2030.
 - Mr. Rice explained that PICA does not agree with the City's projection, relying on the current rate of return, as PICA views it is too high due to historical annual rates of return. He also clarified that some of the cost-saving measures the City has put into place were recommended by PICA and that PICA closely follows the status of the City pension fund.

Adjournment

Mr. Vaughan asked for a motion to adjourn. Mr. Kessler made the motion. Mr. McColgan seconded the motion. The motion passed 3-0.