

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of NEW YORK PUBLIC
INTEREST RESEARCH GROUP, INC., CITY PROJECT,
INC. and COMMON CAUSE/NY

Index No. 122030/99

Petitioners,

For a Judgment pursuant to Article 78 of the Civil Practice
Law and Rules,

-against-

PETER VALLONE, as Speaker of the New York City
Council; the NEW YORK CITY COUNCIL; RUDOLPH
GIULIANI, as Mayor of the City of New York; and the
CITY OF NEW YORK,

Respondents.

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RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO THE PETITION

Respondents Peter Vallone, as Speaker of the New York City Council, the New York City Council ("City Council"), Rudolph Giuliani, as Mayor of the City of New York, and the City of New York ("City") submit this memorandum of law in opposition to the petition.

PRELIMINARY STATEMENT

In the spring of 1999, the decade-long debate intensified on appropriate legislation to prevent childhood lead poisoning. On June 30, 1999, after two days of extensive committee hearings on proposed legislation, the City Council passed Preconsidered Intro. 582 ("Intro. 582"). Petitioners contend that in passing Intro. 582 the City Council did not follow the precise technical requirements of N.Y. Municipal Home Rule Law ("Home Rule") § 20(4), and thus Local Law 38 of 1999 ("Local Law 38") must be vacated and annulled. Petitioners are wrong.

Home Rule § 20(4) sets forth the procedure that legislative bodies should follow when enacting local laws. Home Rule § 20(4) mandates that proposed legislation “age”, that is, be “in its final form and upon the desks of the council members [eight days] prior to its final passage.” Here the proposed legislation was placed on each City Council Member’s desk eight full days before the June 30 City Council meeting. Home Rule § 20(4) also states that the proposed legislation be introduced at a meeting of the legislature. There is, however, no sequencing requirement between the aging of the legislation and its introduction. Here the proposed legislation was introduced at the June 30 City Council meeting. Consequently, Intro. 582 was validly enacted.

Even assuming arguendo that this Court concludes that the precise technical requirements of Home Rule § 20(4) were not met, respondents nevertheless were in substantial and sufficient compliance with its requirement. Moreover, petitioners were not prejudiced by any technical mistake since their counsel was actively involved in the events -- including testifying at both committee hearings -- leading to the passage of Intro. 582.

Finally, petitioners contend that the City Council Rules were not followed in introducing Intro. 582. To start, all pertinent City Council Rules were followed leading to the introduction of Intro. 582. Moreover, the Council Rules are not justiciable, since it is inappropriate for the judicial branch to intrude into the wholly internal affairs of the legislative branch.

STATEMENT OF FACTS

For more than a decade, there has been an ongoing debate in New York City about appropriate legislation to prevent childhood lead poisoning. And as petitioners' moving papers, respondents' answering papers and the papers in the related proceeding¹ establish, the recent ten month running debate on proposed lead paint legislation was extensive; individuals and representatives of organizations from a broad spectrum of interests set forth their opinions before various bodies in various mediums on various legislative proposals. Ultimately, on June 30, 1999 the City Council considered and then passed Intro. 582. Thereafter, Mayor Giuliani signed Intro. 582 into law, making it Local Law 38. While there was a vigorous ten month debate on the various legislative proposals, the specific procedural steps of the last two weeks of June 1999 that led to the City Council's affirmative vote on Intro. 582 are the subject of this proceeding.

On June 17, 1999, a notice was issued pursuant to City Charter § 46 and Council Rule² § 7.50(d) that indicated that the City Council Committee on Housing and Buildings would hold a hearing on June 21, 1999 to consider lead paint legislation. Answer Ex. A (6/17/99 City Council Notice). This notice was placed in every Council Member's mailbox.³ Answer ¶ 30. The notice stated in pertinent part:

¹ Petitioners' Request for Judicial Intervention designated New York City Coalition to End Lead Poisoning v. Vallone, Index No. 120911/99 (Sup. Ct. N.Y. County) as related to the instant proceeding. Respondents do not object to this designation.

² The New York City Council Rules ("Council Rules") are attached to the Verified Petition as Exhibit B. Exhibits designated "Petition Ex. ___" are attached to the Verified Petition, and exhibits designated "Answer Ex. ___" are attached to the Appendix of Exhibits filed herewith.

³ In accordance with City Council practice, in addition to placing City Council notices and agendas in each Council Member's mailbox, these documents are also distributed to the press

Dear Council Members:

Please be advised of the following *Additions & Changes

Monday, June 21, 1999

...

*Note Addition

Committee on Housing and Buildings

Preconsidered Int. ___ -- By Council Member Spigner, et al -- A LOCAL LAW to amend the administrative code of the city of New York, in relation to childhood lead poisoning prevention, and to repeal subdivision h of section 27-2013 of such code.

In accordance with the June 17 notice, and after proposed lead paint legislation was prepared for the Committee on Housing and Buildings, on June 21, 1999 the Committee held a hearing on this proposed legislation. Answer Exs. B (proposed legislation) & C (6/21/99 hearing transcript). The hearing lasted more than eight hours, and a broad spectrum of individuals and organization representatives testified or provided written comments on the proposed legislation. Those testifying included the commissioners of the City's Department of Health ("DOH") and the Housing Preservation and Development Department ("HPD"), as well as "researchers, attorneys, members of the real estate industry, and members of the public concerned with childhood lead poisoning." Answer Ex. D (Report of the City Council Infrastructure/Human Services Division on Intro. 582, at 11). In addition, seventeen Council Members, including many who were not on the Committee, participated in the hearing. Answer Ex. C, at 1. Andrew Goldberg, counsel to petitioners, also testified at length at the hearing. Answer Ex. C, at 407 – 423.

room at City Hall, posted at City Hall and on the City Council web site, and mailed to anyone who provides a stamped, self-addressed envelope. Answer ¶ 30, n. 3.

After the June 21 hearing, and taking into consideration comments made at that hearing, the proposed lead paint legislation was amended. Later that evening, a copy of the amended proposed legislation -- which was later designated Intro. 582 -- was distributed "to each member of the New York City Council by placing the same on the desk of each Council Member in the City Hall Chambers of the Council." Answer Ex. E (6/24/99 Affirmation of Ramon Martinez III). Consequently, Intro. 582 was on the desks of the Council Members a full eight days before the June 30 meeting.

The following day, June 22, 1999, a notice was issued pursuant to City Charter § 46 and Council Rules §§ 1.00 & 7.50(d) that indicated that the City Council Committee on Housing and Buildings would hold another hearing, on June 24, 1999, to consider the proposed legislation. The notice also stated that the next City Council meeting was scheduled for June 30, 1999. Answer Ex. F (6/22/99 City Council Notice). This notice was also placed in each Council Member's mailbox. Answer ¶ 33. The notice stated in pertinent part:

Dear Council Members:

Please be advised of the following *Additions & Changes

Thursday, June 24, 1999

***Addition**

Committee on Housing and Buildings

Preconsidered Int. __ -- By Council Member Spigner, et al -- A LOCAL LAW -- to amend the administrative code of the city of New York, in relation to childhood lead poisoning prevention, and to repeal subdivision h of section 27-2013 of such code.

...

**THE NEXT STATED MEETING HAS BEEN MOVED
TO WEDNESDAY JUNE 30, 1999 AT 1:30 p.m.**

On June 23, 1999, a second notice was issued pursuant to City Charter § 46 and Council Rule § 7.50(d) that again indicated that the City Council Committee on Housing and Buildings would hold the June 24 hearing to consider the proposed legislation, as well as a proposed resolution -- later designated Preconsidered Resolution 883 ("Reso. 883") -- pertaining to the environmental effect of the proposed legislation. Answer Ex. G (6/23/99 City Council Notice). This notice was placed in every Council Member's mailbox. Answer ¶ 34. The notice stated in pertinent part:

Dear Council Members:

Please be advised of the following *Addition

Thursday, June 24, 1999

Committee on Housing and Buildings

Preconsidered Int. ___ -- By Council Member Spigner, et al -- A LOCAL LAW to amend the administrative code of the city of New York, in relation to childhood lead poisoning prevention, and to repeal subdivision h of section 27-2013 of such code.

Preconsidered Res. _____ - RESOLUTION determining that the enactment of Preconsidered Int. ____, A LOCAL LAW to amend the administrative code of the city of New York, in relation to childhood lead poisoning prevention, and to repeal subdivision h of section 27-2013 of such code will not have a significant adverse impact on the environment.

Prior to the June 24, 1999 hearing, members of the Committee on Housing and Buildings were provided with a Fiscal Impact Statement on the proposed legislation that was prepared by the Finance Division of the City Council in accordance with City Charter § 33. Answer Ex. H. Also prior to the June 24 hearing, Committee members were provided with copies of the proposed resolution and the supporting documents, the Negative Declaration, for that resolution. Answer Ex. I.

In accordance with the June 22 and 23 notices, on June 24, 1999 the Committee on Housing and Buildings held a hearing on the proposed legislation and the proposed resolution. Answer Exs. J (proposed legislation, later designated Intro. 582) & K (6/24/99 hearing transcript). The hearing lasted more than four hours, and again a broad spectrum of individuals and organization representatives testified or provided written comments on the proposed legislation. Those who testified included the HPD Commissioner, as well as “representatives of the real estate industry, a representative of cooperative and condominium associations, attorneys and members of the public.” Answer Ex. D (Report of the City Council Infrastructure/Human Services Division on Intro. 582, at 16). Seventeen Council Members, many who were not members of the Committee, also participated in this hearing as well. Answer Ex. K, at 1. Indeed, by the close of the June 24 hearing, twenty-two of the fifty-one City Council Members had participated in at least one of the hearings. Answer Exs. C, at 1 & K, at 1. In addition, petitioners’ counsel, Mr. Goldberg, again testified. Answer Ex. K, at 153 -- 157.

Following the public portion of the hearing and the defeat of certain amendments to the proposed legislation, the Committee considered the proposed resolution. The Committee voted to pass the proposed resolution by a vote of seven in the affirmative, two in the negative and zero abstentions. Answer Ex. K, at 237 – 240. The Committee then considered and passed the proposed legislation by a vote of seven in the affirmative, two in the negative and zero abstentions. Later that day, at the direction of Council Member Spigner and pursuant to Council Rule § 6.00, staff transmitted to the Office of the Speaker the proposed legislation and the proposed resolution. Answer Ex. L.

On June 28, 1999, in accordance with City Charter § 42, the Proposed Agenda for the June 30 City Council Meeting was issued. Answer Ex. M.⁴ The Proposed Agenda indicated that the proposed legislation was to be introduced at the June 30 meeting, and that it was the subject of a report of the Committee on Housing and Buildings. Answer Ex. M, at 4 & 17. The Proposed Agenda was placed in each Council Member's mailbox. Answer ¶ 38.

In accordance with the June 22 notice and the June 28, 1999 Proposed Agenda, on June 30, 1999 the City Council debated the merits of the proposed legislation and the proposed resolution. Petition Ex. V (6/30/99 City Council meeting transcript). Prior to the meeting, and in accordance with City Council practice, numerous documents relevant to the proposed legislation were distributed or made available to the Council Members.⁵ And at the meeting, these documents and the meeting Agenda (Answer Ex. N) were again distributed to the Council Members. At the June 30 meeting, the proposed legislation and the proposed resolution were formally introduced and given the designation Intro. 582 and Reso. 883 respectively, and Council Member Archie Spigner was listed as the sponsor "in conjunction with the Mayor." Answer Ex. O, at 1856-72 (6/30/99 City Council minutes).⁶

Shortly after the beginning of the June 30 City Council meeting, Intro. 582 and Reso. 883 were coupled, and at the request of Council Member Michels and in accordance with

⁴ Both the Proposed Agenda (Answer Ex. M) and the Agenda (Answer Ex. N) for the June 30 City Council Meeting did not have page numbering. For the convenience of the Court, respondents have sequentially "Bates" stamped the agendas that are attached as Exhibits.

⁵ These documents included the proposed resolution and its supporting documentation (Answer Ex. I), the Report of the Infrastructure/Human Services Division on the proposed legislation (Answer Ex. D), and the Fiscal Impact Statement on the proposed legislation (Answer Ex. II).

⁶ Relevant pages of the June 30, 1999 City Council Meeting minutes are attached to the Verified Answer as Exhibit O.

Council Rule § 9.60, they were laid aside for debate on both proposals later during the meeting. In accordance with City Council practice, since Intro. 583 and Reso. 883 had been coupled, they were both before the Council during the entire debate, and Council Members had the right to both speak on and to vote separately on the two legislative matters that had been coupled.

Like the proceedings before June 30, the debate on these coupled proposals was lengthy and extensive.⁷ Petition Ex. V, at 98 – 234. After the debate, the City Council voted 36 to 15 to adopt Intro. 582 and Reso. 883. Answer Ex. O, at 1808. On July 15, 1999, Mayor Giuliani held a public hearing on Intro. 582. Answer Ex. P (7/15/99 transcript of public hearing). Several Council Members spoke in favor of or in opposition to Intro. 582, and thereafter sixteen organization representatives and members of the public testified. After due consideration of the record, Mayor Giuliani signed Intro. 582 into law, making it Local Law 38.

ARGUMENT

Since Intro. 582 “Aged” For The Requisite Time Period And Was Introduced At A City Council Meeting, It Was Properly Adopted Pursuant to Home Rule § 20(4).

“There being a presumption that official acts and duties have been performed, we may assume in the absence of showing to the contrary that the proper procedural steps necessary to enactment were taken.” Commission of Public Charities of City of Hudson v. Wortman, 255 A.D. 241, 245 (3rd Dept.), aff’d, 279 N.Y. 711 (1938). See also Coutant v. Town of Poughkeepsie, 69 A.D.2d 506, 510 (2nd Dept. 1979); Mobil Oil Corp. v. Town of Huntington, 85 Misc. 2d 800, 805 (Sup. Ct. Suffolk County 1975) (“it is incumbent upon one challenging a local

⁷ As petitioners point out, in June 1999 the glare of publicity on this issue was intense, including numerous articles in the four major daily newspapers. See Petition Exs. F - J, L - R.

law to offer proof of noncompliance and in the absence of such a showing, compliance with proper procedures will be assumed” (citations omitted)). Petitioners attempt to overcome this presumption by contending that the City Council, in adopting Intro. 582, did not adhere to the precise technical requirements of Home Rule § 20(4). As shown below, petitioners are wrong.

Home Rule § 20(4) mandates that proposed legislation “age”, that is, the proposed legislation must be placed on the desks of legislators at least eight days before it can be voted on. Home Rule § 20(4) provides in pertinent part:

Procedure for adoption of local laws by legislative body

4. A proposed local law may be introduced only by a member of the legislative body at a meeting of such body or as may be otherwise prescribed by the rules of procedure adopted by the legislative body. No such local law shall be passed until it shall be in its final form and . . . upon the desks or table of the members at least seven calendar days, exclusive of Sunday, prior to its final passage⁸

Home Rule § 51 provides that Home Rule provisions “shall be liberally construed.” See also Kamhi v. Town of Yorktown, 74 N.Y.2d 423, 428 (1989) (same); Pete Drown, Inc. v. Town of Ellenburg, 188 A.D.2d 850, 852 (3rd Dept. 1992) (same); Braxton v. Kuwik, 114 Misc. 2d 668, 670 (Sup. Ct. Erie County 1982) (noting that the “procedures for adoption of local laws are [a] part of the Municipal Home Rule Law to which liberal construction is mandated,” and ruling that “nowhere in [Home Rule §§ 20 or 21] is there an express

⁸ A similar, less procedurally complex requirement exists in City Charter § 36, which provides:

No local law shall be passed until it shall have been in its final form and upon the desks of the council members at least seven calendar days, exclusive of Sundays, prior to its final passage, unless the mayor shall have certified as to the necessity for its immediate passage and such local law be passed by the affirmative vote of two-thirds of all the council members.

requirement that the elements of adoption follow the exact order of their appearance”). In addition to the statutory construction principles set forth in Home Rule § 51, “the statutory rules for the construction and interpretation of statutes do not require strict compliance unless the essence or substance of the legislative intent has been vitiated.” Braxton, 114 Misc. 2d at 670 (citing N.Y. Statutes §§ 171 – 174).

The plain meaning of Home Rule § 20(4) permits a local law to be adopted if it has “aged” the requisite time period, and if it was introduced by a legislator at a meeting of the legislative body. Here the City Council complied with both provisions. First, the Martinez Affirmation conclusively establishes that a copy of the proposed legislation, later designated Intro. 582, was distributed to “each member of the New York City Council by placing the same on the desk of each Council Member in the City Hall Chambers of the Council” on June 21, eight full days before the June 30 meeting of the City Council.⁹ Answer Ex. E. Second, as petitioners concede (Pet. ¶ 2), the proposed legislation was introduced at the June 30 City Council Meeting by Council Member Spigner.

Nevertheless, petitioners seek to read into Home Rule § 20(4) a sequencing requirement. Pet’rs Br. at 6 (Home Rule § 20(4) “requires a proposed law to be ‘introduced’ first and then in its ‘final form’ and on the desks of the Members” for the requisite period). Yet a plain reading of this statutory provision reveals no such sequencing requirement. Rather, Home Rule § 20(4) only requires that the proposed legislation be introduced by a member of the legislative body at a meeting of the legislature, and that it “age” the requisite time. See Home Rule § 51 (provisions “shall be liberally construed”); Braxton, 114 Misc. 2d at 670 (no requirement in Home Rule § 20 that adoption procedures follow the order of their appearance in

the statute). Indeed, the second sentence of Home Rule 20(4) explicitly links the aging requirement to the act of passage of a local law, not to introduction of a local law. That sentence mandates that proposed legislation “age” for the requisite time period “prior to its final passage”, not, as petitioners argue, following its introduction.

Moreover, in drafting Home Rule § 20(4), the state legislature could have easily set forth a requirement that the eight day aging process could commence only after introduction of the proposed legislation. The state legislature, however, did not do so. See, e.g., 91 Fifth Avenue Corp. v. New York City Loft Board, 249 A.D.2d 248, 249 (1st Dept.), appeal dismissed, 92 N.Y.2d 890 (1998) (had the state legislature intended a certain result “it would have done so explicitly and not by means of the oblique importation” of another statutory provision (emphasis added)).

Even Assuming The Precise Technical Requirements of Home Rule § 20(4) Were Not Followed, Intro. 582 Was Still Validly Adopted Since The City Council Was In Substantial And Sufficient Compliance With Home Rule § 20(4) And Petitioners Were Not Prejudiced.

Petitioners argue that since Intro. 582 was introduced and adopted on the same day, “it was not on the desks of City Council members prior to its adoption for seven [sic] days subsequent to its introduction in the Council.” Pet’rs Br. at 2. Assuming arguendo that Intro. 582 was passed without following the precise technical requirements of Home Rule § 20(4), Local Law 38 is still valid. Specifically, if this Court were to determine that the technical requirements of Home Rule § 20(4) were not met, respondents nevertheless substantially

⁹ Consequently, the mandates in City Charter § 36 were met.

complied with Home Rule § 20(4). Moreover, petitioners were not prejudiced by any technical mistake since their counsel was actively involved in the committee hearings leading to the passage of Intro. 582. As described below, cases from numerous courts ranging from the Court of Appeals to the trial level have held that Home Rule § 20(4) merely requires “substantial and sufficient compliance” with its mandates. Alscot Investing Corp. v. Laibach, 65 N.Y.2d 1042, 1044 (1985). As the Third Department recently ruled, applying “form over substance is not warranted” in such circumstances. Preble Aggregate, Inc. v. Town of Preble, 247 A.D.2d 697, 699 (3rd Dept. 1998).

Courts hold that a legislative body’s failure to comply with the precise technical requirements of Section 20(4) is not a sufficient justification to vacate that body’s legislative enactment. For instance, in Alscot Investing Corp., 65 N.Y.2d at 1044, the proposed legislation was distributed in a timely fashion to the members of the legislative body. However, the proposed legislation was never formally introduced by a legislator. The Court of Appeals dispensed with this technical failure, ruling that the directive of the legislative body to the village’s attorney at a prior meeting “to prepare notice of hearing of the local law, the text of which was in the possession of all its members, was a ‘substantial and sufficient compliance’ with the requirement that such a law be introduced by a member of the Board at a meeting of the Board.” Id. (emphasis added). The Court held that only “a departure in substance from the formula prescribed by statute will invalidate a municipal enactment.” Id. The Court concluded by noting that “plaintiff’s arguments are ‘technical at best, and even at a technical level’ provide no basis for invalidation of the local law in question.” Id. at 1045 (citing Jewett v. Luau-Nyack Corp., 31 N.Y.2d 298, 307 (1972)).

Similarly, in Pete Drown, petitioner claimed that a local law was not valid since it was amended on the day that it was passed, and thus not on the legislators' desks in final form for the requisite period of time. 188 A.D.2d at 852. The Court rejected petitioner's challenge, noting that the amendments "were not substantial," and since the "substance of the [local law] was on the desks the" requisite period of time, Section 20(4) was not violated. Id. "Substantial compliance with Municipal Home Rule Law § 20(4) is sufficient." Id. See also Schneider v. Rockefeller, 31 N.Y.2d 420, 434-35 (1972) (ruling on analogous state legislation "aging" requirement, court holds that "there was substantial compliance with the letter and spirit of the constitutional requirement [and accordingly] we ought not to intervene to nullify this legislative action" (citations omitted)). In contrast to Pete Drown and Schneider, in Tylec v. Niagara County Legislature, 175 A.D.2d 676, 676 (4th Dept. 1991), a redistricting plan was held invalid since the plan ultimately adopted by the legislature had not "aged" for the requisite time period.

Courts have also justified upholding the enactment of local laws – even though there was a technical failure in the enactment process – when it was clear that the purpose of the statutes, to provide notice to legislators and the public, had been met. For instance, in Joseph Realty Co. v. Town of Babylon, 250 A.D.2d 614 (2nd Dept. 1998), petitioners sought to annul certain resolutions adopted by a town since the latter did not hold a hearing within certain time limitations prescribed in Town Law 54. The town, however, had properly noticed the hearing, and had discussed the matter at issue in detail. Indeed, the public and counsel for petitioners were "given an opportunity to comment at the hearing." Id. at 614. The Court rejected petitioners' arguments, and ruled that "the Town was in 'substantial and sufficient compliance' with the statute." Id. (quoting Alscot Investing, 65 N.Y.2d at 1044). More importantly, addressing the core policy issue – notice – the Court ruled that "the petitioners have not been

prejudiced in that they had a full opportunity to be heard on this issue.” Id. at 615 (emphasis added). See also Preble Aggregate, 247 A.D.2d at 699 (the “record supports the conclusion that the public had adequate notice of the adoption and contents of Local Law 1 and that plaintiff, who had been intimately aware of the process herein, suffered no prejudice”).

In contrast to Joseph Realty and Preble Aggregate, in 41 Kew Gardens Road Assocs. v. Tyburski, 124 A.D.2d 553 (2nd Dept. 1986), there was a failure to provide the statutory mandated notice under Home Rule § 20(5). The Court found that those interested were in fact prejudiced by that failure, which consequently “resulted in the frustration of the purpose and intent of the applicable notice requirements.” Id. at 554. The Court also distinguished the facts from other cases that “involved technical violations of the relevant statutes [where] sufficient and adequate notice was in fact provided.” Id. And the Court also reiterated that “technical compliance with the [above-cited] provisions is not essential to the validity of a municipal enactment.” Id. (quoting Alscot Investing, 65 N.Y.2d 1045).

Here there is no question that the passage of Intro. 582 substantially and sufficiently complied with Home Rule § 20(4). Here, following appropriate notice to every Council Member (Answer Ex. A), on June 21 proposed legislation was the subject of a City Council committee hearing. At that hearing, seventeen council members participated. Answer Ex. C, at 1. After the proposed legislation was amended, on June 21 the new version – later designated Intro. 582 – was distributed to each Council Member’s desk. Answer Ex. E. Consequently, the proposed legislation was in the possession of every Council Member eight full days before the June 30 City Council meeting. Compare Tylec, 175 A.D.2d at 676. On June 24, again following appropriate notice to every Council Member (Answer Exs. E & G), there was a City Council committee hearing on the proposed legislation. Again, seventeen Council Members

participated in this hearing. Answer Ex. K, at 1. Indeed, by the end of the June 24 hearing nearly one-half of the City Council membership had already participated in a committee hearing on the proposed legislation or its predecessor version. Answer Exs. C, at 1 & K, at 1. Applying the reasoning of Alscot Investing, because all the Council Members were made aware of the proposed legislation and the aging requirements were met, the City Council would have been in “substantial and sufficient compliance” with the requirements of Home Rule § 20(4) even if Intro. 582 had not been formally introduced. 65 N.Y. 2d at 1044.

Moreover, petitioners cannot argue that they were not on notice ... and thereby prejudiced by the City Council process of adoption. As shown above, petitioners’ interests were presented to the Council by their attorney, who testified at length during the June 21 hearing and again testified at the June 24 hearing. See Joseph Realty Co., 250 A.D.2d at 615 (petitioners not prejudiced by technical violations since petitioners “had a full opportunity to be heard on this issue”).

Finally, the policy considerations implicit in Home Rule 20(4) were not violated. As the Court of Appeals noted in an analogous case involving state “aging” requirements, the “clear purpose of this provision is to prevent hasty and careless legislation, to prohibit amendments at the last moment, and to insure that the proposed legislation receives adequate publicity and consideration.” Schneider, 31 N.Y.2d at 434-435 (citations omitted). Here, in addition to the appropriate “aging”, the repeated notices to Council Members and the extensive committee hearings on the legislative proposal, the glare of publicity was intense, including numerous articles in the four major daily newspapers about the legislative proposal. See Petition Exs. F - J, L - R.

**The City Council Complied With Its Rules
Pertaining To The Introduction And Adoption
Of Intro. 582; Even If It Had Not, Review Of
The Council Rules Is Not Justiciable.**

Petitioners also contend that Local Law 38 is invalid since Intro. 582 was not introduced in accordance with the Council Rules. To start, the City Council complied with its rules. More importantly, however, review of a legislature's internal rules is not justiciable. Consequently, even if there was a failure to follow the Council Rules, that alone is insufficient to justify invalidating Local Law 38.

Here the City Council complied with its rules. Petitioners appear to allege that Council Rule § 6.00 was not followed, which states that proposed legislation be "deposited with the Office of the Speaker before 1 p.m., at least three days, excluding Sundays, preceding the meeting day." Petitioners are wrong. Intro. 582 was deposited with the Office of the Speaker on June 24, 1999. Answer Ex. L. Petitioners also appear to allege that Council Rule § 2.10 was not followed, which states that the Speaker shall prepare an agenda that includes a "list of introductions of local laws and resolutions submitted for consideration to the Council." Similarly, petitioners appear to allege that another provision of Council Rule § 6.00 was not followed, which states that all proposed local laws "be assigned a chronological introduction number . . . and shall appear on the agenda in alphabetical order according to the name of the first named prime sponsor." Petitioners are wrong. The June 30 Agenda indicates that Intro. 582 was listed in the "Introduction & Reading of Bills" section of the Agenda, with a chronological introduction number and the name of the first named sponsor identified. See Answer Ex. N, at 22.

Petitioners also allege that Council Rule § 6.30 was not followed, which states that every "proposed local law or resolution introduced shall, upon its introduction, be referred

by the Speaker to a committee to consider and report thereon.” Petitioners are again wrong. As the June 30 Agenda indicates, Intro. 582 is listed as referred to the Committee on Housing and Buildings. See Answer Ex. N, at 22. As previously indicated, on June 24 that committee had considered and approved the proposed legislation, later designated Intro. 582, and had issued a report as mandated by Council Rule § 7.80. Answer Ex. D.

Petitioners also appear to allege that Council Rule § 6.20 was not followed, which states that “a member may add his or her name as a co-sponsor within 48 hours after introduction or a proposed local law.” Petitioners are wrong. Nowhere in Council Rule § 6.20 -- or anywhere else for that matter -- is it mandated that proposed legislation cannot be considered for 48 hours after introduction; rather, Council Rule § 6.20 merely permits Council Members to add their names as sponsors for 48 hours after introduction.

Finally, even if the Council Rules were technically not completely followed, a controversy over the purely internal rules of a legislature is not justiciable. As the Court of Appeals noted, “courts are reluctant to question the internal procedures in the general lawmaking process, State or local.” Lewis v. Klein, 45 N.Y.2d 930, 932 (1978) (citations omitted). See also Heimbach v. New York, 59 N.Y.2d 891, 893 (1983) (declining to consider an alleged violation of state senate rules, court holds that “based upon our respect for the basic polity of separation of powers and the proper exercise of judicial restraint, we will not intrude into the wholly internal affairs of the Legislature” (citations omitted)); New York Public Interest Research Group v. Steingut, 40 N.Y.2d 250, 257 (1976) (proper restraint must be exercised “on the part of the judiciary in responding to invitations to intervene in the internal affairs of the Legislature as a coordinate branch of government – ‘it is not the province of the courts to direct the legislature how to do its work’” (quoting Hatch v. Reardon, 184 N.Y. 431, 442 (1906))).

In Michels v. Cuite, 104 Misc. 2d 540 (Sup. Ct. N.Y. County 1980), Justice Gammerman declined to invalidate a New York City Council legislative enactment even though the Justice determined that there had been a violation of the Council Rules. Justice Gammerman squarely addressed the issue:

Questions of internal legislative procedure, as opposed to statutory compliance, fall closer to the borderlines separating the legislative and judicial powers. Here the court must tread more lightly, particularly where the litigants seek invalidation of legislation. The Court of Appeals has indicated its reluctance to involve itself in purely internal legislative matters, absent a clear cut constitutional issue. . . . Absent constitutional consideration or statutory interpretation, deliberative bodies are to be the final arbiters of their own internal procedure. Id. at 543 – 544 (citation omitted).

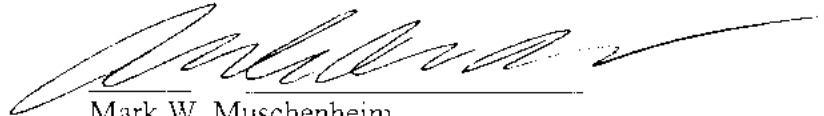
See also Abel v. New York City Council, 3/14/95 N.Y. Law J., at 25 (Sup. Ct. N.Y. County) (copy attached hereto) (petition dismissed since issues focus solely on internal procedures that are beyond the scope of judicial review); Mantello v. City of Troy, 172 Misc. 2d 664, 671 (Sup. Ct. Rensselaer County. 1997) (a violation of the council rules “is not a procedural defect of such magnitude as to invalidate the Local Law”).

CONCLUSION

For the foregoing reasons, the petition should be dismissed in its entirety.

Dated: New York, New York
November 22, 1999

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HEADLINE: Term of Republican Minority Leader Is Question for Council, Not Court; Matter of Abel (New York City Council), Supreme Court, IA Part 18, Justice D. Saxe.

BODY:

SUMMARY New York County

PETITIONER, FORMER Republican minority leader of the City Council, sought an order declaring invalid the designation of its member Thomas Ognibene as new minority leader. He challenged the procedures by which four of the seven Republicans replaced him. Mr. Ognibene and the Council cross-moved to dismiss. The court dismissed the petition, ruling that selection and terms of office of the minority leader was for the Council, not the court, to decide.

IA PART 18

Justice D. Saxe

MATTER OF ABEL (N.Y. City Council) -- New York City Council Member Michael J. Abel was elected Minority Leader of the City Council on March 3, 1994. In this proceeding, he challenges the propriety of the procedures by which on November 9, 1994 four of the seven Republicans on the City Council designated Thomas V. Ognibene as the Council's new minority leader. He seeks an order declaring invalid any document purporting to designate Ognibene, and declaring Abel's term of office as Minority Leader to be concurrent with his term of office as a member of the City Council.

Both Council Member Ognibene and the City Council cross-move to dismiss the petition, contending that the designation of a new Minority Leader is entirely a matter of internal legislative procedure, beyond the scope of judicial review.

Our courts are repeatedly cautioned that we must exercise restraint when legal challenges invite us to intervene in the internal affairs of the other branches of government (see, e.g., *New York Public Interest Research Group v. Steingut*, 40 NY2d 250, 357 [1976]; see, *Michels v. Cuite*, 104 Misc2d 540, 543-44 [Sup Ct NY Co 1980]). Thus, for instance, a dispute between a member of the New York State Assembly and the Speaker of the Assembly, as to whether the Assembly was required to send a particular mailing to the Assemblyman's constituents was held to be a non-justiciable internal dispute (see, *Matter of Gottlieb v. Duryea*, 38 AD2d 634 [3d Dept 19713, affd 30 NY2d 807, cert denied 409 US 1008]).

In contrast, where a lawsuit involves a constitutional challenge to the

procedures or undertakings of a legislative body, or questions of statutory or regulatory interpretation, a determination by the court is clearly appropriate (see, *Matter of Anderson v. Krupsak*, 40 NY2d 397, 403 [1976]). Additionally, on occasion courts have considered the proper application of the rules of a political party. In *Matter of D'Angelo v. Executive Comm. of County Comm. of Republican Party of Kings County* (188 AD2d 649 [2d Dept 1992]), it was held that the executive committee of the County Committee of the Republican Party was created solely by party rules, and therefore certain protections provided by the Election Law for notice and a hearing before an officer of a party committee may be removed, did not apply to chairman of the executive committee. And *Bachman v. Coyne* (99 Ad2d 742 [2d Dept 1984]) examined political party rules in order to determine whether the filling of a vacancy in the position of chairman of the executive committee of the County Committee of the Republican Party of Queens County comported with the applicable party rules.

Thus, in order to determine whether or not a dispute is justiciable, the court must first examine the merits of the arguments in order to determine whether or not the challenge implicates a constitutional right, requires an interpretation of statute or asserts a misapplication of a rule or regulation.

The Rules of the council promulgated by the City Council in 1994 provide as follows for the position of Minority Leader:

4.10. Minority Leader -- The Minority Leader shall be chosen by the members of the Council of the political party with the greatest number of members in the Council after the majority party. During absences, the Minority Leader shall designate, in writing, any members of such minority party to perform the duties of the Minority Leader for that legislative day. The Minority Leader may appoint such party officers as he or she deems appropriate.

None of the rules of the party or the City Council provide for the method of selection, the tenure, the duties or the emoluments of the position -- although that New York City Administrative Code §3-204 authorizes the payment of "additional remuneration" to the Minority Leader.

It is Council Member Abel's position that once a Council Minority Leader is elected, the position automatically remains his for his term of office. He cites Roberts Rules of Order for the proposition that "after an election has become final . . . , it is too late to consider the vote on the election." However, the issue is not one of "reconsideration," but of the term for which a Minority Leader serves -- if any.

The issue of the term of an officer of the City Council arose in *Morris v. Cashmore* (253 App Div 657 [1st Dept 1938]). There, the respondent had been elected vice chairman of the City Council at its January 3, 1938 meeting; the nomination was explicitly for the two-year period through which the members' terms ran. Yet on January 25, 1938, the council held a vote in which it declared vacant the post of vice-chairman, and a follow-up vote to elect a different member to the post. The court, after holding that those follow-up votes were improperly conducted, added:

Beyond that, however, we are of the opinion that the office of vice chairman of the council was intended to carry with it tenure of office for the full term of which the individual has been elected to the council (253 App Div 657,

supra.)

However, that comment in *Morris v. Cashmore* does not constitute a ruling that all positions within the City Council are necessarily held for the full term of the member holding that position. Moreover, I conclude that *Morris v. Cashmore* must be distinguished from the present circumstances.

First, in that matter the position in question was that of an officer elected by the full Council. The Court in *Morris v. Cashmore* noted that the City Charter specified a number of duties and administrative functions of a vice chairman, including succeeding to the position of Council President under certain circumstances; it commented that "[any] construction which permitted him to be ousted at will would lend confusion to city government" (253 App Div at 664, supra). In contrast, the position in question is rather, merely that of a party officer chosen only by those Council members belonging to his party. There is no reason to conclude that any confusion in City government would result if a Minority Leader's tenure were for less than his full term.

Furthermore, as respondents point out, on occasion in past years the minority party's designation of a Minority Leader has explicitly specified the term for which the position was designated: for instance, in 1974 the designation of Angelo Arculeo as Minority Leader was "for the year 1974," and in 1975 Mr. Arculeo's designation was specifically "for the years 1975, 1976, and 1977." In contrast, the designation of petitioner in march 1994, like that of his predecessor in January 1994, specified no time period.

In considering whether any authority necessarily provides for an automatic term of office for a Minority Leader, it is useful to examine carefully the decision in *Mele v. O'Dwyer* (86 Misc2d 326 [Sup Ct NY Co 1976]). There, the 1975 designation of Angelo Arculeo had specifically been for a three-year period, yet during this period a majority of the Republican Council members called a meeting at which they noted their grievances against Arculeo, declared the office of Minority Leader vacant, and selected a new member for the position. These individuals then brought an Article 78 proceeding seeking a direction that the Council recognize their newly designated choice as Minority Leader. The petitioners contended that a Minority Leader serves at the will of the minority members and may be removed at any time.

In dismissing the petition in *Mele v. O'Dwyer*, supra, the court emphasized at the outset that Arculeo had been chosen for the full term of the Council. In the case of Mr. Abel no term was specified. The court also commented in *Mele v. O'Dwyer* that electing a Minority Leader for the full term of the Council was "apparently in keeping with the tradition of that office"; however, that remark clearly falls short of a rule that a Minority Leader must necessarily be designated for the full term. Indeed, there is no indication on the record before me that any such tradition of specifically designating the Minority Leader's term as the full term of the Council has been maintained in the intervening years.

I see neither basis nor support for judicial imposition of a specified term of office for the position of City Council Minority Leader when none was specified by rule or designation. This is simply an open question that may clearly and easily be addressed and clarified by the legislative body itself. Indeed, I concur with the court in *Mele v. O'Dwyer* that "[it] is for the

Council, not this Court, to determine the method of selection, the tenure, and the duties of the Minority Leader" (86 Misc2d at 329, supra).

As to petitioner's arguments regarding the procedures employed by his challengers, none rises to the level of a constitutional issue or one of statutory interpretation or application, such as would be appropriately addressed this court.

Finally, petitioner's claim of fraudulent inducement contains insufficient factual support to rise to the level of a supportable claim.

Accordingly, the petition is denied and the proceeding is dismissed.

The foregoing constitutes the decision and judgment of the court.

LANGUAGE: ENGLISH

LOAD-DATE: March 21, 1995