



## MEMORANDUM

TO: Jim Kevlin  
FROM: Ellen Leary Coccoma, County Attorney  
DATE: January 20, 2017  
RE: Question regarding appointment of Committee Chairs

An inquiry has been made regarding the authority of the Chair of the Board of Representatives to appoint chairs of committees.

County Law section 153 (8) empowers a county legislature to adopt its own rules of procedure as long as they are not in contravention of state law. The Otsego County Board of Representatives has enacted its own Rules of Order (as amended 2016) (hereafter referred to as Board Rules).

Both County Law and Board Rules mandate that the Chair appoint the committee members. County Law section 154(3) states: "Members of all standing and special committees shall be appointed by the chairman of the board from its membership." Board Rule 8 concurs: "The standing committees of the Board shall be appointed by the Chairperson at the regular January session of the Board or any time during the year due to unforeseen vacancies, such as illness or death."

With respect to appointing chairs of the committees, the usual procedure, used apparently for decades, is that the Board Chair appoints the chairs of the individual committees. The first person named by the Board Chair has always been considered the chair of the committee, and the list on the county website so states.

While neither the Board Rules nor County Law specifically state that the Board Chair has the authority to appoint committee chairs, the Board has the power to interpret its own rules, including by custom and practice. By virtue of the longstanding practice of and the representatives' acquiescence to committee chair appointments by the Chair, the Board has effectively interpreted its rules to so authorize the Board Chair. The Board Chair's authority to appoint committee chairs has been accepted for a lengthy period of time, including by the current Board which took office on January 1, 2016.

Because of the doctrine of separation of powers, courts rarely intervene in the internal procedure of a municipal legislative body unless constitutional or statutory violations occur. Instead, great deference is given to the body's own rulings on its procedure. (see *Matter of Montano v. County of Suffolk*, 70 AD3rd 203 (2009)). However, one of the few existing court rulings supports the use of custom and practice when a particular issue is not otherwise specifically addressed. In *Town Bd. v.*

*Hallock*, 2 Misc. 3d 826 (Erie County Supreme Court, 2003), the court ruled that the Town's reliance on its custom and practice of 28 years of the Town Supervisor appointing Town Board members to various committees and departments was sufficient despite the absence of written rules. The action by some Town Board members against the Supervisor to remove a particular appointee was dismissed.

Finally, Board Rule 52 states: "Any matter coming before the County Board for which these rules do not provide shall be controlled by Robert's General Rules of Order." A review of the most recent edition of Robert's Rules of Order Newly Revised (11th edition) also supports the Board Chair's authority to appoint committee chairs. Robert's Rules states as follows:

"The power to appoint a committee carries with it the power to appoint the chairman and to fill any vacancy that may arise in the committee." Section 50 Committees, subsection 'Appointment of Committees.' (page 492).

"If the chair appoints or nominates the committee, he has the duty to select its chairman-which he does by naming that person to the committee first -and the committee cannot elect another." Section 13 Commit or Refer, subsection 'Designating the Committee Chairman' (page 175).

Therefore, it is my opinion that the Board Chair has the authority to appoint committee chairs and that a committee does not have the authority to choose its own chair.

Thank you,

ELC/dh  
Encls.