

Legislators debate state-mandated DA raise

By BOB CLARK, Olean Times Herald | Posted: Tuesday, March 29, 2016 9:15 am

BELMONT — Several Allegany County legislators were “probably tilting at windmills” to express their opposition to state-mandated expenses Monday.

Five legislators — Scott Burt, R-Scio, David Decker, R-Cuba, Karl Graves, R-Wellsville, David Pullen, R-Fillmore, and Norman Ungermann, R-Cuba — voted against a \$30,000 raise for District Attorney Keith Slep up for approval at the meeting.

Pullen led off the opposition, calling the mandate a violation of the Home Rule sections of the state Constitution and other laws — but said that with state control, his opposition was “probably tilting at windmills.”

“The state is telling the county what to pay the district attorney, who is a county officer,” Pullen said. “It’s not because we decided a county officer needed a raise.”

Pullen’s comments echoed those he made April 9, 2012, when legislators failed to pass a state-set \$27,000 raise for the district attorney by a 10-4 margin. Following a threat from District Attorney Keith Slep to sue over what he called at the time an “idiotic” decision, legislators voted 9-6 on May 14 to approve the raise, with Pullen and Ungermann opposing the raise as they did four years later.

As it was four years ago, Pullen disagreed with the state’s highest court, which ruled on the matter more than 30 years before.

Kelley v. McGee, a 1982 lawsuit brought by a district attorney in Clinton County, was argued in front of the state Court of Appeals. The seven-member court sided unanimously against the county government.

“We hold that the requirement of section 183-a that full-time District Attorneys in certain counties be paid at the same salary level as County Court Judges in their counties is not in conflict with the home rule provisions of article IX of the New York State Constitution, nor does section 7 of article XIII bar a midterm increase in the salary of these local officers. Hence, District Attorneys in counties falling within section 183-a are entitled to be compensated in accordance with its provisions both prospectively and retroactively to the date at which the counties ceased paying salaries equivalent to those of the County Court Judges,” the decision states.

Legislator Dwight Fanton, R-Hallsport, indicated “I’d love to vote ‘no,’” on the resolution, but “if we vote this down, we’ll get sued and it will cost us more than the raise.”

And it wouldn’t have been the first time such a suit cost Allegany County.

In the 1982 case of Francis v. Mulholland, the county lost a lawsuit brought by then-district attorney George Francis, who sued over a state-mandated raise and won, costing the county the raise and legal fees.

Majority Leader Mike Healy, R-Belmont, noted the oaths of office he has sworn, including his time in the U.S. Army, the New York State Police and the Legislature.

“I swore oaths to obey laws whether I agreed with them or not. This is already a matter of settled law,” Healy said. “Although it might be politically popular to vote against this today, I think I’m going to have to obey my oath and vote ‘yes.’”

Legislator Tom O’Grady, R-Wellsville, compared the salary hike to mandated Medicaid costs pushed on counties and a 2009 vote to overhaul the county courthouse under threat of the state holding back millions of dollars in aid after more than two decades of not meeting court facilities standards.

But O’Grady said he would vote in favor of the measure.

“So one of our county officers doesn’t sue the county,” he said. “Otherwise, I’d vote ‘no.’”

(Contact reporter-editor Bob Clark at bclark@oleantimesherald.com. Follow him on Twitter, [@OTHBob](https://twitter.com/OTHBob))