

2018 CHARTER REVIEW COMMISSION MINUTES

August 31, 2018

Roll Call

Present: Vince DeLeonardis, Chairman
Deputy Commissioner Michael Sharp, Vice Chairman
Deputy Commissioner John Daley – Via Video Conference Disney World, Florida
Commissioner John Franck – Via Video Conference Wells, Maine
Commissioner Michele Madigan
Commissioner Peter Martin
Commissioner Skip Scirocco
Deputy Commissioner Maire Masterson
Deputy Mayor Lisa Shields

Absent: Deputy Commissioner Joe O'Neill

Recording of Proceeding

The proceedings of this meeting were recorded for the benefit of the public and the secretary. Because the minutes are not a verbatim record of the proceeding, the minutes are not a word-for-word transcript.

Call to Order

Chairman DeLeonardis called the meeting to order at 10:04 AM. Attorney Robert McLaughlin was also in attendance.

Public Comment

Chairman DeLeonardis opened the floor up for public comment.

There was no public comment. End of public comment.

Approval of Minutes

No minutes available

Discussion Items

Chairman DeLeonardis began the meeting advising that at the last meeting the Charter was unanimously approved with the exception of 2.7 – Civil Service Commission. Previous discussions included other Charters where the municipalities had appointed the secretary to the Commission and also held other offices such as HR Administrator. Attorney Robert McLaughlin of Hodgson Russ provided a memo (attached) to address questions raised at a previous meeting. Looking at the examples previously provided by Deputy Shields, none of the cities have the commission form of government so that is one distinction. Rochester is also a first class city with a much larger population than Saratoga Springs. The Mayor appoints the secretary to the Civil Service Commission which is more of a function, meaning there was no line under Civil

Service for an appointment. So, in our view, it is name only and not an employee of the Civil Service Commission. The Commission does function entirely on their own. A discussion continued. Deputy Shields cited the Rochester website that shows the HR Administrator and the Civil Service secretary being the same person. Attorney McLaughlin said that the site is misleading. Their research could find no appointment being made by Civil Service. The time frame is too tight and in their opinion HR and Civil Service are two separate functions except in Albany where they worked out an agreement. Commissioner Scirocco asked if HR could also be Civil Service? Chairman DeLeonardis said not under our Charter. After further discussion it was agreed that there is no time to adequately research the options for the City and all parties (i.e. the County, City and Civil Service Commission) should be included in any discussions going forward. If it is determined that changes will be needed, a referendum may be brought at any election. Chairman DeLeonardis made a motion: Motion to approve Section 2.7 as drafted and contained in the draft document of the Charter and to be incorporated in the Charter draft and submitted on the ballot. Second: Deputy Commissioner Mike Sharp.

Roll call vote: Chairman DeLeonardis – Aye
Deputy Commissioner Sharp – Aye
Deputy Commissioner Daley – Aye
Commissioner Franck – Aye
Commissioner Madigan – Aye
Commissioner Martin – Aye
Commissioner Scirocco – Aye
Deputy Commissioner Masterson – Aye
Deputy Mayor Shields - Aye

Aye – 9, Nay – 0. The motion passes.

Chairman DeLeonardis continued the meeting with the next question for consideration and vote – the ballot questions. He then read the questions submitted for consideration by Hodgson Russ (attached). Commissioner Franck said to shorten the language on question #2. The longer the ballot language the statistics say it will be a no vote. Chairman DeLeonardis said that we aren't proposing a new charter so there is no template to use for wording. Attorney McLaughlin said that they toiled long over this. The statute is clear that you must add a separate question because you are changing the vote of the legislature. We are presuming the vast majority of voters won't review Vince's report. So, what they were trying to do is: the first message is we are expanding the Council from 5 to 7 members, and assuming that the report is not read the 2nd message is no administrative functions because the public may assume the additional council member will have the same duties the current Council has. The goal is to make it as clear as possible. A) notice to expand and B) what are they doing. Chairman DeLeonardis would like to review the language in the first question. He would like to change "new" to revised or updated. Attorney said the word new is in the statute but it is not needed because you aren't providing a new charter. Commissioner Martin doesn't like the word "updated" – the majority of what has been done is revision. Attorney McLaughlin said the statute references amendments and since technically this is not a new charter, the word amendment should be used. Chairman DeLeonardis read the questions that Tony Izzo proposed which included brackets (attached). Commissioner Madigan suggested omitting the bracketed language. Commissioner Franck asked if we could continue to tweak the charter prior to being submitted to the BOE but after filing with the City Clerk? Attorney McLaughlin said only the ballot questions can be revised. The Charter is complete when filed. Commissioner Franck left the meeting at 11:09 AM. Chairman DeLeonardis spoke

to Deputy Sharp's comment about adding the word "further" to amended. Attorney McLaughlin said if you vote no on one question and yes on the other, we believe that would, amplified by your report, make it clear that if you're not voting for the Charter then there is no amendment to be further amended. You need to make it clear in the report that's filed with the City that that's exactly what your accomplishing. If it is amended you get to go to the second question if it isn't you don't. Do you want to amend the Charter? – Yes. Do you want to further amend it? – Yes. But - Do you want to amend the Charter? – No. Then there is no further amendment and question #2 is moot. He further said that the word "further" was inserted on purpose and believes it is a defensible position. Chairman DeLeonardis requested a vote on the questions. He made a motion: That the proposed questions on the ballot include in sum and substance the following: Question 1 – Shall the Saratoga Springs City Charter be amended as proposed by the 2018 Charter Review Commission? And Question 2 – Shall the Saratoga Springs City Charter be further amended to provide for two additional City Council members whose authority shall be legislative only? Second: Deputy Commissioner Mike Sharp. All those in favor? Aye – 8, Opposed – 0. The matter passes.

Chairman DeLeonardis thanked Tony Izzo for drafting the questions.

The meeting recessed at 11:24 for 5 minutes.

The meeting resumed and Chairman DeLeonardis again thanked Tony Izzo for drafting the questions for the ballot. He then reviewed the steps needed for filing. The draft showing the deletions and additions must be filed with the City Clerk on Thursday 9/6/2018 along with the Report. The Ballot Questions should also be filed with the Report. The financial analysis has no time line and Deputy Sharp will work on that. Are there any other dates we need to be aware of? Attorney McLaughlin said that the City Clerk will send the amendment to the County Board of Elections and the questions should be submitted in the Report and separately. The Commission and the City Clerk can send the Ballot Questions but he will check to be sure. Chairman DeLeonardis advised that there are 66 days to the election. After the drafts are filed the next action is to think about the education outreach. Commissioner Franck raised, at a previous meeting, to not send the charter document but instead send 4 separate mailings and advise where the draft can be found. Attorney McLaughlin agreed. Deputy Sharp suggested giving copies to the library, and City Hall, and notice that it is online too. Commissioner Madigan said to provide a full-page outline of what has been done. Chairman DeLeonardis asked for all to come to the meeting on 9/12 with ideas. He said that the physical outreach should be done as a Commission and go to a location such as the City Center for public assess. Visits to specific sites would also be good. Deputy shields suggested another public Forum. Commissioner Madigan suggested the Lyons Club and Rotary at their regular luncheons. Commissioner Martin suggested the political party's functions, the Senior Center, Elks and Knights of Columbus. Commissioner Scirocco said the message has to be consistent on the handouts. Deputy Sharp suggested using the survey data and a power point presentation. He also asked about getting outside help. Chairman DeLeonardis asked if there was budget money what should be done with it and, keeping in line with the purchasing policy, who could obtain quotes for the work? Commissioner Madigan suggested using a graphic artist for the mailers. A budget of approximately \$15,000 is not enough so the budget may need to be amended. She likes the woman she has worked with on her campaign and said she would get a quote from her. Commissioner Scirocco and Deputy Shields said they could also obtain a quote. The following agreed to contact organizations to set up community outreach meetings:

Commissioner Madigan - the Lyons Club
Commissioner Scirocco - the Elks and the Rotary
Deputy Shields - the Senior Center
Chairman DeLeonardis - the VFW
Tony Izzo – the American Legion
Deputy Masterson – the Chamber
Deputy Sharp - Skidmore
Commissioner Martin – Sustainable Saratoga

Deputy Shields asked if the City’s Boards and Commissions should also be included? Tony Izzo said he was not aware of that being previously done but not an inappropriate idea. Deputy Masterson asked if the contacted parties should be asked to meet with the Commission or if the Commission should ask to attend their meeting. Chairman DeLeonardis suggested attending their meetings to reach the largest audience available.

Chairman DeLeonardis opened the floor public comment.

Public Comment

Bonnie Sellers, Saratoga Springs. Bonnie suggested investigating the bulk mailing option with the post office to save on expenses. It would go to the resident not a specific address. She also advised to keep the mailer clean so it looks nice.

End of public comment.

Next meeting on 9/5/18 @ 11:00 AM
Chairman DeLeonardis adjourned the meeting at 11:47 PM.

Respectfully submitted by Trish Bush.

MEMORANDUM FROM

Robert J. McLaughlin
Direct Dial: 518.433.2421
Email: rmclaugh@hodgsonruss.com



To: Vince DeLeonardis
Date: August 30, 2018
Re: 2018 Charter Review Commission

QUESTION: Can the City of Rochester model for the Human Resource Department be adopted in the Charter?

ANSWER: At the meeting of the Commission held on August 28, 2018, we were asked to again review the potential of having the secretary to the City's Civil Service Commission ("CSC") be appointed by the City Council while also acting as the Director of Human Resources. Further examples of this form being acceptable were discussed and submitted. At a minimum, it would appear that the Cities of Glen Cove, Niagara Falls, Rochester and Schenectady use this form of administration.

We note at the onset that none of the cited examples use a commission form of City government. We also note that there are differences for each of the Cities cited as examples – Schenectady defers to the County CSC; Binghamton has an HR Director for the City which does not report to the CSC.

The first issue which must be examined is whether one individual can hold two public offices. We have noted in a previous memo that for a City, this is generally not permitted by various statutes. The issue is resolved under the doctrine of compatibility of office. There are two sources of incompatibility - statutes that prohibit holding designated multiple offices, and application of the common law test for compatibility of office. The compatibility doctrine's goal is to maintain public confidence in the integrity of government.

In the absence of a constitutional or statutory prohibition against dual-officeholding, one person may hold two offices simultaneously unless they are incompatible. The leading case on compatibility of office is People ex rel. Ryan v. Green, 58 NY 295 (1874). In that case the Court held that

two offices are incompatible if one is subordinate to the other or if there is an inherent inconsistency between the two offices. The former can be characterized as “you cannot be your own boss”, a status normally easy to see. The latter is not easily characterized, for one must analyze the duties of the two offices to ascertain whether there is an inconsistency. An obvious example is the inconsistency of holding both the office of auditor and the office of director of finance. *See, NY Attny Gen Op No. 95-12.*

In *Dupras v. County of Clinton*, 213 AD2d 952 (3rd Dept 1995), Gladys M. Perry was appointed to the Clinton County Legislature to fill the unexpired term of her late husband. Petitioner commenced an Article 78 proceeding challenging the appointment on the ground that it created a conflict of interest since Perry was employed as a senior clerk in the Clinton County Board of Elections. In holding the appointment incompatible, the Court noted that “Incompatibility exists when one office is subordinate to the other or subject to audit or review by the second (see, *O'Malley v Macejka*, 44 N.Y.2d 530, 535).”

Here, the incompatibility is readily apparent since in her legislative capacity Perry will be in a position to vote upon the budget and personnel of the Board of Elections, as well as the salary of the commissioners who are her supervisors and who may remove her at their. *Id @ 952.*

In the case of one person being appointed HR director and Secretary to the CSC, (and assuming satisfaction of the provisions of the State’s Civil Service law discussed below), since the Secretary position would need to be a Civil Service appointment, we believe that a Court would deem that there is a violation of the compatibility doctrine – while the Secretary cannot be removed without a hearing, the same person could be removed as the HR director without a hearing as an appointee of the City Council.

We have previously discussed with the Commission Civil Service Law §§15-27 which generally address the requirements of a municipal CSC. CSL §16 (2)(b) permits a city to adopt one of the optional forms of civil service administration provided in CSL §15. Therefore, there is a choice between a CSC, a Personnel Officer or a regional approach. The Cities of Glen Cove, Niagara Falls and Rochester seem to have adopted both a secretary for their respective CSC and a personnel director (i.e., a human resource director). We find no authority in support or specifically prohibiting the adoption of these two simultaneous appointments under the

statute. However, we note that a court, or the Office of the Attorney General, could reasonably determine that since the Human Resource Director must still allow appointments to proceed under CSL §20 (i.e., only City CSC has the power to set job classifications and set rules for Examinations for appointments, promotions, transfers, resignations and reinstatements) there is a conflict in the positions which could not be avoided by a recusal or a deferral to the CSC.

CSL §22 requires that a proposal for a position, including a statement of duties, shall be referred to the CSC having jurisdiction and such commission shall furnish the appropriate civil service title for the proposed position and certify the position. Otherwise the position is invalid and the employee cannot be paid (See *Hauben v Goldin*, 74 AD2d 804 (1st Dept 1980)). We have not been able to determine if any of the Cities cited followed this approach or not. If not, there could be a legal issue if the position of Human Resources director was not certified by its civil service commission. The Mayor's appointment in these Cities of the Human Resources director should have been treated like any other appointment of a city employee with the classification and job description and duties set by the City CSC. That employee can only serve one entity (the Rochester Civil Service Commission) or individual (the Mayor) at a time, creating the compatibility issue.

Accordingly, we continue to maintain that the approach of appointing one individual as both the Human Resources Director and the Secretary to the CSC is not an ideal approach. However, there is nothing in statute which prevents the adoption of this approach in the proposed Charter amendment.

QUESTION:

What are the responsibilities of the Commission after the Charter amendments have been agreed on?

ANSWER:

Municipal Home Rule Law § 36 [5] [a] requires the proposed charter revisions to be contained in a report to the public. At a minimum, the Commission report should address the appointment goal in the Mayor's appointment – to determine efficiencies and organizational improvements. Accordingly, the report should contain: a statement of the public meetings conducted by the Commission, a statement of the public hearings conducted, a summary of the proposed changes in the Charter and the reasons for the changes, a summary of those sections of the Charter which were not amended and the reasons for the non-amendment, and a concluding section on how the proposed changes and the remainder of the charter meet the goal of "efficiencies and organizational improvements."

In *Julian v. LaSalle*, 22 AD3d 1033 (4th Dept 2005), the charter commission for the City of Utica submitted a 14 page report to the City Clerk. The attached Court of Appeals case (*Cruz v. Deierlein*, 84 NY2d 890 (2nd Dept 1994)) is illustrative of the report's requirements. We recommend that the outline contained in *Cruz* be followed and that the revised charter, with a redline version, accompany the report(s).

Municipal Home Rule Law § 36 [5] [b] requires that the report should be given such publicity as the commission "may deem proper," and the "new charter or amendments shall be completed and filed in the office of the city clerk in time for submission to the electors not later than the second general election after the charter commission is created and organized" (§ 36 [5] [b]). For 2018, we have previously advised the Commission that the amendments need to be filed with the City Clerk sixty (60) days prior to Election Day. Since the date of filing and Election Day are not counted, the last date the filing can occur is **September 6, 2018**.

QUESTION:

What ballot questions should be submitted to the Board of Elections?

ANSWER:

On August 28, 2018, the Commission requested guidance on the ballot questions to be submitted to the Board of Elections for Saratoga County given the amended Charter contains numerous changes and also adds two new elected positions. As discussed at that meeting, Municipal Home Rule Law § 36 [5] [c] requires a separate ballot question for the two new elected provisions. Without this change, the ballot question could follow the suggestion made at Municipal Home Rule Law § 36 [5] [b]:

Shall the new city charter proposed by the city charter commission be adopted?

In light of the addition of the two new elected positions, and being mindful of the intent to provide a clear choice to the voters, we believe two questions should be submitted. The first will follow the statutory language noted above. The second would address the proposed addition of two elected at-large members to the City Council:

Shall the new city charter be further amended to provide that the city council be expanded from its current 5 members to a 7 member council with the 2 new members being at-large positions without direct supervisory duties with their terms being the same as for the other council members?

We believe this approach will allow for the approval of the new charter without – or with – the two new members. The proposed new charter

should be filed with a report without the new elective positions for ballot question 1 and a report and proposed amendment adding the positions be filed for a separate ballot question 2.

RJM:mml

cc: Richard L. Weisz
George Cregg, Jr.

QUESTION NO. 1

~~AMENDMENTS TO SARATOGA SPRINGS CHARTER~~

SHALL THE SARATOGA SPRINGS CITY CHARTER BE AMENDED [~~AND UPDATED~~] AS PROPOSED BY THE 2018 ~~CITY~~ CHARTER REVIEW COMMISSION?

QUESTION NO. 2

~~FURTHER AMENDMENT TO SARATOGA SPRINGS CHARTER~~

Two Additional Council Members

SHALL THE SARATOGA SPRINGS CITY CHARTER BE FURTHER AMENDED [~~AND UPDATED~~] TO PROVIDE FOR TWO (2) ADDITIONAL CITY COUNCIL MEMBERS WHOSE AUTHORITY SHALL BE LEGISLATIVE ONLY?