

TOWN OF WESTERLY, RHODE ISLAND
REGULAR MEETING – AD-HOC ADVISORY CHARTER REVISION COMMISSION – TOWN CLERK’S LIBRARY
THURSDAY – APRIL 7, 2016 – 5:30 P.M.

1. 5:30 P.M. CALL TO ORDER

Present: Lawrence Cioppa, Chair
Chris Lawlor, Filer
James Angelo
Richard Dudley
John Formica
Christian Lund
Nina Rossomando
Paula Ruisi
Stephen Turano

Also Present: James Silvestri, Council President (entered 5:34 p.m.)
Jean Gagnier, Town Councilor (entered 5:39 p.m.)
Matthew Oliverio, Esq., Town Solicitor
Donna Giordano, Town Clerk
Jason Gramitt, Education Coordinator/Staff Attorney, Rhode Island Ethics Commission
Benjamin Delaney, Recording Secretary

2. 5:30 P.M. APPROVAL OF MINUTES

Mr. Lawlor requested the minutes of the March 30, 2016 regular meeting be amended to replace “was” with “should be” in the first paragraph under 12-4-1 Director of Development Services.

Motion by Mr. Dudley, Seconded by Mr. Lawlor, to accept the minutes as corrected. (Voted unanimously)

3. 5:31 P.M. DISCUSSION

Solicitor Oliverio thanked the Commission for its work and engagement.

Mr. Dudley questioned if an ordinance would be required to reduce the number of members on the Planning Board from seven to five.

Solicitor Oliverio stated an amendment to the ordinance would be required if the composition was established by an ordinance. He confirmed the Town Charter takes precedence over ordinances and any recommendation by the Commission regarding ordinances would not be binding.

Ms. Giordano confirmed the Planning Board’s composition was not included in the Charter.

Solicitor Oliverio noted the Commission’s role was to make recommendations to be voted on in an election. He stated the Town Council does not have the authority to select only certain recommendations for inclusion on the ballot and it does have the authority to present and include its own recommendations. He also stated he would provide a copy of the related summary document to Ms. Giordano as a reference.

Mr. Angelo recommended any potential conflict between the Commission and Town Council be resolved before the ballot is finalized.

Mr. Cioppa noted the Commission's schedule was limited.

Council President Silvestri stated his understanding the Town Council had no questions on the Commission's recommendations thus far. He also stated councilors may have comments at the time of the Commission's presentation to the Town Council and the Commission may choose to consider addressing such comments.

Solicitor Oliverio stated public comments from upcoming hearings would also be helpful.

Council President Silvestri suggested scheduling the Commission's presentation to the Town Council following the Commission's review of the Charter and address of any public comments heard at its second public hearing and review

Solicitor Oliverio, citing approved text to be included in the Charter regarding recalls, stated a preamble would not be binding and noted grounds for recall should be objective. He stated terms such as 'disgraceful' could be interpreted in different perspectives and further work was needed.

Ms. Rossomando stated the Commission had not voted on any specific grounds for recall and requested confirmation the preamble's text was problematic.

Solicitor Oliverio stated the preamble should be more succinct and confirmed for Mr. Cioppa such grounds could include repeated failure to attend consecutive meetings.

Mr. Angelo stated the Commission was seeking to include grounds for recall due to a court ruling in a related situation.

Ms. Rossomando noted the Charter includes provisions for appointed officials and not elected officials.

Solicitor Oliverio noted all officials, appointed and elected, were fiduciaries for the Town.

The Commission confirmed for Solicitor Oliverio the head of the Division of School Finance was recommended to be appointed by the School Superintendent and overseen by the Finance Director.

Solicitor Oliverio stated his personal opinion the Finance Department should be divided between the School Department and all other municipal departments.

Mr. Angelo clarified for Solicitor Oliverio the Commission had not yet discussed School Committee membership.

Mr. Turano questioned if an approved Town Charter was legally binding in a court and questioned what legal action could be taken against a public official or Town employee failing to follow the Charter.

Solicitor Oliverio suggested the Commission consider including such failure as a grounds for recall.

Ms. Rossomando questioned if a solicitor has the responsibility of advising on a vote which may result in a violation of the Charter.

Solicitor Oliverio stated the Commission should consider including clarifications in the Charter. He noted the Commission could only offer advisement.

Ms. Rossomando questioned who should be responsible for ensuring the Council, boards, commissions and committees receive advisement.

(Council President Silvestri exited at 5:56 p.m.)

(Councilor Gagnier exited at 5:56 p.m.)

Solicitor Oliverio stated responsibility may be dependent on the issue specifically and may also be within a department or by a department head. He stated solicitors should provide advisement to

their respective council, board, commission or committee and noted such advisement should be based off research of information including case law and interpretation.

Mr. Angelo noted the Town's legal expenses and the number of solicitors for boards, commissions and committees and questioned what actions the Town could take regarding this.

Solicitor Oliverio stated municipalities often hire a main solicitor as well as different attorneys for board, commissions and committees. He noted factors which may be contributing to the cost of legal expenses, including the Town's non-membership in the inter-local trust, insurance policies and significant litigation in recent years.

Ms. Ruisi questioned who takes responsibility if the responsibilities of a position are not being done or misrepresentation takes place. She confirmed for Solicitor Oliverio such situations may include fraud and intentional misrepresentation per vested interest.

Solicitor Oliverio stated intentional misrepresentation requires a process to prove and questioned how to incorporate such concerns as grounds for recall.

Mr. Lund questioned at what point a conflict of interest would take place when a School Committee member, as a former teacher receiving a pension or as a relative or spouse to a teacher, voted on the School budget.

Attorney Grammitt stated the Ethics Commission had adopted a general rule School Committee members cannot participate in the negotiating process for collective bargaining or on a specific line item which directly impacts a family member and may participate in other sections and vote on the overall budget. He confirmed elected officials are required to sign a form annually within thirty days of their declaration of candidacy and do not have to identify relatives.

Mr. Angelo questioned how to address concerns of a conflict of interest among multiple members without disclosure of information.

Attorney Grammitt noted general public knowledge of a candidate's relations and stated voters have a right to elect teachers to the School Committee.

Ms. Rossomando stated members on the School Committee should be knowledgeable of the Ethics Code and questioned how good educational opportunities have been in the past.

Attorney Grammitt noted he had previously been to educational events in the Town in recent years and agreed there was an issue of awareness. He suggested the Town provide packets of information to all candidates for appointment and election.

Mr. Dudley noted the previous Commission's recommendation to include requirements for councilors to become familiar with the Code of Ethics was approved for the ballot by a previous Town Council and its same recommendation for the School Committee members was not.

Solicitor Oliverio confirmed it has been clarified the Town Council does not have such an authority and stated it will be included on the ballot if recommended.

Mr. Cioppa questioned if certain types of employment could limit membership on the Planning Board or Zoning Board of Review.

Ms. Ruisi questioned if terms could be limited to prevent individuals from consecutively moving between Planning Board and Zoning Board of Review membership.

Solicitor Oliverio stated a counter argument would be a need for members with backgrounds in related subject areas and including such limitations would be inserting discrimination into the Charter.

Mr. Angelo questioned if an attorney serving on a review board was a possible conflict of interest.

Solicitor Oliverio stated he would disagree.

Attorney Grammitt clarified the definition of conflict of interest and stated the Code of Ethics rarely prohibits any type of individual serving on a board, commission or committee. He noted regulation was fair to do once the individual was serving on a board, commission or committee.

Mr. Angelo questioned if constant recusals should be a grounds for recall.

Solicitor Oliverio noted appointers should be considerate of who they appoint.

Attorney Grammitt stated another issue may be a member not recusing due to concern of being recalled. He confirmed for Mr. Angelo councilors could contact the Ethics Commission for all recusals of candidates for appointment.

Ms. Ruisi, citing two scenarios, requested clarification on recusals regarding members who may have current business relations with a company.

Attorney Grammitt stated members who were previously employed by a company would not be required to recuse themselves and members with a clear conflict should recuse. He also stated best practice would be for a member to physically remove themselves from their seat at the time of recusal.

Ms. Ruisi questioned if citizens have a right to speak up at a time a board, commission or committee member does not recuse.

Attorney Grammitt stated the Ethics Commission recommends contacting the member or the relevant solicitor prior to the meeting. He confirmed a vote may only be voided if an aggrieved party goes through the procedure to seek a void.

Solicitor Oliverio confirmed for Mr. Angelo all recommendations by the Commission will be made available at the Town Clerk's office and an entire amendment will not be included on the ballot. He also confirmed for Mr. Cioppa he had no problem with receiving submissions of the Commission's recommendations.

Mr. Angelo presented a copy of the Charter provided by the Town for public review in 1968 so to not require its entire text be included on the ballot.

Solicitor Oliverio confirmed each recommended amendment to the Charter would have to be a separate question. He stated for Mr. Lund the organization and framing of questions would be dependent on the recommendations and for Mr. Cioppa he had no problem with receiving the current working draft of the Commission's report.

Mr. Cioppa stated he would provide Solicitor Oliverio with the current working draft to ensure accuracy of interpretation following the first public hearing.

Attorney Grammitt stated for Mr. Lund the Charter could include a rule stricter than the Code of Ethics.

Solicitor Oliverio noted for Mr. Lund private causes of action which could be taken regarding a complaint of the Charter being violated. He cited a recent case of a private citizen challenging the Jamestown Planning Board.

Attorney Grammitt stated for Mr. Turano the Ethics Commission does not enforce town charters.

The Commission thanked Solicitor Oliverio and Attorney Grammitt for their attendance.

(Solicitor Oliverio exited at 6:49 p.m.)

(Attorney Grammitt exited at 6:49 p.m.)

4. 6:49 P.M. BUSINESS

Mr. Cioppa requested the Commission have specific grounds for recall to discuss at the next regular meeting.

Ms. Rossomando stated the recommendation for a signed attestation by officials would address some of the Commission's discussion.

Mr. Cioppa requested the Commission review the letter received from Charles Marsh, Town resident, regarding transparency for discussion at the next regular meeting. He overviewed the setup and organization for the public hearing.

The Commission held discussion regarding time limits on public comment and recommended a welcoming statement be given overviewing the organization and purpose for the public hearing.

Mr. Marsh stated his agreement the Commission should clarify the distinction between the Charter and Code of Ordinances.

Mr. Cioppa confirmed the meeting would be held Saturday, April 9 at 9:00 a.m. to 11:00 a.m.

Mr. Delaney confirmed the meeting location was listed on the Town meetings calendar.

(Mr. Lund exited at 7:03 p.m.)

Mr. Cioppa noted a request from the Town Manager to discuss contingency in the Town budget.

Mr. Turano stated he would like to know the opinion of the Town Council.

Mr. Cioppa summarized the Town Manager explained the ability was needed to have the contingency for unsettled negotiations.

Mr. Angelo and Ms. Giordano stated the request could be addressed by ordinance.

Mr. Cioppa summarized the Town Manager also requested carrying over of overspending into succeeding budgets.

Mr. Angelo stated the request should be addressed by ordinance.

Motion by Mr. Angelo, Seconded by Mr. Turano, the two recommendations by the Town Manager for the contingency parts of the budget be filed. (Voted unanimously)

11-1-3 Vacancies

Ms. Rossomando recommended the School Committee should make its own appointments to fill School Committee vacancies due to its membership being elected or should have input in such appointments.

Mr. Angelo noted the need for respect of the organizational hierarchy.

Mr. Lawlor cited the previous Commission recommended no change to the section.

Ms. Ruisi stated her agreement the Council should appoint a member to fill a vacancy until the next regular election was held.

Motion by Ms. Rossomando, Seconded by Mr. Lawlor, Section 11-1-3 read "any vacancy in the membership of the School Committee shall be filled by a majority of the whole number of members of the School Committee until the next regular Town election when the office shall be filled for the unexpired term thereof."

Ms. Ruisi restated her agreement the Council should be the appointing body and noted the procedure which the Council adopted for filling a vacancy.

Mr. Angelo stated a procedure would have to be established for the School Committee to fill its own vacancy.

Ms. Rossomando noted no procedure was established in the Charter for the Council to fill its own vacancy.

Mr. Lawlor stated he seconded the motion to allow discussion and questioned the Council's obligations in relating to the School Committee.

Ms. Ruisi noted Solicitor Oliviero had stated the Council has authority over all other bodies.

Mr. Angelo suggested a special election should be recommended if the motion was concerning voter rights.

Mr. Formica suggested the School Committee offer input or nomination to the Council regarding an appointment.

Ms. Giordano clarified for Ms. Ruisi School Committee members are elected for staggered terms.

Ms. Rossomando confirmed for Mr. Cioppa the motioned amendment includes requirement of a majority.

(The motion was voted 2-6 with Mr. Turano, Ms. Ruisi, Mr. Dudley, Mr. Angelo, Mr. Lawlor and Mr. Formica against)

Mr. Turano stated he had no issue with the current language.

Ms. Ruisi stated the same reason.

Mr. Dudley stated the Council should have the authority to make appointments to the School Committee.

Mr. Angelo stated the same reason.

Mr. Lawlor stated the same reason.

Mr. Formica stated the same reason.

Ms. Giordano stated she would absent at the April 13, 2016 regular meeting and clarified the reasoning for the red text for item G and down, beginning on page five, was due to its new inclusion.

Ms. Rossomando and Mr. Dudley stated they would be absent at the April 13 meeting.

5. 7:28 P.M. ADJOURNMENT

Motion by Mr. Angelo, Seconded by Mr. Lawlor, to adjourn. (Voted unanimously)

Minutes for the April 7, 2016 regular meeting submitted by:

Benjamin Delaney

