

Attachment # 1

From: "Robert W. Galvin, Esq." <rwgalvin@comcast.net>
To: dgibson@driscollandgibson.com
Cc: "Dan Burke" <burke4@comcast.net>, "Bill Bowers" <wbowers46@verizon.net>
Sent: Monday, January 25, 2016 1:01:57 PM
Subject: Questions on 43B Issue and Charter Changes

Don:

You inquired of me at the initial Charter Review Committee meeting as to the effect of the limitations under Chapter 43B (and I think Section 10) on the authority of the Committee.

I indicated that night off the top of my head that I did not believe statutory limitations effected the ability of the Committee to make changes. I mentioned that Bob Marzelli may have opined on this issue since he was ex-officio then but he deferred back to me.

I have done some additional research to confirm my opinion but I was aware that in Norwell in 2012 we had actually changed the composition of the Board of Selectmen from 3 to 5 by special act legislation. My additional research also included contacting the Attorney General's Office and specifically Margaret Hurley, Esq. and her assistant Kelli Gunagan, Esq. Kelli emailed me this morning confirming that they too believe that the composition of a board of selectmen and other matters may be accomplished through special act legislation notwithstanding the provisions of Gen. L. c. 43B section 10 for example.

We could share this opinion with the rest of the Committee at the next meeting on 2/4/16.

Bob Galvin

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or supervise maintenance and repairs to all town buildings, a function in many instances formerly contracted for by individual departments.

The Charter sets out specific procedures for the recall of any elected official and removal of any appointed official. These procedures, particularly that of recall may seem somewhat involved, but in view of the seriousness of the proceedings, they are designed to be fair to all parties.

The only change pertaining to elected town officials is the prohibition against holding multiple elected offices with certain exceptions.

Final Report of Marshfield Charter Review Committee (May 2003).

A Charter is defined as follows:

"Charter, when used in connection with the operation of city and town government shall include a written instrument adopted, amended or revised pursuant to the provisions of chapter forty-three B which establishes and defines the structure of city and town government for a particular community and which may create local offices, and distribute powers, duties and responsibilities among local offices and which may establish and define certain procedures to be followed by the city or town government. Special laws enacted by the general court applicable only to one city or town shall be deemed to have the force of a charter and may be amended, repealed and revised in accordance with the provisions of chapter forty-three B unless any such special law contains a specific prohibition against such action." (*MGL, Chapter 4, Section 7*)

The two most familiar ways that a Charter can be changed is through:

1. Electing a home rule charter commission
2. Petitioning the state legislature for special legislation ("the home rule petition").

While the two routes to charter change lead to the same aim - a new or revised charter - the procedures and timeline are quite different.

Option one is election of a home rule charter commission, which leads to what is often referred to as a "home rule charter." **A commission of nine members may be elected to "frame a charter" or "revise its present charter" for a city or town upon petition of 15 percent of the municipality's voters.** Chapter 43B of the Mass General Laws provides a specific framework, timeline, and set of responsibilities for the charter

In general, the special act charter changes are ordinarily faster than those produced by an elected Charter Commission but the procedure is less formal.

Robert W. Galvin, Town Counsel

- "Deliberation" shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

D. Posting of Meetings (see checklist):

- Except in an emergency, a public body shall post notice and an agenda of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays (meaning for a Monday night meeting notice must be posted before the end of the business day Thursday (4:30PM, etc.)
- Unlikely there would ever really be an emergency
- Notice of meeting shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. FOLLOW A STANDARD FORMAT NOTICE

E. Meetings – Public Participation:

- While OML ensures public nature of meetings, the OML does not guarantee the right of the public to participate in a meeting
- Public may not address the meeting without permission of the chairperson
- Public does have the right to make an audio or video recording upon notice to the chairperson
- If meeting is being recorded by anyone, the chairperson must notify those in attendance that the meeting is being recorded
- Marshfield does permit remote participation but review with me first
- Unlikely there would be a need for executive session.

F. Meeting Minutes (see checklist):

- A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.
- All votes should be recorded in the minutes and there can be no secret ballots
- Meeting minutes should be created and approved at the next following meeting and then filed after approval with the Town Clerk.

G. Certification:

- Within 2 weeks of election or appointment and before starting to perform any service, a member of a board or commission is required to sign a certification

OVERVIEW - REVIEW AND REVISION OF TOWN CHARTER

I. Scope of Review

1. Legal limitations
2. Fiscal limitations
3. Political limitations

II. Process of Review

1. Identification of Charter-Related Issues and Concerns
2. Formation of Subcommittees
3. Meetings and discussion as necessary with all elected boards and officials
4. Meetings and discussion as necessary with all appointed officials, boards, commissions, and committees
5. Public hearings and meetings with civic groups and interested parties (The Listening Tour)
6. Survey town boards, commissions, committees, and elected/appointed officials
7. Research town government structure and budgetary process of similarly sized communities in Massachusetts
8. Work sessions of charter review committee
9. Meetings with Town Counsel re legality of proposals and to discuss by-law changes versus charter amendments
10. Preliminary report to Board of Selectmen
11. Solicit comment and input re preliminary report
12. Final report to Board of Selectmen
13. Preparation of Town Meeting warrant article(s)
14. Town meeting presentation
15. Legislative committee presentations and hearing

SUBCOMMITTEE SUGGESTIONS

A. SPECIAL TOWN MEETING/ANNUAL TOWN MEETING SUBCOMMITTEE

Key Participants:

Board of Selectmen

Town Administrator

Moderator

Advisory Board

Town Clerk

Key Issues To Be Addressed:

Clarify The Process For Convening Special Town Meeting And The Annual Town Meeting

Explore Over Reliance On Special Town Meeting Re Non-Emergency Issues That Should Instead Be Included In The Annual Town Meeting

Explore Open Town Meeting Versus Representative Town Meeting

Study The Length Of Town Meeting And Consider Alternate Town Meeting Formats

Study The Lack Of Specificity Re Monetary Amounts In STM and ATM Financial Warrant Articles And Suggest Improvements

Explore Creation, Composition, And Distribution Of Town Meeting Warrants

Existing Charter Articles:

Article 2 – Town Meeting

B. OPERATIONAL BUDGET AND CAPITAL BUDGET SUBCOMMITTEE

Key Participants:

Creation Of Governmental Survey To Be Distributed To All Boards,
Commissions, And All Elected And Appointed Officials

Explore Consolidation And Combination Of Governmental Functions

Explore Creation Of A Vertical Governmental Hierarchy

Explore Enhancement Of Authority And Jurisdiction Of Town Administrator

Explore Expansion Of Jurisdiction And Membership Of Certain Boards And
Commissions

Explore Elimination Of Certain Elected Boards And/Or Commissions

Explore Elimination Of Certain Appointed Boards And/Or Commissions

Existing Charter Articles:

Article 1 – Incorporation: Form Of Government: Powers

Article 3 – Elected Officials

Article 4 – Appointed Town Officials, Boards, Commissions And Committees

Article 6 – General Organization

Article 9 – General Provisions

D. GOVERNMENT COMPARISON SUBCOMMITTEE

Key Participants:

Town Counsel

Town Administrator

Board Of Selectmen

State Governmental Agencies

State, County, And Municipal Groups And Organizations

Key Issues:

Attachment #4

MEMORANDUM TO CHARTER REVIEW COMMITTEE

TO: Members of CR Committee
FR: Robert W. Galvin, Esq. Town Counsel
DA: 2/5/16
RE: CONTACTS

WELLESLEY:

Katherine Babson (known as "Gig" Babson)
Charter Review Committee in Wellesley (2016 TM – Special Act Legislation)
k.babson@comcast.net
also: Pete Hechenbleikner, former TA in Norwell and Reading (now Interim in
Amherst): Hechenbleiknerp@amherstma.gov

DUXBURY:

Friend S. Weiler, Sr.
Government Study Committee (In Process now but ahead of
Marshfield).

ATTN.: Moderator
(Friend is the Moderator
and Appoints this
Committee)
878 Tremont ST
Duxbury, MA 02332
781-934-1100; Ext. 6016
Also: Ted Flynn,
Selectmen's Liasion

NORWELL:

Daniel Collins
Norwell Charter Committee (2011 Special Act Legislation)
Daniel Collins collins.dp@gmail.com

~~Amendment~~
Attachment #5

PROPOSED AMENDMENT TO MINUTES OF JANUARY 21, 2016

Page 3, second paragraph from bottom of the page, after the words: "Mr. McDonough agreed to follow up on", please add the following:

Mr. Gibson also inquired if the CR Committee would have a budget of any kind from which committee expenditures would be paid or reimbursed. Mr. McDonough agreed to explore funding of some kind for the committee, but reminded everyone that preparation of the Town's budget for the next fiscal year was already underway and that any budgetary request should be submitted as soon as possible.