

CHARTER COMMISSION MEETING
TUESDAY, SEPTEMBER 14, 2010 – 7 P.M.

Chair Ladakakos opened the regular meeting at 7:02 p.m., in Town Hall, Council Chambers. The following members were in attendance:

Jerome Begert
John Bird
William Gombar
Paul Ladakakos
Ronald Regis
Jayne Flaherty, excused absence
Tianna Higgins, excused absence
Michael Vallante, excused absence

The members of the Charter Commission stood for a Pledge to the Flag.

Motion made by Vice-Chair Bird, seconded by Chair Ladakakos, to accept the minutes of August 10, 2010.

VOTE: Motion passed unanimously.

Charter Commission members were given a copy of the answers from Attorney Vaniotis to their questions at the last meeting. See next page.

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August 12, 2010

Kim McLaughlin, Town Clerk
Town of Old Orchard Beach
1 Portland Avenue
Old Orchard Beach, Maine 04064-2245

Re: Charter Commission Questions

Dear Kim:

I am responding to the four questions recently posed by the Charter Commission, as follows:

1. **Could you please clarify the word “immunities” as stated in Section 102 of the Town Charter, and if it should remain or can be removed: “The Town shall have, exercise and enjoy all the rights, immunities, powers, privileges and franchises, and shall be subject to all the duties, liabilities and obligations, provided for herein, or otherwise pertaining to or incumbent upon said Town as a municipal corporation, or the inhabitants or municipal authorities thereof;”**

The term “immunities” refers to various protections which municipalities enjoy from liability. Those immunities are found in various places in state law, principally the Maine Tort Claims Act, in federal law and in common law (court precedents). The immunities afforded to municipalities are primarily for the purpose of protecting the municipal treasury against potentially devastating liability. The word “immunities” should not be removed from Section 102.

2. **Could you please advise if the word “convenient” can be removed from Section 102, “The Charter shall be liberally construed to the end that the Town may have all the powers necessary or convenient for the conduct of its municipal affairs, including all the powers the Town may assume pursuant to state laws and to the provisions of the State Constitution”.**

The word “convenient” should not be removed from Section 102. There are historical reasons for describing municipal powers as “necessary or convenient,”

going back to an era before state constitutions granted home rule powers to municipalities. Prior to home rule, municipalities were strictly limited to exercising those powers expressly granted by a state legislature and incidental powers that were strictly "necessary" to carry out the state mandates. That is not the case with home rule municipalities and there is no reason for the Charter to limit the Town's powers to only those which are "necessary." The Commission should keep in mind that Section 102 is referring to the powers of the Town as a whole, not to the powers of any particular body or official.

3. Under Section 201 can the "Charter Commission" be added as elected officials?

The Charter Commission should not be added in Section 201. A charter commission is created pursuant to state statute, not by virtue of a charter.

4. Under Section 202, it states we follow an "Australian ballot", which has always been known as a secret ballot. Vice-Chair Bird stated that the Australian ballot is different now. It is no longer secret in Australia when you vote. Each ballot is numbered. Will that cause a problem if the words are changed to "secret ballot" in the Charter.

"Australian ballot" is the term which has traditionally been used to describe the kind of ballot utilized in elections in this country. A standard dictionary definition of Australian ballot is "an official ballot printed at public expense on which the names of all the candidates and proposals appear and which is distributed only at the polling place and marked in secret." *Merriam Webster's Collegiate Dictionary*, 11th Ed. (2003). That same dictionary defines "secret ballot" as "Australian ballot." Therefore, either term is acceptable.

Sincerely,



Christopher L. Vaniotis

CLV/lc

Chair Ladakakos read the answer to question one.

Commissioner Begert stated that if the Charter Commission were to revisit this section, they could leave the word "immunities" in the paragraph to protect the treasury, but if someone were to ask the Town Council to consider something that wasn't monetary, then

that would not be covered under immunities. Commissioner Begert then stated they could look at that later, and Commissioner Regis agreed.

Chair Ladakakos stated he didn't have a problem leaving the term "immunities" in the Charter, advising that it had been in the Charter a long time.

Vice-Chair Bird stated this was "boiler plate", and if they wanted to tamper with it, then they would need to put those specifics in another area.

Commissioner Begert stated that if the Charter Commission does a good job, then the citizens will be protected by doing a fine tuning to the recall provision and ordinance overturning provisions. If there is enough transparency for appeal and protest, then we're giving the citizens a chance to mitigate any decisions by elected councilors or hired help.

Town Clerk Kim McLaughlin read the answer to question two.

Commissioner Regis felt there wasn't a reason to remove the word "convenient", because it appears to be a necessary term.

Commissioner Begert wanted to contest the attorney's underlying assertion that local government only exists to carry out state law. Local government reflects the will of its citizens. Local government does not contradict state law, but does not carry out its will. Further discussion is needed. He further stated that the Charter Commission agreed to leave the word "liberally" in the sentence, "The Charter shall be **liberally** construed to the end that the Town may have all the powers necessary or convenient for the conduct of its municipal affairs, including all the powers the Town may assume pursuant to state laws and to the provisions of the State Constitution".

Vice Chair Bird agreed, stating it is not necessary to have the term "or convenient" in the Charter. He has no objection to removing that term, and Chair Ladakakos agreed.

Commissioner Begert motioned, seconded by Commissioner Regis to remove the term "convenient" from Section 102, "The Charter shall be liberally construed to the end that the Town may have all the powers necessary ~~or convenient~~ for the conduct of its municipal affairs, including all the powers the Town may assume pursuant to state laws and to the provisions of the State Constitution".

VOTE: Unanimous.

Chair Ladakakos asked the Charter Commission how they felt about leaving the term "immunities" in the Charter.

Commissioner Begert stated that he didn't mind leaving it in there as long as it was to protect the municipal treasury, but doesn't want it as a blanket term to protect the over-reaching bureaucrats.

Commissioner Regis stated they should revisit that term. Vice-Chair Bird agreed, stating they would want to revisit that later.

Town Clerk Kim McLaughlin read the answer to question three.

Commissioner Begert wrote a summation of his points regarding this question, and he read them at this time. [This summation is attached to the minutes]

Commissioner Begert referred to a newspaper article he had read in regard to the Town of Scarborough Town Council having their own committee to review the Charter. He was concerned about uniformity among municipalities, stating in Old Orchard Beach the Charter Commission is elected and in Scarborough they are appointed. He felt the Charter Commission should be in the Charter to cover the fact that they are elected.

Resident Thomas “Rich” Redmond entered the meeting and the Charter Commission invited him to join them at the table.

Vice-Chair Bird asked the Town Clerk to find out the type of Charter Committee that Scarborough had, and how it was set up (i.e. state law or charter) stating they must have set up their own committee to review the Charter, and send out individual amendments to the voters instead of an elected Charter Commission to review the entire Charter.

Commissioner Regis stated that the Charter Commission should be in the Charter as an elected body, and the Charter should be revisited every ten years.

Chair Ladakakos stated the Charter Commission is elected per state statute. Why do they need to have that placed in the Charter? There haven’t been any questions regarding this issue since the inception of the last Charter in 1996.

Vice-Chair Bird stated that it could be a housekeeping issue.

Commissioner Begert stated that he was concerned about the Charter Commission being appointed by the Town Council, stating, again, the State law doesn’t appear to be uniform, and the Charter Commission should retain its autonomy by being elected instead of appointed.

Vice-Chair Bird, again, asked that Town Clerk to correspond with Scarborough to obtain an answer.

The Charter Commission agreed to revisit this section at their next meeting, once the Town Clerk has corresponded with Scarborough.

Town Clerk Kim McLaughlin read the answer to question four.

Vice Chair Bird motioned, seconded by Commissioner Gombar to replace the term “Australian ballot” with “secret ballot” wherever the term “Australian ballot” is located in the Charter.

VOTE: Unanimous.

Vice-Chair Bird read the proposed new section 103, “Town Governance”.

“The Government of the Town shall be made up of three parts: Legislative and Policy-making; Administrative; and Adjudicative and Advisory.

The Legislative and Policy-making branch of the Town Government shall consist of a Town Council, which shall be the Representatives of the People of the Town, enact the bylaws, regulations and ordinances, set the governing policies and guide the affairs of the Town.

The Administrative Branch of the Town Government shall consist of a Town Manager, an elected Town Clerk and various Department Heads, who shall manage the daily operational and administrative affairs of the Town according to the direction and policies of the Town Council and this Charter and pursuant to state laws and to the provisions of the State Constitution.

The Adjudicative and Advisory Branch of the Town Government shall consist of such various Boards, Commissions, and Committees as set forth in this Charter or as may be created from time to time by the Town Council, including, but not limited to, a Planning Board, Zoning Board of Appeals, Conservation Commission and others. They shall consider initial appeals under various policies and ordinances and such other duties as set forth in this Charter or as assigned by the Town Council, and provide advice to the Town Council”.

[move this paragraph to Article IV] “It is the obligation of every public official and employee to carry out the lawful orders and policies of the Town Council. No public official, employee or appointee shall knowingly take any action inconsistent with the lawful orders or policies established by the Town Council and no public official or employee shall knowingly take any action which would be detrimental to the best interests of the Town”.

Vice-Chair Bird stated the new Section 103 basically outlines the flow chart of the Town.

Commissioner Regis asked why Vice-Chair Bird recommended moving the above paragraph to Article IV, to which Vice-Chair Bird responded that it was recommended for that move because the wording in the paragraph may be better suited for the section involving the Town Council.

Commissioner Begert motioned, seconded by Commissioner Regis, to leave the four paragraphs as is in the new Section 103.

Commissioner Begert stated that it was suggested that one of the paragraphs be moved to Article IV because of the words “Town Council”, but it doesn’t just pertain to the Town Council. It pertains to all, and is about ethics. It belongs where it is.

VOTE: Unanimous.

Vice-Chair Bird read the new Article II, Section 201, with the recommended changes.

“Sec. 201. Town Council, Representatives to the Board of Directors of the Regional School Unit, Town Clerk.

The elected officials of the Town shall be: the members of the Town Council, Representatives to the Board of Directors of the Regional School Unit and the Town Clerk.”

Commissioner Begert recommended that instead of “Representatives to the Board of Directors of the Regional School Unit”, it should read “Representatives to the Education System”. He felt that using this generic term will protect the Charter in case of future changes by the State.

Commissioner Begert motioned, seconded by Chair Ladakakos to change the term to “Representatives to the Education System”.

Commissioner Gombar felt it should remain as Representatives to the Regional School Unit, with Vice-Chair Bird in agreement.

Chair Ladakakos stated this is a minute problem, and had no problem either way.

VOTE: Commissioner Begert, Commissioner Regis, Chair Ladakakos, for; Vice-Chair Bird, Commissioner Gombar against; Motion passes 3-2.

Vice-Chair Bird read section 201.1, with recommended changes.

“Town Council. The Town Council shall be composed of six (6) members, each of whom shall be elected by the registered voters of the entire Town. Each member shall be elected for a term of three (3) years, and shall serve until a successor is elected and qualified. The terms of the Town Council shall be staggered, and expire at three year intervals on the third Monday in November. No member of the Town Council shall be eligible to serve for more than two (2) three-year terms consecutively”.

Commissioner Regis felt that tie votes should be revisited, and that whether there were six members or seven, a tie should never mean an item has failed.

Resident Rich Redmond stated that he had never heard of six Town Councilors, that most have seven.

Vice-Chair Bird stated that six works the same as seven. Either way you need four votes to pass an item. With six members, the election process is easier because you elect an even number each year (two).

Chair Ladakakos stated he had given the six member Town Council idea further consideration and now agrees with having six members, stating it's less complicated.

Chair Ladakakos motioned to change the Charter to read there shall be six [instead of five] Town Council members, seconded by Vice-Chair Bird.

Commissioner Regis commented that they had done a show of hands last time, and out of respect for the missing Charter Commission members they should table this item.

Vice-Chair Bird retracted his second, and Chair Ladakakos retracted his motion.

Commissioner Begert spoke of wards based on voter population.

Mr. Redmond stated the Town is close to 10,000 in population and felt that any decision on wards should wait until the census is complete, because the State may be changing our districts. He was also concerned about having wards because someone from each ward may not be willing to run for the office.

Commissioner Gombar stated the Charter Commission should hold a public hearing and ask the public how they feel about the number of Town Councilors, length of terms, term limits and Wards.

Chair Ladakakos advised the Town Clerk to place the public hearing on the next agenda.

Vice-Chair Bird read section 201.2 with the recommended changes.

“Section 201.2. Representatives to the Education System.

The State Legislature has eliminated the Town's locally elected School Board and replaced it with Regional School Unit Representatives, allowing only two locally elected Representatives to the Board of Directors of the State-mandated Education System Regional School Unit #23.

The terms of the Education System representatives are currently set by the State as three years, however no Representative of the Education System for the Town shall be eligible to serve more than two (2) three-year terms consecutively”.

Commissioner Begert recommended removing the first paragraph, “The State Legislature has eliminated...”.

Vice-Chair Bird motioned, seconded by Commissioner Begert to adopt the new section 201.2 of the Charter as follows:

“Section 201.2. Representatives to the Education System.

The terms of the Education System representatives are currently set by the State as three years, however no Representative to the Education System for the Town shall be eligible to serve more than two (2) three-year terms consecutively”.

Vice-Chair Bird read section 201.3.

“Town Clerk. The Town Clerk shall be elected by the registered voters of the town. The term of the Town Clerk shall expire at two (2) year intervals on the third Monday in November, in the even numbered years. The Town Clerk shall be elected for a term of two (2) years, and shall serve until a successor is elected and qualified.”

Commissioner Regis stated that Commission had spoken before about changing the term of the Town Clerk to three or four years.

Commissioner Regis motioned, seconded by Commissioner Gombar to amend the term of the Town Clerk to four years, and that the Town Clerk shall be elected during the gubernatorial election year.

VOTE: Unanimous.

Vice-Chair Bird read section 201.4 with the recommended changes.

“Section 201.4 Qualifications of the Town Clerk. The Town Clerk shall be a registered voter of the Town and shall have his or her principal place of residence in the Town during his or her term of office. The Town Clerk shall not hold any other compensated Town Office, be employed in any Town department other than the office of the Town Clerk or serve in any position appointed by the Town Council under section 409.3 of this Charter except that of Registrar.”

Commissioner Begert stated there should be qualifications to the Town Clerk’s position, including computer literacy skills, absence of a criminal record, and United States citizenship.

Chair Ladakakos motioned, seconded by Vice-Chair Bird to amend section 201.4 of the Charter by adding “except that of Registrar” at the end of the last sentence.

VOTE: Unanimous.

Commissioner Begert felt that it should be a requirement for all elected officials to be United States citizens.

Chair Ladakakos stated that it would be hard to conduct a background check on candidates running for office, and doesn't feel it's necessary.

Commissioner Gombar stated that felons should not be Town Clerk due to the nature of the job (confidentiality issues, vital records, voting).

Jason Webber, the Recreation Director, entered the room and sat at the table. He stated that he does background checks on all of his volunteers.

Vice-Chair Bird was concerned about the privacy of a candidate in requiring a background check.

The Charter Commission agreed that the Town Clerk should ask Atty. Vaniotis if a background check can be conducted on a candidate running for elected office, when can that background check be conducted, and by whom. Also, can "computer literacy skills" be required to hold the position of Town Clerk, and can a candidate be disqualified if they are a felon?

The meeting was adjourned at 9:02 p.m.

Respectfully Submitted.

Kim McLaughlin
Town Clerk

I, Kim McLaughlin, Town Clerk of Old Orchard Beach, do hereby certify that the foregoing document consisting of ten (10) pages is a true copy of the original Minutes of the Charter Commission Meeting held September 14, 2010.

Kim M. McLaughlin