

CHARTER COMMISSION MEETING
TUESDAY, MARCH 8, 2011 – 6 P.M.

Chair Gombar opened the regular meeting at 6:12 p.m., in Town Hall, Council Chambers. The following members were in attendance:

Jerome Begert [arrived following adoption of minutes]
John Bird
William Gombar
Tianna Higgins
Ronald Regis
Michael Vallante
Jayne Flaherty [excused absence]

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

Motion made by Commissioner Higgins, seconded by Commissioner Regis to accept the minutes of February 22, 2011.

VOTE: Unanimous.

Chair Gombar acknowledged the presence of Attorney Christopher Vaniotis [Bernstein, Shur, Sawyer and Nelson].

Vice-Chair Bird suggested the Charter Commission discuss the most important topics first, i.e. fiscal year and recall provisions. He then commented that Attorney Vaniotis had located language from Freeport that he thought the Charter Commission could incorporate into the Charter:

ARTICLE VI - FINANCIAL PROCEDURES

6.01 Municipal Fiscal Year

The fiscal year of the town shall begin on July 1 and shall end on June 30 except that the council may by ordinance change the fiscal year to conform to general municipal practice in the State.

Vice-Chair Bird said they are concerned about the fiscal year being changed on the whim of four or five people. There have been cases where the fiscal year has changed because the municipality needed funding, and he feels that isn't appropriate. He stated the Charter could incorporate Freeport's language, but he would also like to see language that states the Town Council could only amend the fiscal year by unanimous vote.

Attorney Vaniotis replied that Old Orchard Beach changed their fiscal year from calendar year to its current dates (July 1-June 30) many years ago along with many other municipalities, partly because of a state change in the school funding formula. He said there is a possibility the state could amend the formulas, again, and the municipalities will need to change their fiscal year to reflect the need. He asked the Charter Commission if they wanted to be locked into a fiscal year should the need arise. He also stated that state statute says the municipal officers (Town

Council) shall determine the fiscal year. It doesn't say, "Except as preceded by Charter", meaning that it is a mandate. Attorney Vaniotis said the Freeport provision is consistent with state law.

Vice-Chair Bird stated that the Town Council always has the provision to bring a change to the voters through the Charter.

Attorney Vaniotis responded that in that case, the fiscal year would not be determined by the Town Council, that it would be determined by the voters.

Commissioner Begert suggested that the fiscal year be placed in the Charter, with a sentence that serves as a reminder that the Town Council, by order, can change the fiscal year.

Attorney Vaniotis said that is essentially what the Freeport Charter says. Attorney Vaniotis' preference is to leave the Charter as it currently is.

Vice-Chair Bird started discussion on Section 601.

Attorney Vaniotis stated the RSU (Regional School Unit) state statute is very complicated. The RSU statute is specific about elections and terms of office, advising that recall cuts short the term of office, making a recall provision inconsistent with state statute.

Vice-Chair Bird said that he believes the recall provision speaks to the qualifications of an official. The voters would be recalling their vote because they feel that the person is not qualified to represent them further.

Attorney Vaniotis responded that elections do not determine qualifications, and there are a number of places in the RSU statute that speak to terms of office, and read Title 20-A, Section 1471. He further stated that we do not have case law, as this is all new to the state. He said he has to use his best judgment in signing off on the Charter.

Commissioner Begert commented to Attorney Vaniotis that Attorney Vaniotis advises against a recall provision, but implied that the RSU statute does not contain recall provisions. What makes an omission equivalent to a state law prohibition?

Attorney Vaniotis said that state law contains a detailed schematic. That detailed schematic includes election terms. There is nothing mentioned regarding a recall. State statute is not addressing it. The implication is that once an RSU director is seated, they're seated. It would be similar to County Commissioners, who do not have recall provisions, either.

Vice-Chair Bird stated there are a number of other reasons why an elected person might be disqualified from their position, including moral turpitude. There is no explicit prohibition on this. Is it possible the Legislature just never thought about it?

Attorney Vaniotis stated there are four reasons for a vacancy to occur in the State Statute, and recalling is not one of them.

Chair Gombar inquired if the Board can remove one of their members?

Attorney Vaniotis responded that he believes the only thing an RSU board can do if there is illegal activity, is to take the RSU member to court.

Jack Turcotte, the Town Manager, attended the meeting. He approached the Charter Commission, and inquired of Attorney Vaniotis if when he is referencing state law, did he cross reference the state law with the local RSU document that was signed by the three communities, because there are local issues in the RSU document that are not universal in state law.

Attorney Vaniotis replied that he did look at the local RSU document. It comes down to who has authority. He doesn't see that Old Orchard Beach has that authority, and if it was in the RSU document, it would not need to be in the Charter.

Vice-Chair Bird felt that if a recall were to happen, then the Board member could be deemed to have resigned.

Attorney Vaniotis responded that it doesn't work that way. Someone being recalled is not something being done voluntarily by the member. He reminded the Charter Commission that he has put them on notice that he cannot sign off on the document should the recall provision remain.

Vice-Chair Bird began discussion on Section 415 and the recommended changes, and Attorney Vaniotis's concerns regarding the six month expiration:

Sec. 415. Vacancies in Council.

Any member of the Town Council who misses three (3) consecutive regular meetings of the Council without excuse may be removed from office after notice and hearing by a resolution duly adopted by the majority of the remaining members of the Council. The office of Councilor shall also become vacant upon resignation, death, recall, failure to qualify for the office within ten (10) days after written demand by the Council, forfeiture of office, or failure of the municipality to elect a person to the office. If a vacancy occurs for any reason other than recall during the first six months after a Town Councilor has been elected, such vacancy shall be filled for the unexpired term by that person who was a candidate for Council at the same election at which the Councilor whose office has become vacant was elected and who received the greatest number of votes among the unsuccessful candidates; and in the event that such person is unwilling or unable to serve or there is no such person, then the vacancy shall be filled by a special election held within 90 days from the date the vacancy occurred. Otherwise, if a seat on the Council becomes vacant more than six (6) months prior to the next regular municipal election and more than six (6) months prior to the expiration of its term, the vacancy shall be filled for the unexpired term within ninety (90) days from the date that the vacancy occurred, by a special election. If a seat on the Council becomes vacant less than six (6) months prior to the next regular municipal election, the vacancy shall be filled for the unexpired term, if any, at the next regular municipal election.

Attorney Vaniotis's written recommendation is below from his letter to the Charter Commission, dated 02/18/2011:

Section 415 (Vacancies in Council).

Perhaps I am missing something, but I do not understand how adding the words “and more than six (6) months prior to the expiration of its term” adds anything to the requirement for a special election when a vacancy occurs more than six months prior to the next regular municipal election, since the terms all expire after the regular municipal election.

Vice-Chair Bird pointed out that since they are multi-year terms, not all terms expire after the next regular municipal election. This language takes care of that situation.

Attorney Vaniotis advised he would review his recommendation and respond back to the Charter Commission.

Vice-Chair Bird started discussion on Section 501, regarding the Charter Commission’s recommendation that the Town Manager be required to be a resident of the State of Maine before entering into a contract.

Attorney Vaniotis stated he has concerns about requiring that of the Town Manager before he signs a contract. Attorney Vaniotis’s written recommendation is below from his letter to the Charter Commission, dated 02/18/2011:

Section 501 (Town Manager, Qualifications).

I do not think it is realistic to expect a town manager coming in from out of state to become a resident of the Town before having a contract with the Town. I would therefore recommend against the proposed change to the last sentence.

Vice-Chair Bird commented that the Commission was not asking that an applicant become a resident of the Town, but that an applicant should, at least, be a state resident before a contract is signed.

Attorney Vaniotis responded that if the Town Council were to conduct a nationwide search, there is a potential that they may choose an applicant from another state. That applicant may not move to the State of Maine until they have a contract. Maybe the Charter could include provisional wording that the Town Manager become a resident of Maine within a certain time frame after the contract is signed.

Chair Gombar stated the Charter’s intention was that there was a six-month probation before a contract would be signed, anyway.

Attorney Vaniotis replied that the six-month probation is a contract. He also stated that if the contract is less than two-years, it may be difficult to obtain a town manager. The goal of the last Charter Commission to place the two-year contract into the Charter was to achieve stability for the Town. He advised the change from a two-year contract to “up to a two-year contract” could translate into a month-to-month employee to the Town Council.

Vice-Chair Bird stated that he felt that the present limitation of the contract to a term of two-years as is currently in the Charter, was there to allow for the replacement of a manager who was not working out, in a civilized manner without having to put the Town through the trauma of firing the manager. There have been instances in the past where it has been very difficult to “replace” a town manager who decided that he did not want to go. The Town Council could always renew the contract if they felt that it was appropriate.

Chair Gombar said the Charter Commission’s intent was not to bind the hands of the Town Council. It would give them the ability to set the term.

Vice-Chair Bird then started discussion on Section 414.2, the Town Clerk, and Attorney Vaniotis’s comments in his 2/18/11 letter.

Section 414.2 (new subsection on compensation of Town Clerk).

While I understand the Commission’s concern that the elected Town Clerk may have less bargaining power with respect to compensation than appointed department heads, I do not recommend establishing a minimum level of compensation within the Charter. The Charter is – by design – not a flexible document. What is an appropriate level of compensation for any municipal employee is subject to all sorts of variables and to changing conditions over time, which the Council should be able to take into account in determining salaries.

Vice-Chair Bird stated the Town Clerk’s Office is an elected, independent office, and should not be influenced by the Town Council. The Charter Commission wants to mandate reasonable compensation, which the Town Council can adjust, but at arm’s length. The Town Clerk’s compensation should not be tied to obedience to the Town Council.

Attorney Vaniotis responded that he understood the rationale. He’s just expressing the concept of what Charters do. Salaries aren’t usually in Charters. An elected Town Clerk is in an awkward position. They are both an employee and an elected official. Vice-Chair Bird disagreed, stating that they are independent elected officials and should not be characterized as employees.

Commissioner Vallante wanted to discuss the recommended changes in the Charter from “appoint” to “nominate”. He inquired of Attorney Vaniotis what the roles of the Town Manager and Town Council are. He is concerned that the Charter Commission may be incidentally changing the functions of both roles. He wants a legal perspective on both roles.

Attorney Vaniotis stated that to “nominate” someone means to put forward a name for consideration, to be confirmed by the Town Council. The ultimate decision is made by the Town Council. He said the Charter should remain as “appoint”, subject to confirmation by the Town Council. Many statutory provisions, i.e. Code Enforcement Officer, have to be appointed. If the Charter Commission wants to use the term “nominate”, it should be followed by “appoint”. This is a significant change from the current Charter.

Commissioner Vallante said they should consider who shall appoint and confirm. He inquired if a confirmation was a “veto”?

Attorney Vaniotis replied that it was. The Town Council says yes or no, but is not the initial decision maker.

Commissioner Begert said the Town Council is still doing the hiring. The inference that the Town Manager hires and the Town Council only confirms sounds like the Town Council is a group of potted plants.

Commissioner Vallante inquired of Attorney Vaniotis if the Town Manager appoints a person, does it mean they automatically get the job.

Attorney Vaniotis responded that it is not effective until the Town Council confirms. The missing piece in the Charter Commission's recommendation is the appointment. Nomination and confirmation skips the appointment part. Just using the word "nominate" doesn't help at all. He said his recommendation is to keep the word "appoint" as is currently in the Charter.

Commissioner Higgins stated the word "appoint" is important because whoever hires, also fires.

Commissioner Begert asked if it could be worked out to define appointment and the appointing body to be the Town Manager and Town Council acting together.

Commissioner Higgins responded that there are some positions that it would not work for.

Commissioner Regis stated it would take power away from the Town Manager. The Town Manager has the right to fire.

Town Manager, Jack Turcotte, approached the table, and advised that the inconsistencies would be hard to manage. There should be a standard format of who does what. There needs to be universal language.

Attorney Vaniotis stated that Scarborough just went through the same discussion. They clarified the language. He advised he would obtain the language for the Charter Commission.

Commissioner Vallante then inquired about Section 1013, asking Attorney Vaniotis if appointments with successors are different than other appointments. He also asked if there was a reason these types of appointments were placed in this section.

Attorney Vaniotis stated that the person who appoints can also appoint a successor to any position. For example, if the Public Works Director has the ability to hire/fire an employee, the Public Works Director also has the power to appoint a successor.

Commissioner Begert asked, "If there was a new department head, and they didn't hire the employee, do they have the power to fire that employee?"

Vice-Chair Bird added that that was why the Commission had thought that the section was worded that way.

Attorney Vaniotis responded that there is language currently in the Charter that deals with that. The current language is fine, but he will give the Charter Commission Scarborough's language, as well.

Commissioner Regis inquired about Attorney Vaniotis' response regarding Section 506.3, stating that by placing Emergency Management Director in the Charter, it is creating a new, permanent position. He asked of Attorney Vaniotis if this is something the police or fire chiefs could handle.

Below is Attorney Vaniotis's response on March 3, 2011:

Section 506.3 (new section, Municipal Emergency Management Agency).

This proposed new section would create a permanent position which the Town would be required to fill even should there be subsequent changes in state or federal law regarding how emergency management services are provided. The policy question is whether to inscribe this position in the Charter or leave it to ordinance (as the Council is currently considering). As to the language of proposed Section 506.3, I would suggest changes as follows:

“506.3. Municipal Emergency Management Agency

The Emergency Management Director shall be nominated by the Town Manager, subject to ~~confirmation~~ appointment by the Town Council. The Emergency Management Director shall coordinate the activities of the fire, police, code enforcement, public works and planning departments with respect to emergency management. Collectively, such departments shall constitute the municipal emergency management agency for the Town ~~of Old Orchard Beach. The intent and purpose of these provisions are to establish procedures to ensure complete and efficient utilization of all the Town's facilities to respond to disaster.~~

The Emergency Management Director shall have powers, duties and responsibilities ~~as are provided in accordance with the Old Orchard Beach ordinances and state statutes by the laws of the State of Maine and ordinances duly adopted by the Council. Notwithstanding Section 1003.1, the head of any of the departments within the Municipal Emergency Management Agency may also serve as~~ the Emergency Management Director ~~may be chosen from existing Town department heads.”~~

Vice-Chair Bird stated that it is required by the Federal Government to obtain FEMA funds, and that is why we have an EMA Director.

Attorney Vaniotis said that it is required by Federal Law and there is an ordinance, asking the Charter Commission if they want to create the position in the Charter, as well. He also asked them how detailed they wanted to be, or leave it to changing laws. If it is in the Charter, it cannot be changed easily.

Commissioner Begert advised Attorney Vaniotis that he had mentioned the need for the position at another York County meeting.

Attorney Vaniotis responded that it doesn't need to be in the Charter. There are hundreds of positions in the federal government that are not in the Constitution. It may be necessary now to have an Emergency Management Director, but years from now, will the Town need one? It may be a totally different system of managing.

Commissioner Begert started discussion on Section 102, inquiring of Attorney Vaniotis why he had displeasure in the removal of the words "or convenient". He would like a historical reason why it should be re-inserted.

Attorney Vaniotis stated that before Home Rule, the municipalities needed legislative approval. With the law change to allow Home Rule, Charters have had this phrase placed in them, to allow the Town to use Home Rule as long as it is "convenient" or in the best interest of the community. This section talks about the municipality as a whole, not the Town Council. If the word "convenient" is taken out of the Charter, someone could argue that something passed by referendum was not necessary. He strongly recommended that the words "or convenient" not be removed, because it would put a limitation on the whole Town. It could be argued that parks aren't necessary and money should not be spent on them. The word "convenient" is in most charters all over the country. He strongly urged the Charter Commission to not make their Charter any different from any other charter in the State of Maine. He stated the wording is not broken, and by fixing it, it could hurt the Town.

Vice-Chair Bird started discussion on Section 202, the Australian ballot vs. secret ballot wording. He then read Attorney Vaniotis's answer to that question from 2/18/2011:

Section 202 (Municipal Elections).

Again, the reference to the School Board should be eliminated, because that is governed by the state statute on regional school units. I also recommend keeping the existing term "Australian ballot." That is a defined term, which is more precise than "secret ballot." The term "Australian ballot" means "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).

Attorney Vaniotis responded that it is tricky if using the term "secret ballot" instead of "Australian Ballot". There is a clear definition of an "Australian ballot". If you use the term "secret ballot" instead, it could become confusing because in a Town Meeting, the term "secret ballot" is not an "Australian ballot".

Vice-Chair Bird asked if the phrase "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" could be used, since apparently Australia no longer uses "Australian ballots"?

Attorney Vaniotis responded that it could.

Commissioner Regis questioned Section 1014. He was concerned that five people shouldn't have the authority to make the Town Council deal with everything. Below is the answer to Section 1014 from Attorney Vaniotis in his letter dated 3/3/2011:

“Section 1014 (new section, Violations of the Charter).

As I have previously indicated, I think this provision is highly problematical, and I would suggest that it is really not necessary. Under the current Charter and laws, if an elected official violates the Charter, that official can be recalled. If an appointed official violates the Charter, that appointee can be removed. And if an employee violates the Charter, that employee can be disciplined (which could include removal).

To involve the Council in employee personnel matters would be contrary to all the other provisions of the Charter which make the Town Manager the chief administrator of the Town. And requiring the Council to hold a hearing based upon a complaint filed by five voters could prove intimidating to municipal officials trying to do their jobs. Any board that reviews applications and says yes to some and no to others is often going to displease one group or another interested in the application. This provision would allow any person displeased by a board decision to gather four additional signatures and then complain to the Town Council. Over the past several years, a number of Maine municipalities have had a difficult time finding volunteers willing to serve on their boards. I would think subjecting such volunteers to the potential for this kind of a process might have a chilling effect on the Town's ability to attract residents willing to serve the Town.”

Attorney Vaniotis stated that anything the Town Council does is subject to review by a Court. Under the current Charter, the Town Council can conduct inquiries or investigate Town departments, but not personnel. This is similar to a Congressional inquiry. He then referred to Section 409.6, which states the Town Council, as a body, not individually, can inquire into a department, agency, etc.

Commissioner Begert asked if inquiring is micro-managing.

Attorney Vaniotis stated that this section permits the Town Council to conduct an inquiry if, for example, they believed malfeasance was occurring. It's a formal process.

Commissioner Begert then asked what the formal process would be.

Attorney Vaniotis stated that in the new wording being recommended by the Charter Commission, it would begin upon complaint of five people. This takes away the power of the Town Council. It forces the Town Council to take action. It's a recipe for mischief and litigation. It can also put personnel into chaos. It's a problem that it can be triggered outside the Town Council.

Vice-Chair Bird said he was concerned about employees being too insulated.

Commissioner Regis stated it should go through the chain-of-command. It should go to the Town Manager, and then he could bring it to the Town Council, if necessary.

Vice-Chair Bird responded that if the Town Manager did not want to move forward, the citizens would have no-where else to go.

Commissioner Vallante started discussion on the enforcement of the Charter. He inquired of Attorney Vaniotis the best way to make sure the Charter is enforced.

Attorney Vaniotis stated that the Charter is the Constitution for the Town. There is nothing in the State Constitution for penalties of the State Constitution, unless the State Legislature makes penalties. If the Town Council violates the Charter, they can be recalled. If an employee violates the Charter, then the appointing authority could remove them. There are serious concerns regarding union contracts and State law. The Town would start receiving many union grievances.

Commissioner Begert was concerned if the Town Council as a group or individually can be recalled; there is not a sentence in the Charter that states a recall can be for violation of the Charter.

Attorney Vaniotis replied that there isn't a hearing to determine a recall. Voters can recall based on any issue. Most Charters do not have an enforcement issue. Some Charters do authorize the Town Council to enact an ordinance with penalties.

Resident and Finance Committee member, Neal Weinstein, who was present for this meeting, stated the Charter states the Town Council can establish a committee to do an inquiry. He said it should be up to the Town Council to conduct the inquiry, not a committee, to avoid the politics of the Town Manager, and should be subject to Union rights.

Commissioner Begert stated that Section 409.6 is important. If inquiring into the Town Manager, it should be done through the Chair of the Town Council.

Attorney Vaniotis replied that the Town Council has inherent authority. The Town Manager is the only employee who works directly for the Town Council. They can always conduct inquiries into his office.

Neal Weinstein stated that all department heads should answer to the Town Council, just like the Town Manager does.

Attorney Vaniotis responded that would be a radical change. We do not have a Selectmen form of government.

Jack Turcotte, Town Manager, stated that when hiring people, the interviews go both ways. People ask questions of the Town Manager, i.e. what is the process, standards and procedure, chain of command, etc. These facts are considered when prospective employees are looking to see if they want to work here.

Commissioner Vallante stated those are the type of employees we want to attract, that ask those questions.

Attorney Vaniotis told the Charter Commission they need to ask themselves if there is a problem that needs to be fixed, before they change the Charter. Attorney Vaniotis then read the current Section 411:

“Sec. 411. Council Not to Interfere in Appointments or Removals.

Neither the Town Council nor any of its members shall direct or request the appointment of any person to office, nor the removal of any person from office, by the Manager or by any of the Manager's subordinates. Except for the purpose of inquiry, the council and its members shall deal with the administrative functions of the town solely through the Town Manager, and neither the council nor any member thereof shall give orders to any subordinates of the Town Manager, either publicly or privately.”

Attorney Vaniotis said that this section states that the Town Council cannot deal with the administrative functions except for the purpose of inquiry. This is clear as to what it currently means. The Town Council does not get into the day-to-day operations. He suggested 411 should reference 409.6.

Commissioner Regis said that he could see in the past that the Town Council, as individuals, did get involved.

Attorney Vaniotis responded that that shouldn't occur.

Chair Gombar stated that in Section 411, the Charter Commission wants the Town Council to be able to request the Town Manager to remove an employee, but not make it obligatory on the Town Manager's part.

Attorney Vaniotis said this would be a 180 degree turn in the Charter. It is supposed to protect employees from being intimidated by elected officials, and protect the Town Council from being dragged in. The current language is designed to create a wall.

Vice-Chair Bird stated that if it protects employees from being intimidated by the Town Council, they currently can be intimidated by one person, the Town Manager. There needs to be a way around this.

Attorney Vaniotis stated this is a policy issue, suggesting this change would be radical. Most policies occur through personnel policies and union contracts.

Vice-Chair Bird discussed the answers Attorney Vaniotis gave regarding Sections 301, 302, 305.1 and 305.2, regarding the percentages of voters, in his letter of 2/18/11. Vice-Chair Bird stated that what Attorney Vaniotis suggested is pretty much the same intent the Charter Commission has.

Section 301 (Petition for Overture of Action of Council).

For the new language describing the requisite number of signatures, I suggest substituting the language which appears numerous times in the state statutes: “on the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election.”

Section 302 (Petition for Enactment of Ordinances).

Again, I suggest using the statutory language concerning how the 10% is calculated.

Section 305.1 (Procedures for Recall).

Again, I would suggest using the statutory language referencing the number of votes cast in the last gubernatorial election – in both places where the phrase appears.

Section 305.2 (Procedures for Recall).

Same comment concerning language relating to votes cast at the last gubernatorial election.

Attorney Vaniotis stated that part of his function is to wordsmith. There is tried and true language. He recommended language that was close, but mirrored State language.

Commissioner Higgins stated they were trying to refer to the amount of registered voters.

Vice-Chair Bird asked what the difference is between votes cast and having voted.

Attorney Vaniotis responded that using “having voted”, there are voters that will leave their ballots blank.

Commissioner Higgins stated that if it’s worded as “votes cast” in the State Statute, the Charter should use the same language. It it’s not broken, she recommended not fixing it.

Chair Gombar initiated discussion on Section 707, asking why the Town Council should not get a copy of this information, referring to Attorney Vaniotis’s response, dated 2/18/11:

Section 707 (Work Program, Allotments).

The proposed change requiring a submission to the Town Council, even for “informational purposes,” is inconsistent with the concept that the Manager is the chief administrative officer and that the Town Council deals with the administrative service only through the Manager. The Manager always has the option of sending material to the Council, and the Council can always request it of the Manager. I do not think that it is appropriate to put a requirement in the Charter that department heads must communicate directly with the Council.

Attorney Vaniotis responded that it doesn’t make sense to be placed in the Charter. Giving the information to the Town Council is probably a good idea, but should it be enshrined in the Charter?

Vice-Chair Bird stated that he was concerned about the Town Council being blind-sided in March when the budget starts. This would give the Town Council a heads-up on what will be discussed.

Attorney Vaniotis responded that it may be reasonable to do, but asked why it should be in the Charter. This has to do with a relationship between the Town Manager and the Town Council.

Vice-Chair Bird initiated discussion reference Section 305.6, recall of the Town Clerk, stating that he finds the suggested language concerning:

Section 305.6 (Procedures for Recall).

I suggest adding a new clause at the end (after the reference to sections 305.1 through 305.5 above), to read as follows: “unless the Town Clerk is serving as the Registrar of Voters, in which case the Town Manager, after consultation with the Chairperson of the Town Council, shall select another municipal employee to perform such functions.”

Attorney Vaniotis stated that he was trying to put together language that would protect the procedure should the Town Clerk be subject to a recall. He will work on different language.

Commissioner Begert initiated discussion regarding the annual appointments of the Town Attorney and the Auditor, inquiring of Attorney Vaniotis if he is on retainer.

Attorney Vaniotis stated he felt awkward discussing the attorney provisions. The Auditor performs the audit annually and is currently not appointed annually.

Vice-Chair Bird stated that state law says the auditor needs to be appointed annually.

Attorney Vaniotis stated he wasn't aware of that and could check into it.

Commissioner Begert started discussion regarding Attorney Vaniotis's pending retirement from Bernstein, Shur, Sawyer and Nelson at the end of March, 2011. He asked if there was any legal rationale why the legal records should be kept at the law firm, and not kept at Town Hall.

Attorney Vaniotis responded that it should already be in the Town Hall vaults. State law requires you to keep litigation on file per the Record of Retention schedule.

Vice-Chair Bird started discussion on Section 709, stating that the Charter Commission put in Section 1016, which he believes meets Attorney Vaniotis's questions on Section 709.

Attorney Vaniotis stated he would check that section.

Chair Gombar inquired about Section 708, stating that Attorney Vaniotis advised against allowing the Town Council to transfer appropriations on its own initiative, per his letter of 2/18/11:

Section 708 (Transfer of Appropriations).

For the same reasons described in connection with section 707, above, I advise against the proposed change that allows the Council to transfer appropriations on its own initiative.

Attorney Vaniotis stated there needs to be a balance between the Town Manager and the Town Council, and who has control over the budget.

Vice-Chair Bird was concerned that the Town Council is relying on the Town Manager's permission. The Town Council should dictate policy and that the budget is policy written in money. The Town Council should have control over the budget.

Attorney Vaniotis said the Town Manager keeps the Town Council informed and the Town Manager has primary responsibility to monitor the budget.

Commissioner Regis commented reference impact fees in designated funds. He said the Town charges impact fees for road construction. After a road is paved, they should be not charging those impact fees.

Attorney Vaniotis responded that State law does require that if there are excess impact fees, they need to be returned to the developer.

Vice-Chair Bird started discussion on CIP (Capital Improvement Projects), stating the Charter Commission took care of that with Sections 1015 and 1016.

Town Clerk, Kim McLaughlin, stated there were questions from the Finance Director, wanting to make sure Section 1016 does not violate Governmental Accounting Standard Board (GASB) rules.

Attorney Vaniotis stated he wasn't an auditor and could not answer that question.

Jack Turcotte, Town Manager, stated he would check with the auditor.

Attorney Vaniotis stated section 905 should be cross-referenced with Section 1015. The Finance Committee would be required in the new Charter, but doesn't say what it is. This section now gives life to the committee. This gives it direct responsibilities, as well as being an advisory committee.

Discussion began regarding the Conservation Commission, and the change to the Charter that would have them responsible for "Town-owned and/or undeveloped spaces".

"There shall be a Conservation Commission composed of five (5) members, and two (2) Alternates who shall be appointed by the Council. Members of the Conservation Commission shall serve staggered three (3) year terms under 30-A M.R.S.A. § 3261 and shall serve until a successor has been appointed and qualified. The Conservation Commission shall be responsible for the care and superintendence of the municipal trees, public parks, Town-owned open and/or undeveloped spaces and significant natural resources, oversee and monitor any Conservation Easements known to or held by the Town, initiate, provide for and be a supplemental repository for the results of any environmental testing for the Town, and shall have such powers and perform such duties as are provided by the laws of the State of Maine, this Charter and ~~the~~ ordinances duly adopted by the Council, including the powers and duties of tree wardens. The Conservation Commission shall have the power to form subcommittees and/or advisory boards as they deem necessary."

Jack Turcotte, Town Manager, stated that the Ballpark is under a new ordinance, including the 50-acre wood. It is not a park.

Attorney Vaniotis stated the Ballpark is not a public park in the current ordinance; however, the new language regarding undeveloped spaces may well be in conflict with the ordinance on the 50-acre woods. It could potentially void that ordinance on the Ballpark.

Commissioner Vallante suggested adding the words “except the 50-acre woods adjacent to the Ballpark”.

Attorney Vaniotis suggested they could also just put in an exception to the current Ballpark Ordinance.

Commissioner Vallante inquired if there was a conflict, what prevails, the Ordinance or the Charter.

Attorney Vaniotis responded that the Charter would prevail. He also reminded the Commission that the Conservation Commission is not a requirement to have under State law.

Commissioner Begert inquired if the Town is required to have a Comprehensive Plan.

Attorney Vaniotis replied that a comprehensive plan is a predicate to having a Zoning Ordinance.

Chair Gombar initiated discussion regarding Section 1003.1, stating several people are holding more than one position. The Charter Commission wants to make sure department heads can continue to hold those positions.

Attorney Vaniotis stated the current language in the Charter is very restrictive. In the recommended language, he would like to see the content for the word “regular”.

Commissioner Higgins suggested changing the word “regular” to “full-time”.

Commissioner Higgins initiated discussion regarding the Charter timeline, stating they need to push off the advertisement in the newspaper and the public hearing, and discuss the calendar.

Attorney Vaniotis stated his firm needs the final document by July 15th. He would then get it back to the Charter Commission for any suggested changes.

Jack Turcotte, Town Manager, stated the department heads reviewed the recommended changes to the Charter. He asked the Charter Commission how they would like him to address questions that have arisen. He would like to present those questions to the Charter Commission. He suggested he could present them at the Public Hearing, or they could hear them ahead of time. He would like to offer the opportunity to do that.

Commissioner Higgins responded that the Charter Commission needs to fix the Charter after hearing Attorney Vaniotis’s comments, and then the Town Manager could comment.

Vice-Chair Bird stated it is not fair for the department heads to come in now. They should have come in all along.

Commissioner Vallante stated the Charter Commission appreciates the Town Manager's position and everyone else's. The Charter Commission does not all agree on one thing. They have different perceptions. He said he, personally, wanted tonight's meeting to get the attorney's opinion. Anything the Charter Commission has recommended for changes are contingent upon the advice from the Attorney. They need to go through the document and reconsider sections. They will then put together a final draft and then get opinions.

Commissioner Begert suggested the Town Manager have the department heads put their questions/suggestions in writing and give them to the Town Clerk to give to the Charter Commission for review.

Jack Turcotte responded that they could put it in writing, but with writing, they can't delve into it deeply.

Chair Gombar asked the Town Manager if he could at least put the bullet points in writing for the Charter Commission and then present the questions more in depth at the meeting.

The Town Manager responded that he could do that.

Commissioner Higgins stated that once the Charter Commission makes the modifications and corrects the inconsistencies, they can decide how the department head interaction will occur separate from the public hearing.

Commissioner Begert asked Attorney Vaniotis about the number of questions for the ballot.

Attorney Vaniotis responded that the statute is ambiguous. If there are a series of minor modifications, the Charter Commission can put in as many questions as deemed appropriate. For example, one question could be the size of the Town Council and term limits, and the second question could be for the rest of the Charter.

Chair Gombar suggested that term limits be its own question.

Vice-Chair Bird inquired if the School Board changes should also be a separate question.

Attorney Vaniotis stated he would have to think about it. He said no matter what the Charter Commission does in the Charter, State Law controls. He believes this question is premature.

The Charter Commission agreed to meet at 6:30 p.m. on March 22nd and March 29th at Town Hall.

Attorney Vaniotis stated that September 15th is the absolute deadline for the Town Council to place the question on the ballot.

Commissioner Higgins suggested April 12th as the meeting date in which the department heads or Town Manager could present their questions. The meeting will be at 6:30 p.m., and will probably occur at the Police Department, since the RSU has the Council Chambers that night.

Commissioner Higgins and Chair Gombar suggested May 24th as the public hearing date. On April 26th, the Charter Commission will have completed the Charter and summary to give to

Attorney Vaniotis and the Town Clerk for advertising. A meeting time on May 24th was not determined. They also assume there will be a May 10th meeting.

Commissioner Begert stated that the RSU Directors are not officials of the Town. He inquired of Attorney Vaniotis if the Charter should label them as a state agency.

Attorney Vaniotis stated the language he suggested covers his recommendation. If the Charter does not state they are town officials, then they're not, but he would check on the language.

Meeting adjourned at 10:07 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 seventeen (17) pages is a true copy of the original Minutes of the Charter Commission Meeting held March 8, 2011.

Kim M. McLaughlin