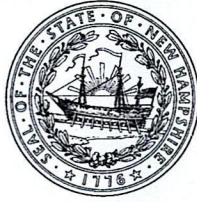


**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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ATTORNEY GENERAL



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July 1, 2021

Susan Mistretta, Clerk
c/o Joshua Wyatt, Esq.
City of Dover
288 Central Street
Dover, NH 03820-4169

Re: Dover Charter Amendment

Dear Attorney Wyatt:

Pursuant to RSA 49-B:4-a, the Secretary of State, the Department of Revenue Administration, and the Attorney General's Office are required to "review the proposed [...] charter amendment to insure that it is consistent with the general laws of this state." RSA 49-B:4-a, I(d). The Secretary of State's and Attorney General's Offices, pursuant to RSA 49-B:4-a object to the proposed City of Dover charter amendment for the reasons outlined below. The Department of Revenue Administration has no comment or objection regarding the charter amendment.

The Secretary of State's and Attorney General's Offices (collectively "the offices") have three concerns related to specific provisions of the proposed charter amendment. These three concerns form the basis of the offices' objection. The below analysis also summarizes the phone call the offices had with Attorney Wyatt on June 29, 2021 regarding the same.

1. Section 5 – Membership on Board or Commission

This amendment would add the following language –

"An employee of a City or the School Department may volunteer on a board or commission provided it is not directly related to their employment or their department, or if they are appointed ex officio."

RSA 669:6 states that "no person shall hold an elective town office who does not have his domicile within the town." Furthermore, several statutes mandate that in order to be qualified for membership to a particular board or commission, the individual must be domiciled in the

corresponding municipality. See RSA 38-C:2 (Requiring that the board of public works commissioners consist of 3 or more citizens of the municipality.) See also RSA 671:18 (“To become a candidate for any school district office, a person must be a registered voter in the district.”). RSA 44:1, RSA 44:2, and RSA 47:1, collectively apply the town statutes to a city.

The contemplated amendment has the effect of permitting a non-resident of Dover, who is employed by the City, to assume a roll on a board or commission. As there is no domicile requirement for municipal employment, the consequence could be a non-resident making substantive decisions that would impact the City. There is also the potential that this amendment would raise questions of the validity of a board’s or commission’s actions if its membership were comprised of unqualified, non-resident individuals.

Therefore, the offices object to this provision. The offices note that there is in fact a distinction between membership on a board or commission where the body is only serving in an advisory capacity, instead of setting policy or making substantive decisions. In the case of an advisory board or commission, the offices acknowledge that it may be possible for a non-resident to serve as a member.

2. Section 10 – Correction of Technical or Grammatical Issues

This amendment contains 39 sub-provisions that seek to make technical changes across a variety of different sections of the City’s existing charter.

RSA 49-B:5, I(c) states in relevant part, that “[e]ach amendment shall be limited to a single subject, but more than one section of the charter may be amended as long as it is germane to that subject.”

While the offices acknowledge that crafting a single question for each of the 39 sub-provisions may prove cumbersome, an umbrella-like question to encapsulate all of the changes is also challenging. The purpose of RSA 49-B:5, I(c) is to ensure voters are able to take time to consider each substantive change, and prevent a voter from overlooking a potential amendment important to him/her.

Instead, the offices encourage the City to consider crafting a question based on the type of technical change being made. For example, a question that would encapsulate all changes where a written number (*i.e.* one thousand) is amended to its numerical version (*i.e.* \$1,000).

3. Section 2 – Vacancies and Qualifications of Successors

This amendment would strike language that an elected official’s term continues until his or her successor is elected and takes the oath of office, thereby assuming office.

Striking the provision that extends an elected official’s term until the successor is sworn-in, makes it possible that an elected position would remain vacant between the end of a term and when the successor is elected and sworn-in. While likely uncommon, were the election or swearing-in of multiple members of a public body to be postponed for any period of time, this

could lead to a situation where there are insufficient members of a public body to constitute a quorum. The body could be left without the ability to make required decisions. The recent COVID public health crisis, which resulted in many postponements of municipal elections, provides a recent example of this issue.

As discussed with Attorney Wyatt on June 29, 2021, the offices would accept that a duly elected successor making and subscribing the oath of office, effects the transition of an elected position from the outgoing to the incoming office holder. The successor is "qualified" once he or she takes the oath of office. RSA Chapter 92.

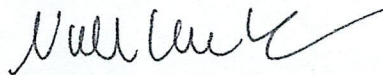
CONCLUSION

Based on the forgoing, the offices object to the City of Dover's charter amendment. However, we invite you to resubmit your charter amendment proposal, with revisions consistent with the analysis above. If you would provide the reviewing agencies with the City's anticipated timeline to prepare the charter amendments for a vote by the voters, we would be able to expedite our review of the revised proposal.

Additionally, we understand that the City will be submitting another, separate charter amendment proposal for the reviewing agencies' approval. Consistent with RSA 49-B:4-a, the reviewing agencies will apply separate statutory deadlines for this additional proposal and respond accordingly with our acknowledgment and determination.

Please feel free to contact us should you have any questions.

Sincerely,



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cc: David Scanlan, Deputy Secretary of State
Orville Fitch, Assistant Secretary of State
Bruce Kneuer, Department of Revenue Administration
Derek Kline, Department of Revenue Administration