

CITY OF DOVER

CITY COUNCIL - AGENDA

Meeting Type: Workshop Session
Meeting Location: Council Chambers, City Hall
Meeting Date: **Wednesday, September 16, 2015**
Meeting Time: **5:30 pm**

1. CALL TO ORDER
2. MOMENT OF SILENCE
3. PLEDGE OF ALLEGIANCE
4. ROLL CALL ATTENDANCE
5. CITIZEN'S FORUM

Citizens are invited to speak on the subject matter of the Workshop. Statements shall be limited to five minutes.

6. DISCUSSIONS
 - A. CHARTER AMENDMENT QUESTIONS ON THE NOVEMBER 3, 2015 MUNICIPAL ELECTION BALLOT
7. ADJOURNMENT

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City of Dover, New Hampshire

OFFICE OF GENERAL LEGAL COUNSEL

September 10, 2015

Karen Lavertu, City Clerk
City Hall
288 Central Ave.
Dover, N.H. 03820

Re: Charter Amendment – School Board Elections
R – 2015.08.26 – 119

Dear Clerk Lavertu:

I have reviewed the proposed charter amendment regarding the Dover School Board, brought forward by a petitioners' committee pursuant to the provisions of RSA 49-B:5, which would amend the Charter to provide for ward elections for the Dover School Board (six members elected from Wards, one member elected at large). This would be a change from the current procedure whereby all seven members are elected at large. It is my opinion that this proposed charter amendment is not in conflict with the general laws of this state or the constitution.

Sincerely,

Anthony I. Blenkinsop
City Attorney
NH Bar # 14173

Cc: Mayor Karen Weston and Dover City Council
J. Michael Joyal, City Manager



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September 10, 2015

Hon. Karen Weston, Mayor
Dover City Council
288 Central Avenue
Dover, NH 03820-4169

Re: Proposed Charter Amendment – Legal Officer

Dear Mayor Weston and Members of the Council:

We represent Dover Citizens Connect! (“Citizens”), an association of Dover residents who support the proposed charter amendment that would require the city’s general legal counsel to report to the city council rather than the city manager. Citizens has asked us to address the lawfulness of the amendment under state law as required by RSA 49-B:5, V(b). Among other things, we have reviewed the August 12, 2009, and May 18, 2015, opinions of Christopher Boldt of Donahue, Tucker & Ciandella and the June 24, 2015, and August 25, 2015, letters from Stephen LaBonte of the New Hampshire Department of Justice.

As the letters of Mr. Boldt and Mr. LaBonte make clear, the lawfulness of the proposed charter amendment turns on the meaning of the introductory clause of RSA 49-C:18 (“[s]ubject to the provision of the charter . . .”). Mr. Boldt reads the language of this statute as giving the city manager the exclusive authority to appoint the “city solicitor” under the provisions of RSA 49-C:20. Mr. LaBonte interprets this language to mean that the city manager has the authority to appoint the city solicitor unless provided otherwise in the city charter.

We think Mr. Labonte’s reading of the statute is correct for many reasons, not the least of which is that Mr. Boldt’s construction would amount to deleting the introductory clause from the statute. RSA 49-C:20 prescribes which city offices and officers must be included in the charter and grants authority to create additional offices and officers through the charter. Given this provision, the city manager may only appoint those officers whose offices are created by the charter. Accordingly, there is no need to include language in RSA 49-C:18 to reiterate that the city manager may appoint only those officers provided for in the charter. In other words, if Mr. Boldt were correct “[s]ubject to the provision of the charter” would be mere surplusage. The

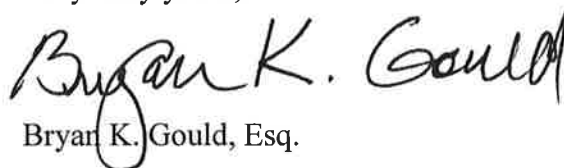
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New Hampshire Supreme Court has held repeatedly that “ ‘[e]very statute should be so construed that it may have a reasonable effect, agreeably to the intent of the legislature, and, if possible, *so that no clause, sentence or word shall be superfluous, void or insignificant.*’ ” Emphasis supplied. *Churchill Realty Trust v. City of Dover Zoning Bd. of Adjustment*, 156 N.H. 668, 675 (2008), *quoting State v. Wilton Railroad*, 89 N.H. 59, 61 (1937)

We disagree with Mr. Boldt’s conclusion that “[s]ubject to the provision of the charter” refers to “which departments and officers are provided for in the charter rather than a limitation on the [city manager’s] appointive power.” Letter of C. Boldt (8-12-09) at 6. The New Hampshire Supreme Court has construed “subject to” to mean “subservient to or governed by.” *Appeal of State Employees’ Assoc.*, 142 N.H. 874, 877 (1988) (citations omitted). More specifically, “ ‘subject to’ . . . clearly means that” the rights granted “are limited by” the provision to which they are subject. *Id.* Thus, the introductory clause of RSA 49-C:18 does in fact give the voters the authority to impose a limitation on the city manager’s appointive powers through the charter.

It is our opinion that the proposed amendment is not in conflict with the general laws of the State of New Hampshire or the constitution.

Very truly yours,



Bryan K. Gould, Esq.

BKG:bmb

cc: J. Michael Joyal, Jr.
Anthony Blenkinsop, Esq.