

**Charter Review Committee agenda
Tuesday, Sept. 3, 2019, 6:30 p.m.
City Hall Hearing Room 18
210 Main St., Northampton, MA 01060**

Meeting Minutes

Present: Stan Moulton (ward 1), Robbie Sullivan (ward 2), Dylan Gaffney (ward 3), Sam Hopper (ward 4), Bob Boulrice (ward 5), Patty Healey (ward 6), Mollie Fox (ward 7, arrived at 7:50 p.m.), Lyn Simmons, Chief of Staff (Executive Branch), City Councilor Bill Dwight (Legislative Branch), Attorney Alan Seewald, City Solicitor (non-voting member)

The meeting opened at 6:33 p.m.

1) Approval of minutes for Aug. 20, 2019, meeting

Sam Hopper moved approval of the August 20, 2019, minutes as written. Councilor Dwight seconded. The motion passed 6-0-2 with Councilor Dwight and Dylan Gaffney abstaining.

2) Public comment

None

3) Updates from committee members

None

4) Comments by Northampton School Committee members and Smith Vocational and Agricultural High School trustees about prohibiting the hiring of immediate family members

John Cotton, an 18-year Smith Vocational and Agricultural High School Trustee, was present to offer his belief that the proposed prohibition is already handled by filing a conflict of interest statement with the city clerk. He also believes that the proposed prohibition is a Human Resources problem and not a problem that is handled by the charter. Mr. Cotton feels that this prohibition could be conceived as selective hiring, otherwise known as discrimination, and could cause a loss of good personnel. Mr. Cotton's son has been an employee of Smith Vocational for the last five years and his employee status has not affected Mr. Cotton having to recuse himself. The only time he has had to recuse himself is when the vote is related to his son's salary.

Lonnie Kaufman, Ward 6 school committee member, was present to share his thoughts with the committee. After watching the last few videos of the charter review committee meetings, he heard committee members ask for clarity on what a school committee member does. Lonnie Kaufman gave an overview of his Aug. 29 memo to the Charter Review Committee summarizing his portrayal of the major school committee functions from the Massachusetts Association of School Committees (MASC) which

included the following: governance: establishing educational goals and policies for schools in the district; finance: reviewing and approving a budget for education in the district according to a process and timeline developed with the superintendent and overseeing the operation of the annual school budget; staffing: appointing the superintendent along school business administrator, nurses, etc.; policy: establishing and periodically reviews educational goals and policies for the schools in the district; school councils: reviewing and approving annual school improvement plans for each school in the district; advocacy: engaging in advocacy on behalf of students and their schools and promoting the benefits of a public school system to the community; curriculum: approving major adoption or revision of curriculum and textbooks upon recommendation of the superintendent; collective bargaining: acting as employers of school employees for collective bargaining purposes and designating a negotiator or negotiating team; communication: supporting the development and promotion of the vision, mission, goals and strategies of the school system including maintaining open communication between the community and the schools by scheduling public meetings on a regular basis; performance standards: establishing, upon the recommendation of the superintendent, the performance standards for teachers and other employees and evaluating the performance of the superintendent; and professional development: adopting a professional development plan for all principals, teachers and other professional staff employed by the district. In addition to these functions, Mr. Kaufman stated that school committee members also participate in at least 1 of 3 standing subcommittees, are liaisons for a variety of different functions, attend annual retreats, attend numerous events i.e., convocation, and respond to constituent's questions and concerns. Mr. Kaufman cited the functions so the committee has a full picture of what school committee members do and that their charge goes beyond just collective bargaining. Mr. Kaufman stated that when he first got elected, he spoke with a city councilor, the State Ethics Commission (SEC), MASC, Mayor Narkewicz and Superintendent Provost, to get a better understanding of what he can and cannot participate in. He understood that the only time he can't participate is when there is a direct financial interest. He stated that this has occurred but is very rare. He furthered that he has not come close to needing to recuse himself for the majority of voting and most people understand the need to recuse oneself at the appropriate times.

Sam Hopper asked for clarification on whether Mr. Kaufman was advised from recusing himself from collective bargaining discussions and the budget.

Lonnie Kaufman stated it was in fact the opposite. He sought out the opinion of Superintendent Provost, Mayor Narkewicz and the SEC, who was clear that because Northampton Association of School Employees (NASE) was negotiating on behalf of all six bargaining units, that he couldn't participate. Mr. Kaufman received approval to be involved in the budget discussions up until the last one.

Sam Hopper ask whether Mr. Kaufman voted on the budget.

Lonnie Kaufman stated he didn't but he has every intention on voting on the next budget and has the blessing of the SEC.

Chair Moulton asked Mr. Kaufman how many votes he has recused himself from over the last two and a half years.

Lonnie Kaufman stated it was just one and it was the budget meeting that Sam Hopper was referring to.

Howard Moore, Ward 3 school committee member, was present to share his opinions. He stated that if an individual is thinking about being on the school committee, the best thing for that person to do is to decide whether they still want to, knowing they will have to recuse themselves from votes and discussions. He furthered that state ethics law takes care of the issues including nepotism and favoritism. He stated that if people want the job as a school committee member, even with the limits of recusing themselves, then it is up to the voters to decide. Mr. Moore would have valued Mr. Kaufman and Ed Zuchowski's input during executive session but the plus side was that the school committee had their input for all other discussions. Mr. Moore concluded by saying that there are already safeguards in place for these situations.

Chair Moulton asked what number of school committee members with a relative working for the school department might be a concerning amount.

Howard Moore stated that more than half would be a huge problem and that two, three or four members is still a problem.

Attorney Seewald clarified that the rule of necessity would be invoked if the school committee didn't have a quorum because of conflicts. He stated that as long as there is a full complement of the board, then all recused members return to the table. The other problem is that the reasons these members weren't involved was because of a conflict and now those people would be back at the table. Neither scenario is an ideal situation.

Susan Voss, at-large school committee member, was present to offer her strong feelings and agreement with previous speakers. She stated that having the whole school committee involved is better but this year was an unusual situation because all units wanted to bargain together. She mentioned that Ed Zuchowski, a 12-year school committee member, has never had this happen before and there are so many other things the school committee does that enabling people to run for this position is incredibly important. She stated that almost everyone on the school committee is a parent which is an equal conflict of interest because of their child's unique needs. She concluded by saying that people are usually good about not gaming the system and being transparent.

Patty Healey asked if the bargaining units presented that they wanted to work together.

Susan Voss stated she has only been through this process once. School Committee members Molly Burnham and Downey Meyer are on the bargaining subcommittee so they do most of the communicating with the union. They then bring back their communications to the full school committee in executive session and then a strategy is discussed for moving forward. Susan Voss suggested a way to solve the issue could be for the school committee to ask the union not to bargain together.

Sam Hopper asked if the school committee decides how the union bargains.

Councilor Dwight pointed out that the type of bargaining is negotiated. The union says how they want to bargain and the schools say how they want to bargain and it is collectively agreed upon on how to proceed. He furthered that none of this can be embedded in the charter.

Alisa Klein, Ward 7 city councilor, stated that over the years she has seen city councilors have to recuse themselves because of a conflict. Elected officials grapple with ethics all the time and most know how to identify a conflict and then recuse themselves, which is part of being an elected official. She stated that MASC said there is no issue and the SEC has also given the okay, so to write something into the charter that is already covered in state law seems unnecessary. She furthered that the reason the school committee has at-large members is because occasionally individual ward members have to recuse themselves and at-large members are able to serve all constituents. Councilor Klein concluded by saying she believes the proposed provision is searching for a problem that doesn't exist.

- 5) Further discussion and vote on proposals to extend conflict of interest to immediate family members in Article 4 (School Committee) Section 4-3 (Prohibitions) with added sentence: No immediate family member of a member of the School Committee may be hired by the Northampton School Department while such relative is serving on the School Committee; and Article 5 (Other Elected Officials) Section 5-4 (Superintendents of Smith's Agricultural School) with added sentence: No immediate family member of a trustee of Smith Vocational and Agricultural High School may be hired by Smith Vocational and Agricultural High School while such relative is serving as a trustee of that school.**

Chair Moulton reported, for the record, five emailed letters that were sent by individuals prior to the September 3 meeting. Letters are attached to the official record.

Attorney Seewald provided a brief recap of the information he learned from the State Ethics Commission that he shared with the committee at the August 20th meeting. He added that while the proposed restrictions are addressed in the State Ethics law, the law also allows cities and towns to make more stringent ethics rules for its community if necessary.

Councilor Dwight moved to put the item on the floor for purposes of discussion. Sam Hopper seconded.

Councilor Dwight stated that he believes the restrictions are a solution searching for a problem and embedding them in the charter is not necessary. He stated that these restrictions would be better suited as a policy or a rule. He furthered that there is never a way of knowing how collective bargaining will be structured and it has the potential to become more of a problem in the future. He stated that candidates have to inform their constituents that there may be times when they won't be served and leave it up to the voter to decide. Councilor Dwight agrees that the vote should be rescinded because the modification is splitting hairs. He furthered that there is a perception of a conflict but it can be addressed another way. He concluded by saying in a city of roughly 29,000 people the labor pool is not that deep and the restrictions would impose an additional constraint.

Robbie Sullivan agreed with Councilor Dwight and is hesitant about putting limitations on people applying for a job in the school system because it may be that person's dream job, they may be the most qualified for the position, etc. She furthered that this issue is not relevant to the charter.

Sam Hopper disagrees with the idea presented by school committee members that the budget isn't a

bigger deal. She stated that the budget dictates policy, educational goals, etc. She furthered that the budget is a moral document that decides what happens in the schools. She stated that this year was different and while she understands school committee members don't have to recuse themselves every year, they did this year, and it was a problem. She stated that there is a difference between school lunches changing and a direct conflict of interest if a school committee members spouse is paid more. She finds it difficult to understand how it's not a direct conflict of interest when there are people at public comment advocating for cutting certain programs to fund salaries, and then those funds go to salaries.

Patty Healey stated that schools and families are represented by more than one school committee member, sometimes up to two or three members.

Councilor Dwight stated that it's worth noting there is a potential conflict if a school committee member has a child in the school system but it is not defined in Conflict of Interest law. He stated that parents have advocated for certain programs while on school committee that would benefit their children and it could be argued that there is a moral conflict but the scenario is not a direct comparison.

Lyn Simmons pointed out that there is a clause in the charter that prohibits elected officials from holding a city position. This prohibition didn't exist in the prior charter, which existed only a short time ago, so the proposed prohibition (for immediate family members) is essentially an extension of that prohibition.

Bob Boulrice opined that anything that can be done to bring ethics into the light is a good thing and there are administrative and/or executive solutions that can be implemented to alleviate some of the problems that were experienced in the last year. Bob recognizes the concern but is reluctant to impose restrictions that will diminish the ability for people to run and serve.

Chair Moulton is also reluctant to put further constraints on qualifying individuals running for office. He believes that at-large school committee members can represent a constituent's point of view if their ward member has to recuse themselves.

Sam Hopper asked what the alternatives would be if this restriction isn't embedded in the charter.

Councilor Dwight stated that it could be an executive policy order barring individuals from being hired if they have an immediate family member that is an elected official.

Attorney Seewald stated that the school committee is subject to ordinance so it could be done that way.

Dylan Gaffney stated that much of the focus of the charter review committee has been opening up participation and the restrictions are in conflict with that.

The motion to approve the language, "No immediate family member of a member of the School Committee may be hired by the Northampton School Department while such relative is serving on

the School Committee” failed unanimously 8-0 by roll call vote.

Chair Moulton explained that the committee’s thought was to extend the same restriction to Smith Vocational trustees to treat each school committee equally but since the Northampton School Committee restriction did not pass, there is no reason to vote on the Smith Vocational trustee restriction.

6) Further discussion and vote on revision to recommended changes in Article 3 (Executive Branch) Section 3-9 (Vacancy in Office of Mayor) (see Attachment1)

Attorney Seewald recapped that there was nothing in his previous draft that required the city council to call a meeting to schedule a special election. He stated that he added the following language to section 3-9 (b), “under section 2-6 (c)(ii), call a special meeting of the city council, and the city council shall.”

Chair Moulton explained that there is one outstanding issue in subsection (e) of section 3-9 that the committee must decide on: if there is a vacancy in the office of the mayor in months 47 and 48, that the city council president shall serve the remaining term or the mayor-elect would be sworn in immediately and serve the remaining mayoral term and the four-year term for which he or she was elected.

Councilor Dwight pointed out that the objective is a peaceful transition of power. Option two speaks to the voter’s choice and option one allows someone who is experienced to close out a season that the new mayor might be in the dark about. He stated that the new mayor may have the best intentions but lack the ability to keep the city running smoothly. He furthered that with option one, the city council president could sabotage everything before the new mayor takes office and option two allows for the voters to implement their choice of mayor. Councilor Dwight concluded by saying he favors option two.

Sam Hopper favors option two as well because it speaks to what the people want and the worst case scenarios that were mentioned could happen at any time, even two months into a new term.

Attorney Seewald stated that the provision is intended just to get to the next election and option two is more consistent with the work the committee has been doing.

There were no arguments in favor of option one.

Councilor Dwight moved a positive recommendation for the amended version of section 3-9 and option two which states, “In such case, the mayor-elect shall be sworn to office immediately and shall serve the remainder of the mayoral term and the four-year term for which such person was elected.” Sam Hopper seconded. The motion passed unanimously 9-0 by roll call vote.

7) Further discussion and vote on possible recommendation to make the city clerk an appointed rather than elected position

Chair Moulton asked committee members for their thoughts on whether the city clerk position should be appointed by the mayor and approved by the city council or appointed by the city council.

Bob Boulrice stated he was blessed in his position as a former treasurer/tax collector because he was insulated from political forces. He pointed out that professional positions need to be independent from political legislative forces because there are too many opportunities for someone to ask for favors. For consistency purposes, Bob believes that the city clerk should be appointed by the mayor and confirmed by the city council.

Lyn Simmons stated that by making the city clerk a mayoral-appointed position with confirmation by the city council it will be consistent with all other department head appointments. She pointed out that a lot of communities have city councils that appoint the city clerk because the city clerk is also the staff person to the city council, which isn't the case in Northampton.

Councilor Dwight stated that the reason the city clerk position was elected was to protect it against undue exertion of authority by the executive and the idea of having the position appointed by the city council is to avoid that pressure. However, if the mayor is exerting political pressure, that is one individual and if it's the city council, that is nine people. He believes that having the city council make the appointment does not reduce any political influence and the city clerk doesn't need nine city councilors dictating and demanding. Councilor Dwight believes this position should be consistent with every other department head appointment with city council confirmation.

Bob Boulrice moved to recommend that the city clerk be an appointed position by the mayor with confirmation by the city council. Councilor Dwight seconded. The motion passed unanimously 9-0 by roll call vote.

8) Discussion of process for writing the committee's report

Attorney Seewald stated that he was the chair of the commission that recommended a new charter and with that he appointed a subcommittee to start a draft report and it didn't work well. The process works better for one member to draft the report and bring it back to either a subcommittee to review and revise or bring it back to the whole committee for presentation.

Councilor Dwight stated that the last committee had a professional consultant write the report and then the committee went through the report and made revisions. He furthered that the narrative is essentially already written with the minutes and the recorded votes.

Sam Hopper pointed out that the committee has voted on approximately 30 recommendations.

Chair Moulton stated that some of those recommendations don't need explanations because they were housekeeping items but some will need support with an argument.

Lyn Simmons questioned whether there were still topics on the table for consideration.

Chair Moulton asked the committee to think about whether there are any topics that haven't been

discussed yet. Chair Moulton mentioned two issues for possible further discussion: annual reporting by department heads and whether it is appropriate to be included in the charter, and extending voting rights in municipal elections.

Lyn Simmons doesn't believe that there will be something solid to bring forward to the committee relative to extending municipal voting rights.

Councilor Dwight mentioned that charter amendments can be petitioned at any time so it doesn't have to be submitted with the report.

Attorney Seewald pointed out that extending municipal voting rights could be another item added to the bottom of the report indicating that the committee didn't have time to discuss this topic but it recommends its review.

Sam Hopper stated that the Google doc with all the changes will be a good starting point. She suggested color coding items and separating housekeeping vs. substantive topics. She furthered that for the presentation of the report it might be beneficial to group items by the intent for which they were changed. Sam stated it would be easy to pull out the changes from the Google doc and put them into another document to use as scaffolding that the report can then be built off of.

Lyn Simmons pointed out that there will be a whole new city council soon and the committee should think about whether it wants to wrap up the report sooner and present it to the sitting city council or wait and present it to the new city council.

Councilor Dwight stated that it will be a steeper learning curve with the new city council.

Attorney Seewald stated that the new city council will be taking action on the committee's recommendations and sending it to the legislature so it should be presented to the new city council.

Bob Boulrice asked if there is any value in releasing the report in advance of the election so candidates had a chance to review it. Bob volunteered to put together a draft document to be made available before the election that candidates could receive, review and make a statement on where they stand relative to the committee's recommendations.

Councilor Dwight believes that will be a great opportunity to generate some interest and then the Gazette might be able to publish something about it.

Chair Moulton stated that the report could be linked online. He also stated that he could write an op-ed for the Gazette.

Attorney Seewald opined that it would be very powerful if the report was combined with an op-ed that urged readers and candidates to read and comment on the report before the election and that the committee made a special effort to complete it months early so that it was available.

Chair Moulton agreed that it would be compelling but he doesn't want to short circuit issues that

might need some more discussion.

Councilor Dwight pointed out that if the report was released early then people will want to provide additional comments which would open up Pandora's box.

Chair Moulton suggested that the report could be described as preliminary and if there are issues that arise then the committee has a few months to deal with them.

Attorney Seewald cautioned the committee of this approach because if the report is released in October then it is too late for additional comments and people will want every vote to be reopened so that they can include their input.

Councilor Dwight suggested that the committee can accept individual's thoughts and comments and inform them that they will be passed on to the next charter review committee.

Attorney Seewald reminded the committee that it gave ample opportunities for people to comment on the charter and they shouldn't be allowed to offer additional comments after the report is released. He furthered that the report should be released and filed when it is complete. Any further discussion will have to happen at city council.

Sam Hopper volunteered to take the core information from the Google doc and put it into one document for the report to be built off. Sam confirmed that this work can be done for the next meeting and then Bob Boulrice can pick it up from there.

Chair Moulton asked the committee to think about whether there are any final issues or topics that should be put on the table for discussion.

9) Schedule of fall meetings: Sept. 17 (preliminary election Ward 7), Oct. 1, Oct. 15, Nov. 5 (Election Day), Nov. 19, Dec. 3, Dec. 17

After a brief discussion, the committee agreed to keep the September 17 meeting date and the additional meeting dates will be discussed at a later meeting.

10) Adjourn

Councilor Dwight moved to adjourn the meeting at 8:55 p.m. Sam Hopper seconded. The motion to adjourn passed unanimously 9-0.