



Mayor Joshua Garcia

City of Holyoke

Law Department

November 16, 2021

Honorable Joshua Garcia  
Acting Mayor  
City of Holyoke  
536 Dwight Street  
Holyoke, MA 01040

Re: Updated Opinion on City Councilors also holding employment with the City

Dear Mayor Garcia:

Please accept this updated opinion on whether a newly elected City Council member can also simultaneously hold an employment position in the City of Holyoke.

In December of 2017, the City Council approved Section 2-69 (Ethics) to be added to the City Ordinances. This provision added a local ethics rule to supplement, extend and strengthen existing state conflict of interest laws under MGL 268A.

§20 of this section states in part the following: "...such selectman shall not, except as hereinafter provided, receive compensation for more than one office or position held in a town, but shall have the right to choose which compensation he shall receive; provided, further, that no such selectman may vote or act on any matter which is within the purview of the agency by which he is employed..."

The City of Holyoke however has an ordinance that goes further than MGL 268A § 20 and is even more restrictive than the State statute. Within the City's ordinance, Section (g) (2) contains a specific prohibition that: "no employee of the city shall simultaneously serve on the city council during their term of employment."

This language requires that no one may serve as a member of the Council while also employed as a municipal employee.



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The use of the term “simultaneously” clearly allows employees to become candidates for the Council. However, under the ordinance provision, this postpones a final choice for victorious candidates between accepting the Council seat or resigning their position as a municipal employee.

I note the term “employee” is broadly defined under the 2-69 Ordinance as someone who is employed by the city or any agency, Board, Department or Division of City government. The prohibition extends widely to full and part-time workers and may extend to some volunteers as well due to the placement of this provision in an ethics context.

In creating the absolute prohibition of city employees serving on the Council, the 2-69 provision serves to extend the public purposes originally stated in the Holyoke City Charter. By furthering the reduction in potential corruption or conflicts of interests by enacting this provision, the City Council adoption of this provision is well within the exercise of the legislative powers granted in the charter.

Holyoke does not stand alone on this particular issue. I would also point out that there are several other communities within the Commonwealth of Massachusetts with similar Ordinance or Charter provisions.

For example, the City of Newburyport has a local ordinance which states no member of the city council shall hold any other city office or city employment. The Cities of Chelsea, Gloucester, Lawrence, Lynn, Northampton, Weymouth, and Woburn all have provisions in their City Charters which prohibit city councilors from holding any other city employment with their cities.

Section 23 of the Holyoke City charter states the following: “No member of the Council shall, during the term for which he was elected, hold any other office in or under the city government...” The definition of “any other office” is arguably among the most confusing terms in the charter.

The terms “officer” and “office” give rise to several different understandings depending upon the context in which the terms are used. The City’s Municipal



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Ordinances 2-69 (17) defines a Municipal official as “any individual holding any one of the following positions in the government of the city, whether by election or appointment: mayor, councilor; city clerk; auditor; city solicitor; school committee member; school superintendent; assistant superintendent and principals; chief of police; chief of fire department.

Section 23 also prohibits Councilors from holding a municipal position for a period of time after they are no longer on the Council. The logic of prohibiting a councilor from holding a created position after they leave office would seem to indicate the intent to bar such employment during any term or terms they serve. By extension, the ordinance serves the charter purposes as expressed in Section 23.

Further to that point, Section 23 also prohibits any Council member to have “the expenditure of any money appropriated by the city council”. “Have” in this context would be defined as having any monies appropriated for their own benefit.

For example, in 1963, a special act of the legislature was needed to permit a sitting City Councilor to accept municipal employment upon his resignation from the Council. This illustrates that the City of Holyoke has previously recognized the prohibitions of Section 23. See Acts of 1963 Ch. 600.

The clarification and interpretations of Section 23 charter provisions lies within the power of the Council. This 2-69 ordinance language extends the prohibition to all city employees regardless of department. This is regardless of state school receiverships, non-budgetary funding, funding sources, grant status or individual contracts.

In addition, the City Council alone, under Section 13 of the Charter, shall be the judge of the election and qualification of its members. Please observe that Section 9 of the Charter also references the election and qualification of Council members. This provision provides Council two-year terms beginning the “first Monday in January following their election and until their successors shall be elected AND qualified” (emphasis added).



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This specific charter language may be read to allow a holdover Council member to serve until a successor has been duly qualified by the new Council. This successor provision does seemingly conflict with other vacancy provisions contained in the Charter which allows Council members to elect someone to fill a vacancy. There is also a practical question concerning which at-large member would serve until their successor is qualified should a challenge to qualifications of an elected Council member occur.

Taken together, under the Charter and the Ethics ordinance, there would first need to be a formal challenge to the seating of a Council member. The Council would then need to decide how to proceed to hear the challenge.

Formal objection can be made prior to the beginning of the new municipal year on January 3, 2022. However, it is clear each new Council makes the determination on the qualifications of its members. Thus, the Council taking office in 2022 would decide the question of qualifications if it is raised.

Procedurally, for a Council determination to be triggered concerning qualification, some question concerning qualification must be raised. Absent an objection, all the elected Council members would take the oath on January 3, 2022. Any votes about the certification of a member or the filling of a Council vacancy requires a simple majority. While not explicit in the Charter, ordinances, or Council rules, a majority to elect or seat is consistent with the Council election for President and with several past elections to fill Council or School committee positions (joint meetings).

A thorough review of the election statutes and the charter indicates no role for the Clerk concerning the 2017 ethics ordinance as it relates to the enforcement of the city employment prohibition. To clarify, under both state law and the charter, the Clerk also has no role in deciding ballot access when candidates request and return nomination papers, nor is the Clerk required to investigate prior to allowing a city employee to be placed on the ballot as a candidate for the Council.

Under these circumstances, there is no role for the Clerk other than the normal state required certification of election to be provided to each successful candidate. Any challenge to the seating of a member so certified by the Clerk should be made prior to the initial Council organizational meeting on January 3, 2022.



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The conflict under the ethics ordinance solely pertains to city employees not being eligible to serve on the Council while they are still employees. This specific provision only applies to eligibility for serving on the Council and would not prohibit serving in other elected positions. Note there is no conflict until the employee begins or seeks to begin service as a member.

Under a combined reading of the city charter while applying the 2017 ethics ordinance, any conflict or challenge over compliance with the “no other city job” ordinance would need to be decided by the Council (absent the contested seat or seats). The challenge may come from the public or a member of the Council but must be raised as a point of order by any member. Since the Charter requires the Council to first elect a President, such a point may be made after that election.

The Council under the Holyoke charter is the sole decider of the eligibility of its members. This provision provides the Council with the ultimate municipal authority concerning the seating of a member when there is a challenge. The decision and the ordinance itself are subject to judicial review.

Respectfully,



Michael A. Bissonnette  
Associate City Solicitor



Lisa A. Ball  
Acting City Solicitor