



Mayor Terence Murphy

City of Holyoke

Law Department

October 15, 2021

LATE COMMUNICATION

Holyoke City Council

536 Dwight Street

Holyoke, MA 01040

RE: Opinion on Procedure to Change Charter – Council Approval on Appointments

Dear Councilors:

On September 30, 2021, the Holyoke Charter and Rules Committee requested an opinion as to which method must be used to amend the Holyoke City Charter to require mayoral appointments be approved by the City Council. Put another way, must such amendment be placed on a city ballot so that voters can vote on this issue. The quick answer is in the negative if the City Council uses the Special Act legislation method as set forth in the Massachusetts Constitution, Articles of Amendment, Article II, Section 8.

Currently, Section 26 of the Holyoke City Charter states in relevant part that:

“The mayor shall have the sole power of appointment to all the municipal offices established by or under this act, unless herein otherwise provided, ***.”

I note that there are some provisions within Section 34 of the City Charter which currently requires city council approval of mayoral appointments. For example, the Mayor appoints a City Solicitor and a 7-member Conservation Commission both of which require City Council approval. Having said this, Section 34 also provides that the Mayor shall appoint the following without City Council approval:

- 1) Board of Public Works [three (3) member board],
- 2) Three Fire Commissioners,
- 3) City Marshal,
- 4) Board of Health [three (3) member board],
- 5) City Engineer; and
- 6) General Superintendent of Public Works.

Please know that Section 19 of the City Charter is consistent with Section 34 in that the power to appoint the three (3) members of the Fire Commission rests exclusively with the Mayor. Also, Section 19 provides that the power to appoint all officers and members of the Fire Department rests exclusively with the Fire Commission.



Additionally, in 1947, the charter was changed by special act to rename the City Marshal and Assistant City Marshal to Chief of Police and Deputy Chief of Police. Please also know that Section 21 of the City Charter is consistent with Section 34 in that the power to appoint a Police Chief (f/k/a City Marshall) rests exclusively with the Mayor. Also, Section 21 provides that the power to appoint subordinate officers and members of the police force rests exclusively with the Mayor.

If the City Council wishes to amend Sections 19, 21, 26 and 34 to require city council approval over all mayoral appointments be approved by the City Council, there are two methods that may be used to amend a city charter. One method is known as the Home Rule Amendment method as set forth in the Massachusetts Constitution, Articles of Amendment, Article II, Section 4 and Massachusetts General Law, Chapter 43B, Section 10.

Section 4 grants city councils the power to amend city charters by a two-thirds (2/3) vote, provided that,

- (1) such amendments must be made with the concurrence of the Mayor,
- (2) such an amendment may not involve the composition, mode or appointment, or terms of office of the city council, or the Mayor, and
- (3) All proposed charter amendments must be voted upon by the voters of the city.

The second method is known as Special Act Legislation.¹ Such a method requires that:

- (1) both the Mayor and local legislative body, i.e., the City Council, approves of such and act, and
- (2) the Massachusetts Legislature approves of such an act.

Once the City Council approves of the charter changes being sought, a member of the Massachusetts Legislature will file a bill for approval. The bill will be assigned to committee and the committee will conduct a public hearing. If both houses pass the bill, the Governor must also approve of law.

The use of this method does not require voters of the city to approve the Special Act legislation. The Massachusetts Constitution, Articles of Amendment, Article II, Section 8 grants the General Court to enable special act legislation on a petition by the Mayor and City Council of a city. In the matter of Newell v. Rent Board of City of Peabody, 378 Mass. 443 (1979), the Massachusetts Supreme Judicial Court ruled that voter approval is



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not required for passing Special Act legislation. The Massachusetts Supreme Judicial Court explained that the City Council voted for special act legislation, even though they did not submit a petition, and the Legislature filed and passed a bill approving the legislation upon which the City Council voted and approved. In the matter of Board of Selectman of Braintree v. Town Clerk of Braintree, 370 Mass. 114 (1976), where the plaintiffs argued that the special act legislation method, as set forth in Section 8, used by the town council for the purposes of changing their town charter was unconstitutional and void because the town council did not follow the procedure used for charter amendment as set forth in Section 4 (which I have herein described), i.e. was not put on the ballot for a vote by the citizens of Braintree. The Massachusetts Supreme Judicial Court explained that Section 4 and Section 8 are distinct from each other. The court reasoned that there is nothing in either section evidencing that the Section 4 method of charter change limits or excepts the powers of the General Court to pass special act legislation which serve to amend charters. The Massachusetts Supreme Judicial Court in the matter of Belin v. Secretary of Commonwealth, 362 Mass. 530 (1972) made a decision using a similar analysis that the provisions set forth in Section 3 (adoption and revision of a charter must be submitted to the voters of a city or town) does not prevent the General Court, pursuant to Section 8, from passing special act legislation which could alter the method of electing city officers. I note that the court in the Braintree case referred to analysis made by the court in the Belin matter. I also note that Section 8 provides that "This section shall apply to every city and town whether or not it has adopted a charter in accordance with Section 3.

I hope that my opinion helps to clarify the procedures available to the City Council if you seek to amend the Holyoke City Charter.

Respectfully Submitted

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Assistant City Solicitor