



Mayor Joshua Garcia

City of Holyoke

Law Department

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Holyoke City Clerk's
Holyoke, MA

February 11, 2022

Holyoke City Council
536 Dwight Street
Holyoke, MA 01040

RE: Opinion use Special Act to Change Charter – Council Approval on Appointments

Dear Councilors:

During an Ordinance Committee held on Tuesday, January 25, 2022, a question was posed as to the status of a petition to change in the city's charter regarding City Council approval on Mayoral appointments. I was informed by the City Clerk that the City Council discussed this issue during its meeting held on October 19, 2021, and that the City Council voted to receive and accept my opinion.

My recollection is that I issued an opinion to the City Council as a Late Communication on October 15, 2021 (a copy of which I have attached), which set forth two methods for changing the city charter. One method is to place a question on the ballot, and the other is to utilize Special Act legislation. With respect to the latter, the city charter may be amended, in accordance with the provisions set forth in Articles of Amendment, Article II, Section 8 of the Massachusetts Constitution, which provides in relevant part,

“The general court shall have to power to act in relation to cities and towns***, ***, ***, and by special laws enacted (1) on a **petition filed or approved by** the voters of a city or town, or **the mayor and city council, ***.**” (“**emphasis added**”).

I recognize that I referred to the matter of Newell v Rent Board of City of Peabody, 378 Mass. 443 (1979) in my legal opinion, and that I stated “[T]he 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.” While the City Council in that case did not file a petition with the Legislature, they did approve a petition requesting the city's elected representatives in the Legislature to draft and file necessary legislation to permit the city to enact an ordinance controlling rents and evictions with respect to mobile homes. *Id.* at 446. In the matter of In re Opinion of Justices, 356 Mass. 775 (1969), the Massachusetts Supreme Judicial Court was presented with the same question as the court in the Newell matter, i.e. did the City Council comply with Articles of Amendment Article II, Section 8 when passing Special Act legislation. The court in Opinion of Justices, 356 Mass.775 (1969) cautioned that the use of an order,

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without an accompanying petition creates unnecessary ambiguity concerning compliance with Articles of Amendment Article II, Section 8. The court suggested that such ambiguity would be cured by the approval of a suitable petition containing the substance of the city council order. Id. at 789, 791.

With respect to the order approved by the Holyoke City Council, I reviewed video of the October 19, 2021 City Council meeting and there is some lack of clarity over what the City Council approved. For this reason, I advise that a petition be submitted to the Holyoke City Council containing the specific language as to how the City Council wishes to change the city charter.

Respectfully Submitted,

Kathleen E. Degnan
Assistant City Solicitor