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MEMORANDUM

May 28, 2021

TO: Charter Review Commission and County Council

FROM: Randall K. Gaylord, Prosecuting Attorney *RKG*
Amy S. Vira, Deputy Prosecuting Attorney *ASV*

RE: Term of Office & Submission of Proposed Amendments in Batches

A. INTRODUCTION

Proposed charter amendments offered by the Charter Review Commission are to be submitted to the County Council which then files or registers them with the County Auditor. We have been asked by the Charter Review Commission and the County Council to provide advice on whether proposed charter amendments can be presented to the County Council by the Charter Review Commission (CRC) in two (or more) batches.

B. ISSUE and SHORT ANSWER

Issue: Can the CRC propose some charter amendments to the County council in July 2021 to go on the November 2021 ballot and then continue working and propose additional amendments before the end of 2021 to go on the ballot on the November 2022 ballot?

Short Answer: Initially our office believed this was possible based on the language of Section 9.32 and a brief understanding of what has occurred in King County. However, after reviewing the substantial differences in the King County Charter and after considering Section 9.32 in context with Section 9.20 we believe the safest approach is to submit the propositions in one batch. Any other approach will jeopardize the lawfulness of the subsequent batch(s) of propositions.

C. BACKGROUND

There are three provisions of the Home Rule Charter that must be considered. One addresses the term of office of Charter Review Commission. Two address the procedures for submitting propositions to the County Council and to the County Auditor.

1. Relevant Charter Provisions

Section 9.20(1) – Election Procedures and Period of Office [of Charter Review Commission]

(e) The term of office shall be the shorter of one (1) year or when final recommendations are submitted to the Legislative Body [County Council] for referral to the voters.

Section 9.31 – Charter Amendment – Procedures

(1) Any proposed Charter amendment shall be filed and registered with the County Auditor and submitted to the voters at the next November general election occurring at least ninety (90) days after registration of the proposed amendment with the County Auditor.

Section 9.32 – Amendments by the Charter Review Commission

The CRC may propose amendments to the Charter by filing such proposed amendments with the County Council who shall submit the amendment to the voters at the next November general election at least ninety (90) days after the filing and registration of the amendments.

2. Legislative History Regarding Term of Charter Review Commission Members

The language regarding the term of Charter Review Commission was proposed for amendment by the Charter Review Commission in 2012. The minutes from the 2012 CRC shows the action taken was to provide that the term of office would be modified to when final recommendations are submitted to the county council and not upon later “dissolution of the CRC”:

Moved by Bill Appel, seconded by Richard Ward, that 9.20(1)(e) read “**The term of office shall be shorter of one year, or when final recommendations are submitted to the County Council.** Discussion took place. **Moana Murphy offered an amendment to add, “or upon dissolution of the CRC.”** Discussion took place and it was noted that final recommendation could be to make no changes. **Motion carried with 16 in favor, and 2 opposed.**

(Emphasis in original).

3. Other County Charters

A charter is governed by the particular words used within it. In addressing this issue, we looked to other charters for similar language. Whatcom County, upon whose charter the San Juan County Charter was based, does not contain the portion of subsection (e) which makes the term shortened when final recommendations are submitted to the County Council. Hence, charter review commissioners in Whatcom County have a one-year term.

King County’s Charter also does not contain similar language. Rather, in King County the CRC submits its recommendations to the King County Council which “*may* propose amendments to this charter by enacting an ordinance to submit a proposed amendment to the voters of the county at the next general election...” Section 800, King County Charter, (emphasis added). Because in King County the council has discretion to put the proposals on the ballot or not, the council also has discretion to put some on the ballot in one year and some the following year, which has been the practice there. This is not analogous to the San Juan County Charter, and the King County Charter should not be used as an example.

D. DISCUSSION

The concern from a legal standpoint is that the term of office of the Charter Review Commissioners is linked to the submittal of final recommendations. The second portion of subsection 9.20 (e) provides that the CRC term expires “when final recommendations are submitted to the Legislative Body for referral to the voters.”

The term of office must end at the end of the calendar year regardless of whether recommendations are made to the Legislative Body. It is also clear that the CRC can continue to work throughout the calendar year and make their recommendations to the legislative body at any time during the year. However, once “final recommendations” are made, the second portion of subsection (e) is triggered and the term of office ends.

In 2012 that Charter Review Commission submitted all their propositions in one batch, so past practice does not support submitting multiple batches.

In analyzing such issues, we look to principles of statutory construction, English grammar and common sense. *Kahler v. Kernes*, 42 Wn. App. 303, 306, 711 P.2d 1043 (1985). “‘The primary goal of statutory construction is to carry out legislative intent.’ As a general principle of statutory construction, words in a statute are given their plain and ordinary meaning unless a contrary intent is evidenced in the statute. Statutes are construed as a whole, giving effect to all the language used. A dictionary may be used to give meaning to an undefined term in a statute. Related statutory provisions are interpreted in relation to each other and all provisions harmonized.” § 1:3.Statutes—Interpretation, 16 Wash. Prac., Tort Law And Practice § 1:3 (5th ed.). We interpret a statute to give effect to all language, so as to render no portion meaningless or superfluous. *State v. Ervin*, 169 Wn.2d 815, 823, 239 P.3d 354 (2010).

When read as a whole, sections 9.31 and 9.32 present a system under which proposed amendments are presented to the county council who must put these amendments on the next November election that occurs more than 90 days later. Council does this by filing and registering these amendments with the County Auditor who submits them to the voters. There is no discretion given to either the County Council or the County Auditor to change the propositions, recommendations or amendments, although the Council may submit alternatives.

The CRC may submit proposed amendments to the County Council in draft form before they are “final.” Indeed that is anticipated to occur on June 8, 2021. But once proposed amendments are

submitted to the County Council for referral to the voters, each amendment is in “final” form triggering the duty of the council to submit them to the voters.

By operation of Section 9.20, the submission of the “final recommendations ... for referral by the voters” is the same event that triggers the expiration of the term of office of the Charter Review Commission. That means after “final recommendations” are submitted, the Charter Review Commission will not be authorized to re-convene and submit another batch of amendments.

The duty of the County Council to file and register amendment with the County Auditor in section 9.31 refers to “any proposed charter amendments”. Because “any” is used here but not in Section 9.20, it supports the interpretation that the omission in 9.20 was intentional, and it would be improper to interpret Section 9.20 as if the word “any” or “all” were mistakenly omitted. This is further supported by the minutes from the former CRC which demonstrate that the commission considered adding a third method of terminating the CRC through voluntary “dissolution” at some later date. Dissolution later would arguably have allowed the submission of a second batch of amendments for referral to the voters. This approach was specifically rejected in favor of the automatic dissolution occurring upon submission of the final recommendations for referral to the voters.

Courts are very reluctant to insert words where they have been omitted. We think that a court would be very reluctant to insert the word “all” in Section 9.20 to modify the words “final recommendations” to allow submissions in batches. Additionally, that reading would render the automatic termination provisions of Section 9.20 meaningless because so long as a majority of the CRC has not resigned their positions, it is always possible (up until the one year mark) that additional final recommendations might be presented to council. Under that reading of the charter the CRC term would end only at the end of the calendar year, or upon resignation of a majority of members. Interpretations that render language superfluous are disfavored.

E. RECOMMENDATION

The idea of submitting propositions in two batches is based upon knowledge of what happened in King County with very different charter provisions. The language of the San Juan County Home Rule Charter does not provide for submission of amendments in batches.

There is high risk if the second batch were challenged and a court agreed that the CRC commissioner’s term of office expired before the second batch was submitted to the County Council. That outcome would cause the entire second batch to be void and rejected even if the measures were approved at the ballot.

Accordingly, we recommend a conservative reading of the language such that the CRC follow the past practice to submit ONE SET of recommendations to the County Council for referral to the voters and upon that submission the term of office of the CRC Commissioners will expire.