A & D for 4/4/18 agenda

From: Tassinari, Michelle (SEC) <michelle.tassinari@state.ma.us>
Sent: Friday, March 16, 2018 7:31 PM
To: Robert Troy <rst@troywallassociates.com>
Subject: RE: Proposed Ordinance for Barnstable County

Good Afternoon Bob-

I have some concerns with the proposed language which would amend the Barnstable County Charter to establish a recall procedure for Barnstable County.

The first issue is with who the recall provisions would apply to. Under Section 7-6(a), any elected officeholder serving all of Barnstable County is subject to the recall, which would include elected officials whose positions are established under the General Laws and not the county charter. For example, each county in Massachusetts elects a Clerk of Courts, Register of Probate and Sheriff. I would suggest that the Barnstable County Charter cannot provide a recall process for these officers, who are elected under the General Laws for each county. Barnstable County cannot be the only county to have the ability to recall such officials. It would seem that the recall should be limited to those officials elected under the existing Charter. I note that Sheriff is referenced in the charter, but simply restates that such sheriff is elected under the General Laws.

The next issue I see is with the procedures themselves. Under section 7-6(c), after the affidavit is submitted to the county clerk, the county clerk must submit to the registrars of voters in each town. However, the affidavit is not required to have voters from each town sign on separate affidavits. Accordingly, it is unclear how to proceed if the affidavits if they contain more than one registered voter from different towns. Additionally, there may be records management issue in transmitting original affidavits. What if they get lost either in the mail or at the clerk office? A solution could be to require the petitioners to submit certificates of voter registration with their affidavit. This process is used for petitioners seeking to create a political designation or filing an initiative petition, so the clerks are already familiar with completing such forms. It also will save time all around since the proposed ordinance doesn't have any information about what happens if is determined that the affidavit, after certification by the clerks, is not signed by a sufficient number of voters. Can they just add more affidavits or do they have to start the whole process over with a new affidavit? If the petitioners have to get the voter registration certificates and submit as part of the filing, they would know they had enough before hand, thereby eliminated that hurdle.

Under 7-6(d), I would be careful with using "working days" for the return of the petitions to the town clerks. If I recall correctly, there may be some towns in Barnstable county that do not have business hours on Fridays. How would that affect this timing? It seems like it may create different deadlines for some municipalities. I would also clarify using

residential addresses" and instead refer to the address at which they are registered to vote since I know that some municipalities have some non-conventional references to their street addresses.

Under 7-6(e), there are deadlines for certification of names on the papers. However, the deadlines appear to run from the date the petition is filed and not necessarily by a deadline set by the recall provision. In (d), it states that the petitions need not be submitted at the same time. But under (e), the clerk must submit the petition to the registrars within 1 day of receipt and the registrars must certify within 14 working days. This also raises the issue of what to do if the petition is received on a Friday—does the clerk have to submit to the registrars by Saturday? This is mostly a non-issue since the registrars generally operate out of the clerk's office, but does seem to raise the issue of varying use of just "days" versus "business days" within the proposal generally.

Under 7-6(f), the Registrars are the ones to send the certified petitions to the County Clerk. It seems to make more sense to require the petitioners to pick up their certified petitions from the town clerks and file them with the County Clerk. This is the process already in place for state nomination papers and eliminates an additional responsibility (and potential liability if the papers get lost in the mail or they forget to send them in the time allowed) being placed on the town clerks.

Under 7-6(g), it sets the timing for having a special election for the recall question. However, it does not appear to have sufficient timing or procedural considerations. Under the proposed ordinance, the election is to be held between 60 and 90 days. I believe that timing is deficient. While (h) references the nomination process set forth in the General Laws relative to elections, the county officers elected under the charter are set forth in the charter and not the General Laws. Under the current charter, Assemble Delegates and Commissioners are elected at the state election ballot in accordance with section 8-3 of the charter. Accordingly, any election that would have such candidates appear would need to conform to the timing. However, the bigger issue is that it is unclear who is conducting the recall election. Is it a county election? Under (g), it appears as if it's a town election since there is a reference to the Board of Selectmen although this may be a typo when adapting a town recall provision to apply to the county. In either scenario, the proposal needs additional clarification as to the roles and responsibilities for this election. Who pays for it? Who prints the ballots? How do candidates qualify to appear? This is critical to clarify since currently this Office prepares the nomination papers and prints the candidates on the state election ballots, but would not perform these functions for a recall election.

Regional school districts currently have the ability to conduct district elections, but the district is responsible for the costs. You could look at the language in chapter 71, section 16(N), which does specify who prints ballots and picks up the cost: the district. https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter71/Section16

Another issue is in 7-6(k), which prohibits a person who has been recalled from being appointed to any county office for 2 years. I would recommend adding clarification that this applies only to appointment to any Barnstable county office.

I hope this is helpful and please let me know if you have any further questions.

Michelle K. Tassinari
Director and Legal Counsel, Elections Division
Office of the Secretary of the Commonwealth
One Ashburton Place, Room 1705
Boston, MA 02108
617-727-2828