

No. 08-01

Before the,

CHARLESTOWN TOWN COUNCIL

**Special Hearing Regarding
Planning Commission**

**CHARLESTOWN
SOLICITOR'S ADVISORY OPINION**

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MATTER PRESENTED FOR REVIEW

This matter comes before the Charlestown Town Council as a result of a legal inquiry from the currently constituted Charlestown Charter Review Committee (hereinafter “the Commission”). The question posed arises from a legal memorandum authored by one of the Commission’s members who in the context of considering a citizen’s unrelated proposal for a change in the Charter, gave reasons to question whether the electing of the planning commission in Charlestown went beyond the R.I.G.L. 45-22-1 et. al. which provides the enabling legislation for municipal planning boards and commissions.

The dilemma we are currently faced with simply put is, “does the state enabling legislation for planning boards and commissions allow the Charlestown planning commission to be elected versus appointment by the Town Council?” This dilemma not only requires an analysis of this question under the statutory interpretation case law, but a careful and thorough review of the enabling statute, the Rhode Island Constitution, the Charlestown Town Charter, and the pertinent case law.

I

RHODE ISLAND CONSTITUTION

Think of your everyday life. When an issue confronts us that we cannot answer ourselves, often times we look to individuals in authoritative positions, whether they be a family member, a boss, or some type of clergy, for guidance. In the law, the same principle applies. The highest authority that one can turn to when confronted with a legal issue is the state Constitution. Article XIII § 5 of the Rhode Island Constitution states that, “ It is the intent of this article to grant and confirm to the people of every city and town in this state the right of self government in all local matters.” While the law in all its forms is subject to numerous interpretations, the most reasonable interpretation of this provision is that all legislation governing cities and towns, including R.I.G.L. 45-22-1 and 45-22-2, is intended to support the right of self government. Clearly this provision provides for the election of planning board members in Charlestown, if that is what Charlestown has determined to be the best for its citizens. Surely it can do nothing but ease the concerns of individuals to know that the Constitution, the highest authority in the state, approves the election of members.

II

RHODE ISLAND GENERAL LAWS

The relevant statutory provisions are § 45-22-1, 45-22-2, and 45-22-7. Taken together, these statutes mirror the intent of the Constitution. That intent is to extend power to cities and towns to create a planning board as they see fit as long as they establish a planning board that is independent of the town council. Undoubtedly, the focus of these provisions is the importance of establishing an independent planning

board, not the procedure, appointment or election, by which it is implemented. Though the word “election” is not used as a means of establishing a planning board in § 45-22-2, the word “appointment” is intended only to be a guide as to how to establish a planning board, it is not by any means dispositive. When the Legislature intends to convey a specific intent, that is, state that something is dispositive, it uses words like “shall,” “must,” and “are to be.” For example, § 45-22-1 states, “all cities and towns shall establish a planning board.” The statute goes on to state that “...any city or town operating under a Home Rule Charter which provides for the establishment of a planning board may continue under the provisions of the charter, except that provisions... governing the formulation and adoption of a comprehensive plan and the duties of a planning board or commission, apply to all cities and towns.” The interpretation of this provision is simple; the Legislature’s sole concern is that towns establish a planning board and a comprehensive plan that meet the statutory requirements. Under no circumstances is the Legislature bothered by or worried about the town’s method of establishment.

III

CHARTER

Article IV § C-9 of the Charter addresses the issue of conflicts between town and state law. The provision states that, “in the event of conflict...provisions of the town ordinance or resolution shall prevail.” Obviously this is dependent upon the Charter being

consistent with the Constitution and the intent of the General Assembly, but as was previously discussed, the Constitution clearly supports the election of members.

IV

CASE LAW

In Chambers v. Ormiston the Court announced that “the plain statutory language is the best indicator of legislative intent.” 935 A.2d 956 (2007). The Court went on to say that “what is crucial...is to determine the ordinary meaning as of the time of enactment.” Id. It is undisputed that R.I.G.L. § 45-22-2 uses the word “appointed.” However, at the time of enactment, it was a general practice that most, if not all, towns and cities appointed their planning board members. Clearly, it did not make sense for the Legislature to refer to a manner of establishment, election, when no city or town was using it. This does not mean that election of members was or is forbidden, but merely that the Legislature did not find it necessary to address this form of establishment when no one was using it. Perhaps Justice Holmes said it best in Towne v. Eisner when he stated that, “A word is not a crystal, transparent and unchanged, it is the skin of living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.” 245 U.S. 418. Furthermore, the “plain and ordinary” meaning of § 45-22-2 is that planning boards “are appointed,” not planning boards “are to be appointed.” If the Legislature intended appointment as the sole means of establishment, certainly the words would have been more definitive.

In Stebbins v. Wells, the Court said that absence indicates omission. 766 A.2d 369 (2001). While some may argue that the omission of the word “elected” infers the Legislature’s intent to disallow election of board members, this is simply not so. Merriam Webster’s dictionary defines “omission” as something neglected or left undone. It is reasonable to conclude that the Legislature neglected to include the word “elected” because at the time of enactment, no town was electing board members, not because it was limiting the manner of establishment solely to appointment.

Munroe v. Town of East Greenwich is an interesting case indeed. 733 A.2d 703 (1999). Although it is proffered that this case is decisive of the issue currently facing Charlestown, this assertion is in error. In Munroe, the trial court determined that the town had “usurped” the decision making authority that the Development Review Act delegated to the town’s planning board. Id. In addition, the Court concluded that the Development Review Act required the city or town councils throughout the state to “empower, by ordinance, the planning board to control land development and subdivision projects.” Id. The Legislature was explicit in Munroe. The statute provides that a zoning ordinance....shall require that any land development project be referred to the city or town planning board ...” There is no similarly explicit language in the statutes relevant to the manner by which the establishment of the Planning Board is executed. Simply put, what was at issue in Munroe was the requirement to have an independent planning board. How that independent planning board was established was immaterial.

CONCLUSION

Having reviewed the Rhode Island Constitution, the relevant Rhode Island General Laws, the Charlestown Town Charter and the pertinent case law, we must now turn to the history of this Article IV §C-9 of the Charter and how it came to be. President Abraham Lincoln once said of a fellow lawyer “he can compress the most words into the smallest ideas of any man I ever met.” So as not to offend President Lincoln’s sentiments, I will be brief.

Having spoken to several Charlestown Town fathers over the last several weeks as to why the original authors of the Charter sought to have the Planning Commission elected, I received much insight into why Charlestown chose election by the people versus appointment by the council as a selection method for the Charter Commission. It seems that the Citizens had grave concerns about a proposed nuclear power plant whose construction was being proposed back in the late 1970’s. Not surprisingly given my tenure as the Town solicitor, there was great mistrust of government when it came to matters relating to the protection of Charlestown’s natural resources and way of life. Since the legislature had recently mandated that municipalities create planning commissions to deal with such land use matters, the original Charter Review Commission thought that electing a planning commission would give a greater, more effective voice to the citizenry. Thus, Article IV §C-9 of the original Town Charter was born. Over the years there has been much disagreement over the actions and motives of such a powerful and independent entity. Some believe that there has been an abuse of power while others believe that the Commission has acted in the best interest of the entire Town.

Thus, having reviewed this question from every relevant perspective, I have come to the unmistakable conclusion that the current practice of electing planning commission members is not in violation of Rhode Island law. On the contrary, election of members is permitted by the Rhode Island Constitution, the Rhode Island General Laws and case law. The plain and ordinary meaning of the state planning enabling legislature is that planning boards and Town comprehensive plans are to be established. In no way and at no time did the Rhode Island Legislature purport to prescribe a defined method of establishment. The Charlestown Town Charter is consistent with the intent of the Legislature in that it has provided for the establishment of a planning commission and the creation of a comprehensive plan for land use and has left the appointment method to the municipalities.

Therefore, it is my recommendation to the Charlestown Town Council that no further legal action is necessary to interpret this question. As for this solicitor, in light of the controversy surrounding this question and the recommendations that I would make to this Council, I want you to know that I am not unaware that some will be happy and some will be upset with my conclusions. However, John F. Kennedy once wrote courage is “doing what a man rightfully should do despite personal consequences.” So, to the members of the Charlestown Town Council, my advice is to continue the practice of allowing the citizens of Charlestown to vote for their Planning Commission members because, it is the right thing to do.

Respectfully Submitted,

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