



THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION

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June 15, 2023

Select Board Members
Town of Maynard
195 Main Street
Maynard, MA 01754

**RE: Maynard Annual Town Meeting of May 15, 2023 - Case # 10954
Warrant Articles # 9, 10, 11, 12, 13, 14, 15, 16, and 17 (Charter Amendments)**

Dear Select Board Members:

Pursuant to the provisions of General Laws Chapter 43B, Section 10 this Office has reviewed the proposed charter amendment votes taken under Articles 9, 10, 11, 12, 13, 14, 15, 16, and 17 at the Maynard May 15, 2023 Annual Town Meeting. Chapter 43B, Section 10 (c) requires the Attorney General to furnish "a written opinion setting forth any conflict between the proposed amendments and the constitution and laws of the commonwealth."

Except for certain text in Article 10 (as explained below) we do not find any conflict between the charter amendment votes adopted under Articles 9 through 17 and the Constitution or laws of the Commonwealth ("state law"). Our review is confined to the proposed charter amendments reflected in these Articles and submitted to us for review and does not include a review of the existing text in the Town's charter.

We recommend that the Town consult with Town Counsel to ensure compliance with the charter filing requirements of G.L. c. 43B, § 12, which states in relevant part:

Section 12. Certificates in quadruplicate shall be prepared setting forth any charter that has been adopted or revised and any charter amendments approved and shall be signed by the city or town clerk. One such certificate shall be deposited in the office of the state secretary and shall be kept under the custody of the archivist of the commonwealth, one shall be deposited in the office of the director of housing and community development, one shall be deposited in the office of the attorney general and the other shall be recorded in the records of the city or town and deposited in its archives.

Article 10 - Under Article 10 the Town voted to amend Section 2-8 (c) (3) (iii) to require citizen petition warrant articles to be reviewed by Town Counsel and any proposed article that is

“deemed illegal” will be “disqualified” from inclusion in the Town Meeting warrant. We determine that certain proposed text in Section 2-8 (c) (3) (iii), shown below in bold and underline, conflicts with G.L. c. 39, § 10 that requires citizen petition warrant articles to be placed on a Town Meeting warrant if the statutory requirements are met.

We summarize the proposed charter amendments; explain the Attorney General’s standard of review and the charter amendment process; and then explain why, based on that standard of review, we determine that a portion of the charter amendments voted under Article 10 conflicts with state law.

I. Attorney General’s Standard of Review of Charter Amendments

Pursuant to G.L. c. 43B, § 10 (c) the Attorney General must provide a written opinion to the Town regarding whether the proposed charter amendment conflicts with the Constitution or laws of the Commonwealth. If the Attorney General determines that no such conflict exists, the proposed charter amendment may then be placed on the ballot for vote by the voters of the Town.¹ If the Attorney General determines that there is a conflict between the charter amendment and the Constitution or laws of the Commonwealth, then the charter amendment cannot move forward to a ballot vote as originally drafted, but the Town may cure any deficiencies by revising the text and starting the charter amendment process again by following the steps outlined in G.L. c. 43B, § 10 (a).²

In our review of the proposed charter amendment, we are guided by the same principles that govern our review of proposed by-law amendments. The Attorney General’s limited standard of review requires her to review proposed charter amendments solely for their conflict with state law, regardless of any policy views she may have on the subject matter or the overall wisdom of the charter amendments. See Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986) (analyzing Attorney General’s by-law review role). The state constitution’s Home Rule Amendment, as ratified by the voters themselves in 1966, and the Home Rule Procedures Act (G.L. c. 43B) both confer broad powers on cities and towns to adopt and amend charters to establish municipal government as they see fit. “By the Legislature’s delegation to municipalities through G.L. c. 43B of greater power in managing their affairs, municipalities [can], within certain broad limitations, choose for themselves the forms of local government they f[ind] best suited to their own needs...” Town Council of Agawam v. Town Manager of Agawam, 20 Mass. App. Ct. 100, 103 (1985) (citing Opinion of the Justices, 368 Mass. 849, 855 (1975)).

¹ G.L. c. 43B, § 11 (“A proposed charter amendment shall be similarly submitted to the voters at the first such election or meeting held at least two months after the order proposing such charter amendment becomes effective under section ten.”)

² G.L. c. 43B, § 10 (c) (“If the attorney general reports that the proposed amendment conflicts with the constitution or laws of the commonwealth, the order proposing such amendment shall not take effect except as may be specified by further proceedings of the mayor and city council or town meeting under subsection (a)”).

II. Summary of the Proposed Charter Amendment

Under Article 10 the Town voted to amend certain sections in Article 2, “Legislative Branch.” One change amends Section 2-8 (c) “Requirements for Inclusion on Warrant” to now require citizen petition warrant articles to be reviewed by Town Counsel and if Town Counsel deems a citizen petition warrant article to be “illegal” it will be “disqualified” from inclusion in the town meeting warrant.

The existing text of Section 2-8 (c) (3) (iii) required all proposed warrant articles, except for citizen petition articles, to be reviewed by Town Counsel and any proposed articles deemed illegal by Town Counsel would be disqualified from being included on the town meeting warrant as follows:

(3) The select board shall disqualify proposed warrant articles only if they fail to meet any of the following criteria.

* * *

With the exception of citizen petitions, all proposed warrant articles shall be subject to review by town counsel. Any proposed article deemed to be illegal by town counsel shall be disqualified by the select board.

Article 10 seeks to amend Section 2-8 (c) (3) (iii) as follows:

(3) The select board shall disqualify proposed warrant articles only if they fail to meet any of the following criteria.

* * *

(iii) *Town Administration and Citizen Petitions*: ~~With the exception of citizen petitions~~, all proposed warrant articles shall be subject to review by town counsel. Any proposed article deemed to be illegal by town counsel shall be disqualified by the select board.

We disapprove the text in Section 2-8 (c) (3) (iii) “and Citizen Petitions” because this text conflicts with G.L. c. 39, § 10. The disapproved text is shown in bold and underlined below:

(3) The select board shall disqualify proposed warrant articles only if they fail to meet any of the following criteria.

* * *

(iii) Town Administration **and Citizen Petitions**: all proposed warrant articles shall be subject to review by town counsel. Any proposed article deemed to be illegal by town counsel shall be disqualified by the select board.

III. Because G.L. c. 39, § 10 requires the Selectboard to Include Qualifying Citizen Petition Warrant Articles on the Warrant the Disapproved Text in Section 2-8 (c) (3) Conflicts with State Law

General Laws Chapter 39, Section 10 grants to citizens the right to have an article inserted on the Town Meeting warrant once certain statutory requirements are met:

The selectmen shall insert in the warrant for the annual meeting all subjects the insertion of which shall be requested of them in writing by ten or more registered voters of the town and in the warrant for every special town meeting all subjects the insertion of which shall be requested of them in writing by one hundred registered voters or by ten per cent of the total number of registered voters of the town whichever number is the lesser. . . No action shall be valid unless the subject matter thereof is contained in the warrant. . . .

Section 10 requires the board of selectmen to include in an Annual or Special Town Meeting warrant any “subject . . . requested of them” by the required number of registered voters irrespective of the subject matter or content of the article. Crowell v. Attorney General, 3 Mass.App.Ct. 700, 701 (1975) (determining a zoning by-law amendment was valid because G.L. c. 39, § 10 authorizes the board of selectmen to call special town meetings and insert articles on the warrant under their own initiative.) If the citizen petition warrant article meets the statutory requirements in Section 10, the statute requires that it be included in the town meeting warrant. Id. at 701.

Towns do have limited authority to reject and keep off the warrant a citizen petition warrant article that has “no legal force or effect.” See Valdario v. Town of Winchester, 64 Mass.App.Ct. 1106, * 2 (2005) (unpub.) (upholding selectmen’s decision rejecting a citizen petition warrant article asking the town to accept a gift because town meeting did not have the legal right to vote on the article.). However, the proposed text in Section 2-8 (c) (3) (iii) does not mirror the language used by the Valdario court and, given the strong statutory language in G.L. c. 39, § 10 recognizing the right of citizens to petition town meeting, we cannot determine that Valdario supports the proposed charter text here.³

In Valdario, the board of selectmen refused to insert on the warrant a citizen petition warrant article to require town meeting to accept a gift. The selectmen rejected the warrant article because the gift had already been accepted by the selectmen and because town meeting did not have authority to accept gifts. Id. at *1. In upholding the lower court’s dismissal of the plaintiff’s case on mootness grounds, the court reasoned that because the selectboard alone had the authority to accept the gift (and had already done so before town meeting occurred), and because town meeting has no authority to accept a gift on the town’s behalf, G.L. c. 39, § 10 did not require the selectmen to include the article on the warrant because “town meeting’s vote . . . would have been without legal force or effect.” Id. at * 1.

³ We appreciate the input from town counsel arguing in support of the proposed charter amendment.

Here, the proposed charter amendment does not define the term “illegal” in reference to a citizen petition warrant article that could be rejected. As proposed, the text could potentially include warrant articles that have “legal force or effect” but are deficient in some other respect. For these reasons, the proposed charter text conflicts with G.L. c. 39, § 10 and exceeds those instances allowed under Valdario, and we disapprove and delete the amendment to Section 2-8 (c) (3) (iii) as shown in bold and underline above (“and Citizen Petitions”).

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