

Charter Review Commission

Minutes

C. Vernon Gray Room

October 22, 2019

Charter Review Commission Members Present: Judith Center, Tahira Mussarat Hussain, Deeba Jafri, Elgin Klugh, Stu Kohn, Fred Leong, Paul Skalny, Yolanda Sonnier, Chairperson, Carolan Stansky, and James Walsh

Charter Review Commission Members on Teleconference: James Howard, Margaret Ann Nolan, and Dawn Popp

Staff Present: Lynne Rosen, Legislative Analyst, and John Gwynn, Assistant County Solicitor

Ms. Sonnier opened the meeting at 8:38 a.m.

Ms. Sonnier introduced Mr. Butler, who is attending the meeting today to listen. He is welcome to attend the public hearing on October 24, 2019. Mr. Butler will be able to participate at the November 6, 2019 Commission meeting as a confirmed member of the Commission.

The Commission members approved as revised the minutes of the October 8, 2019 Commission meeting with the change suggested by Ms. Sonnier to add “Per Delegate Terrasa,” at the beginning of the following sentence on page 4: “Montgomery and Anne Arundel county councils may have their own attorneys.”.

Mr. Kohn abstained from the vote to approve the minutes.

The October 8, 2019 minutes reflect that the Commission scheduled a meeting on December 10, 2019. Due to learning after the October 8, 2019 meeting that the Vernon C. Gray Conference Room is unavailable that day, the meeting was rescheduled to December 5, 2019. Ms. Sonnier polled the members to see if there would be enough members present for a quorum of members on December 5, 2019. There should be enough members for a quorum on December 5, 2019.

The Commission members discussed the structure of Sections 701 and 702, and if the two sections should be merged.

Mr. Kohn discussed merging the two sections.

Mr. Leong discussed that he has no problem with the current structure of the two sections.

Mr. Kohn requested information regarding who are the members of the Personnel Board under Section 703.

Ms. Stansky discussed if a member of the Administration should be present at the next Commission meeting to answer questions about the Merit System.

Ms. Sonnier discussed continuing the review of Article VII. If there are questions for the Administration, someone from the Administration can be requested to attend the next meeting.

Ms. Stansky discussed that part of the review of the Charter is how does the Charter work in practice.

Ms. Sonnier discussed that the Commission could make recommendations in other categories, in addition to recommendations for specific changes to the Charter.

Mr. Skalny discussed that the members have gotten bogged down with things that are ancillary to the Charter and outside the scope of authority of the Commission. The Commission recommendations must go to the Council, and only a few will probably go to the voters. He discussed the possibility of making a recommendation for changing the process of reviewing the Charter in the future.

Mr. Walsh discussed that the 2011 Charter Review Commission identified five areas for Charter revision. He discussed that the Council believed there was no way voters would pay attention to more than four at a time. The top four areas were on the ballot in 2012, and the fifth area was on the ballot in 2014.

Mr. Leong discussed that changes to the Charter will need to be approved by the voters. A comprehensive rewrite of the Charter is beyond the scope of this Commission.

Ms. Center discussed if Mr. Gwynn could identify a more holistic approach that is available regarding a more comprehensive process to review the Charter.

Mr. Gwynn discussed that either the Council may propose an amendment to the Charter by a resolution of the Council or a petition by voters for an amendment to the Charter that would be submitted to the voters.

Mr. Skalny discussed if there was a more comprehensive method.

Ms. Nolan discussed that the Charter Review Commission is the process.

Mr. Skalny discussed that there are places that the Charter can be cleaned up but do not warrant being on the ballot.

The Commission members reviewed Section 704.

Ms. Nolan discussed proceeding through the section and requesting input from the Personnel Officer and the Personnel Board.

Mr. Walsh discussed a similar process for upcoming issues so that on the day of the meeting the Commission has received the requested input, for example, centralized purchasing.

Ms. Sonnier discussed that requests for any recommended changes can be made to the Purchasing Administrator and the Citizens Election Fund System.

The Commission members discussed the structure of Sections 703, 704, and 706.

Mr. Walsh discussed that the current structure makes sense. All the details cannot be in one huge section.

Ms. Nolan discussed that these changes fall in the category of nonsubstantive changes and could be in organizational recommendations.

Mr. Kohn discussed that there are five areas of appeal in Section 705(a). Section 709(d) has prohibitions against discrimination. He discussed if there should be a cross reference in Section 705 to Section 709.

Ms. Sonnier discussed that actions concerning discrimination will go to the Office of Human Rights. She further discussed that Councilmember Mercer Rigby suggested changes to Section 709(a).

Mr. Kohn requested clarification of the differences between Sections 705(a) and 709.

Mr. Howard discussed that Section 705(a) is a list of procedural actions, and Section 709 is a list of reasons those actions may have been taken.

Ms. Nolan discussed requesting the counsel to the Personnel Board to answer the questions of Commission members. She requested Mr. Gwynn to ask the counsel to the Personnel Board to attend a Commission meeting.

Ms. Sonnier discussed requesting the counsel to the Personnel Board and the Personnel Officer to attend the Commission meeting on November 6, 2019.

The Commission members discussed continuing their review of sections to generate questions that need to be answered by individuals in the County who have expertise.

Mr. Kohn discussed that the vote of four out of five members of the Personnel Board is required to hear appeals on the record from certain decisions.

Mr. Leong discussed that this is a requirement for a super majority of the members of the Personnel Board on more substantive issues.

Mr. Kohn discussed how to access the Classification Plan required under Section 706.

Mr. Walsh discussed that the requirement for a Classification Plan dates to 1968 when the Charter was adopted.

Ms. Stansky discussed the possibility of the Commission recommending that the County provide certain information that is not specified in the Charter.

Mr. Walsh discussed that the County Code may be the place to find information that is not in the Charter. He further discussed that certain provisions in the Charter are there because of State law requirements for the initial approval of the Charter, which is historical information, for example Section 706(a) and (b).

The Commission members further discussed how to access the Classification and Pay Plans.

Mr. Skalny discussed how to access to information is not in the Commission's purview. There should be a way for constituents to find information, which could be a global recommendation. This would not be a recommendation for changes to the Charter to go to the voters.

The Commission members had no comments on Section 707. Pay plan for exempt positions.

Mr. Kohn discussed what is the purpose of Section 708. Certification of pay.

Ms. Stansky discussed that Section 708 contains standard accounting procedures.

The Commission members discussed Section 709. Prohibitions.

Mr. Klugh discussed omissions in Section 709(a), for example, sexual orientation.

Ms. Sonnier discussed the recommendation of Councilmember Mercer Rigby to include in Section 709(a) anti-discrimination protections based on disability, color, national origin, age, occupation, marital status, sexual orientation, gender identity or expression, familial status, or personal appearance.

Mr. Leong discussed if there is anything in the recommendation of Councilmember Mercer Rigby that goes beyond the current protections in the County Code.

Mr. Gwynn discussed that County law can provide more protection than federal law.

Mr. Leong discussed that he would like whatever is put in the Charter to be consistent with the County Code.

Ms. Center discussed that the recommendations of Councilmember Mercer Rigby exceed the current protections in federal and State law.

Ms. Sonnier reviewed the discriminatory practices that are contrary to the public policy of Howard County that are in the County Code. She discussed that the recommendation of Councilmember Mercer Rigby does not include “source of income”, which is included in the Code.

The Commission members discussed whether it is appropriate to include occupation as a precluded discriminatory practice in the context of employment and hiring provisions.

Ms. Stansky discussed the Charter having broader categories, and the Code can be updated with specifics to stay current. She discussed that the Charter cannot have every detail.

Ms. Sonnier discussed that this area of the Charter is outdated.

Mr. Gwynn discussed that “occupation” is not the qualifications for a job. It is occupational status.

Ms. Nolan discussed that Section 709(a) concerns discrimination against someone because of their position in the County merit system. The Human Rights Commission has broader discrimination provisions.

Ms. Sonnier discussed that “source of income” in the County Code provisions includes where you get income from, whether public assistance or a job. “Source of income” does not fit into Section 709(a).

Mr. Kohn discussed that he would like to know how the prohibitions in Section 709 are enforced.

Mr. Gwynn discussed that Section 710 requires the Council to enact ordinances providing penalties for violations of Section 709.

The members had no comments on Sections 801, 802, and 803 regarding centralized purchasing.

Mr. Kohn asked why there is no mention of sole sourcing in Section 804. Competitive bidding.

Mr. Howard discussed that sole sourcing is conceptually a part of competitive bidding. It is necessary under certain circumstances, if there is only one provider after a competitive bid is put out.

Mr. Leong discussed the importance of the issue of competitive bidding. Is it appropriate for all these regulations to be developed at the administrative level?

Ms. Sager discussed Title 4, Subtitle 1 of the Code, the Purchasing Code of Howard County. There is also a purchasing manual.

Mr. Gwynn discussed that the purchasing manual is updated yearly.

Ms. Sonnier suggested the Commission members review Title 4, Subtitle 1 and bring up any issues at the next meeting.

Ms. Center discussed that Section 805 addresses the issue of not exceeding the budget for supplies, materials, or equipment. Are there provisions elsewhere to make sure that allocated funds are spent? She discussed her concern that allocated funding should not be willfully withheld.

Ms. Nolan discussed that after an Executive budget is passed, the Executive can choose not to expend the money. In individual cases, there could be an injunction to force the Governor or a County Executive to spend the money. There is potential for conflict with State law. There could be mandated funding at a certain level, for example, education. There is push back against these laws because they undermine Executive authority in the budget area.

Ms. Center discussed that some of the issues would arise under a federal model where the U.S. Congress has more authority to mandate funding. There is a different system at the local level. She is thinking of a situation of when funds are not expended because of a quid pro quo. There would be a remedy to get an injunction.

The Commission members had no comments on Section 808. Furthering legislation.

The Commission members discussed Section 901. Conflict of interest.

Ms. Stansky discussed the issue of campaign contributions after the *Citizens United v. Federal Election Commission* United States Supreme Court decision.

Mr. Howard discussed that he believes a campaign contribution does not fall under Section 901 because a contribution is to an entity, not to an individual, and the contribution is regulated under State law.

Mr. Skalny discussed the impact of Section 901 on individuals who are sole sourced or benefit from contracts with the County.

Mr. Gwynn discussed that a contract will usually have a provision that the parties to a contract have to abide with the County ethics law.

Ms. Nolan discussed that there are standard County contracts that have boilerplate language. The definition of "officer" or "employee" is broader than you might think. She discussed requesting a definition of these terms from the lawyer who advises the Howard County Ethics Commission.

Mr. Kohn discussed the use of the terms “officer” or “employee” in Section 901(b).

Mr. Skalny discussed that there are circumstances when an individual can own stock with a business that does business with the County, and this ownership does not create a conflict.

Ms. Nolan discussed the last paragraph of Section 901(b) that authorizes the County Council, by resolution, to authorize a County officer or employee to own stock, if on disclosure to the County Council, the Council determines the ownership does not violate the public interest. The Council may also delegate authority to the Ethics Commission to authorize the ownership. A party to a contract would disclose ownership of the stock. It a question for the Ethics Commission regarding how often this happens.

Ms. Sonnier requested Mr. Gwynn to request information from the Counsel to the Ethics Commission regarding the definition of “officer” and “employee” in Section 901, and how often the disclosure authorized under Section 901(b) occurs.

Ms. Stansky requested a definition of “full public disclosure” in Section 901(b). She discussed if all disclosures under federal, state, or county law should be required to be made in a timely manner.

The Commission members discussed ownership of stocks and mutual funds by government employees and requirements for disclosure.

Ms. Nolan discussed that the disclosure requirements are an issue for the County Code.

Mr. Howard discussed recent changes to the County financial disclosure statement.

Ms. Nolan discussed that the changes to the financial disclosure statement were in response to State law that required the revisions. She discussed that the changes made to the forms for members of boards and commission were made to make it less burdensome for those members.

Mr. Leong discussed Section 901(c) relating to penalties. He discussed that the penalties seem low, and the section is oddly constructed, but he does not see any reason to update it.

Ms. Stansky discussed the “forfeit his or her office” language. How is this enforced? What is the legal remedy if someone refuses to leave his or her office? Mr. Gwynn agreed to refer this question to the Counsel to the Ethics Commission.

Mr. Leong discussed if there is a need to change the penalties.

Mr. Walsh discussed that this language dates to 1968.

The Commission members had no comments on Section 902.

The Commission members discussed Section 903.

Mr. Leong discussed if members of boards and commissions are not covered by any conflict of interest provisions. He discussed that it appears that the Charter has the Council make the determination if the boards and commission are functioning correctly, and the penalty is removal of the members.

Ms. Sonnier discussed that members of boards and commissions are volunteers, so it would not be reasonable to extend all those conflicts to citizen members.

Mr. Walsh discussed that Section 901 refers to officers or employees of the County.

Mr. Howard discussed that an officer includes members of the Council.

Mr. Leong discussed that some commissions are advisory, but others have significant authority. Mr. Leong asked Mr. Gwynn if the provisions in Sections 901 and 902 apply to members of commissions and boards when they refer to “officer”.

Mr. Kohn discussed that he believes that Sections 901 and 902 do not apply to members of commissions and boards. When an individual is nominated for a board or commission, the Council does not ask for financial history during the legislative hearing on the appointment.

Ms. Stansky discussed that Mr. Gwynn will clarify which requirements are applied to members of boards and commissions.

The Commission members discussed the provisions for removal of members of boards and commissions in Section 903.

Mr. Walsh discussed the provision that provides that a member of any board or commission who is absent from three consecutive regular meetings, unless excused by resolution, is deemed to have vacated the office seems like an automatic expulsion.

Mr. Kohn discussed the issue is that people do not seem to know about the provision. He asked if the provision applies to a member of a task force.

Ms. Stansky discussed variations of “boards” under the County Council, that include the Charter Review Commission, versus those under the Executive branch.

Mr. Kohn asked Mr. Gwynn if “board” includes “task force”.

Mr. Gwynn discussed that a task force is contemplated to be under Section 903. A task force is usually an advisory entity.

Mr. Kohn discussed inserting “or Task Force” after “Board” in the first line of Section 903 and adding this suggestion to the parking lot issues. He discussed the importance of future chairs of commissions knowing this section exists, and they have the authority to pursue it, including task forces.

Mr. Leong discussed what should be the standard of conduct that apply to members of boards and commissions.

Ms. Stansky discussed that there should not be a loophole that the rules do not apply to members of a task force.

Mr. Gwynn discussed that the Council passes enabling legislation to create advisory boards. The Council would not be able to establish advisory boards without Section 902.

Ms. Sonnier discussed that review of Section 903 will continue at the next meeting. She introduced Delegate Jones who will attend a future meeting of the Commission. She reviewed the schedule of future Commission meetings.

Ms. Sonnier adjourned the meeting at 10:34 a.m.