

Charter Review Commission

Minutes

C. Vernon Gray Room

October 8, 2019

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

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

Ms. Sonnier opened the meeting at 8:33 a.m.

The Commission members approved unanimously the minutes of the September 24, 2019 Commission meeting.

Ms. Sonnier discussed that Mr. Brade resigned from the Commission due to work obligations that made it difficult for him to fulfill the obligations of the Commission. A Resolution was introduced on October 7, 2019 confirming the appointment of Richard Butler to the Commission.

Ms. Stansky discussed that she listened to the recording of the September 24, 2019 meeting and would like the Commission members to further consider issues relating to the internal auditor of the County Executive. If the County Auditor falls under the County Council, when did the County Executive hire an internal auditor and why? How does this relate to the conversation about the County Council having its own attorney?

Ms. Center discussed that Mr. Glendenning referred to the County Executive having an internal auditor, and she recalled information that the internal auditor has been there for at least several years.

Mr. Skalny discussed that he is not sure there needs to be total symmetry between the County Council and the County Executive. There is a difference between an auditor and an attorney. Are the powers of the auditor who works for the County Executive equivalent to the powers of the County Auditor under the Charter?

Mr. Howard discussed the idea of creating an Office of Inspector General.

Mr. Skalny asked what would be the role of the Inspector General?

Mr. Howard discussed that a lot of what an Office of Inspector General does is an independent role. The job includes investigative powers and taking reports of possible

misconduct. This role could be more valuable to the County Council than having an independent attorney offering advice.

Mr. Skalny discussed if an Office of Inspector General would replace legal and audit functions.

Mr. Howard discussed that an Office of Inspector General would not provide legal advice.

Ms. Popp discussed that she does not believe the request for a separate lawyer for the County Council would be fulfilled by an Office of Inspector General.

Mr. Leong discussed if the function of the County Auditor specifically listed in the Charter applies to an auditor hired by the County Executive.

Mr. Skalny discussed that the function of the County Auditor in the Charter applies to an auditor hired by the County Council.

Delegate Terrasa discussed that an auditor hired by the County Executive is a hired person just like anyone else hired by the County Executive.

Ms. Stansky asked about the powers of the internal auditor of the County Executive. Internal auditors are a cost savings mechanism.

Ms. Sonnier discussed the need to discuss this issue if the auditor under the County Executive is not provided for in the Charter.

Ms. Stansky discussed the issue of separation of powers because the Charter places the County Auditor under the County Council and the potential for conflict between the County Auditor and the auditor hired by the County Executive. If a question arises and the County Auditor has already looked at the question does a conflict arise because it is not clear who is doing what. The issue is what is the intent of the Charter and how does this work in reality?

Ms. Stansky also discussed issues relating to conflicts between the wish list nature of the Capital Improvement Program and the recommendations of the Spending Affordability Advisory Committee.

Mr. Leong discussed the need for balance. A lot of planning that goes on about the future is a political process. The Charter has the requirement for a balanced budget. Perhaps there should be a provision that when the budget is presented, it is required to show the projections for how it will be funded.

Ms. Stansky discussed if there should be a board of public works in Howard County. School buildings are an example of why a board of public works could be needed.

The Commission members discussed who owns the County school buildings and how they are funded.

Ms. Stansky discussed that the Executive budget provides the allocation to the schools. The implication of the Capital Improvement Program is that there are huge needs, and this is when they will be funded. She discussed the lack of certainty if the funds will be there in the future.

Mr. Leong discussed that there are constraints under State law regarding how schools are run.

Mr. Walsh discussed if the Baltimore City Board of Public Works has responsibility for Baltimore City school buildings.

Ms. Stansky discussed the Capital Improvement Program process in Baltimore City and the need to address problems with the Capital Improvement Program in Howard County.

Mr. Leong discussed the issue of the short amount of time for public comment on the budget after the budget is presented.

Delegate Terrasa discussed the Capital Improvement Program and the issue that arises each year regarding a wish list versus a realistic budget. How do you reflect the cost of all the projects you want to do and what is realistic? How do you achieve both? She also discussed if this is a Charter issue or is it not a Charter issue. The timing for the budget is aligned with the State budget and when the County knows how much it is getting from the State. She discussed that she believes the Council needs its own lawyer. She understands there is an expertise issue with having one lawyer for the Council given the amount of expertise in the County Office of Law. She discussed conflicts that arise between the advice given to the County Executive and the County Council.

Ms. Sonnier discussed that the Charter allows the County Council to hire outside counsel. She asked if the conflict described by Delegate Terrasa is a common situation or does it happen occasionally?

Ms. Terrasa discussed that the situation happens when there is a difference of opinion between the Council and the Executive on legislation.

Mr. Skalny discussed a situation when the Office of Law is asked a legal question by the County Executive and responds with a legal position. This could put the Council in a politically bad position because there is already a legal position on the question.

Delegate Terrasa discussed that when the Office of Law is told I want to achieve "X" and is it legal, the analysis includes whether "X" violates the letter of the law, in addition to analysis of case law, and other considerations.

Ms. Sonnier asked why the Council has not hired its own attorney.

Delegate Terrasa discussed the funding issue of hiring an attorney.

Mr. Howard discussed that if the Office of Law and a County Council attorney were to offer conflicting opinions, at some point someone will be the arbiter of what is County law, possibly a judge. There needs to be final authority within an institution.

Delegate Terrasa discussed that if everything you do you do with fear of being sued, you can't do anything. She discussed balancing how likely it is a law suit will be filed, and how likely it is you will win the law suit.

Mr. Leong discussed that if both the Council and the Executive are asking if this is legal to do, they provide the best answer they can to the two parties.

Ms. Popp discussed that if it is a discussion of legal risk, each party decides how much risk they are willing to assume. If the goals are different, it is difficult for the same attorney to advise.

The Commission members discussed what happens when two Councilmembers with different perspectives are seeking advice from the Office of Law on the same issue. How does the County Solicitor handle this situation?

Delegate Terrasa discussed that she does not think that each Councilmember needs an attorney. She discussed that due to separation of powers each branch needs its own counsel.

Mr. Howard discussed that if the County is willing to spend the money on separate counsel for the Executive and the Council, it is okay.

Ms. Sonnier discussed if other county councils have their own attorneys. Per Delegate Terrasa, Montgomery and Anne Arundel county councils may have their own attorneys.

Delegate Terrasa discussed that it is rare that the County Council has hired its own attorney, possibly a handful of times. You can try to put up a wall; however, with the example of a planning and zoning issue, there is one attorney in the Office of Law that has that expertise.

Mr. Skalny discussed that if the Council hired an attorney who is a generalist, would there be a need for experts to be hired.

Delegate Terrasa discussed a structure under which you receive limited advice from the Office of Law, but it is filtered through an independent attorney for the Council. Special counsel could still be hired, if needed.

Mr. Howard asked how this differs from the attorney for the Zoning Board.

Delegate Terrasa discussed that the Zoning Board attorney advises more on legal procedure and has a different role.

Ms. Stansky discussed a situation when the County Executive introduces legislation. A Councilmember wants to introduce an amendment and wants advice. Is this when the conflict occurs? The legal officer representing the County should be able to provide an answer to the Councilmember if “yes” you can do this, but what if it is a political issue, and that is not what the County Executive wants.

Delegate Terrassa discussed the need to be able to advise a client “yes” you can do this, but you also want advice on how to do this.

Ms. Stansky discussed if an attorney is truly independent, and it is not an adversarial relationship, it should be what is good for the County. There is still a “yes” or “no” answer, even if it conflicts from a political perspective.

Delegate Terrassa discussed that if you are trying to balance the risks, there are always risks. You can advise they are likely to sue, but unlikely to win. There is a different analysis when evaluating different factors.

Mr. Skalny discussed that when the client asks what the likely outcome is, the client is the boss, and the client needs to decide whether to move forward. This is different from an advocacy role.

Ms. Jafri discussed that her attorney will discuss risk and use a numbering system for risk reward ratio, and that she needs to make a decision.

Mr. Gwynn discussed it is important to remember that the County itself is an entity. The job of the Office of Law is to represent the County as an entity, not the official branches of County government. The Office of Law needs to opine on whether a bill or resolution is legal. There are many situations in State law that require both branches to sign off on a piece of legislation. When he started working in Prince George’s County, he considered how can one attorney represent both branches. He learned that it could work.

Mr. Howard discussed that it works most of the time. There are times you would need to hire special counsel for each branch.

Delegate Terrassa discussed what if the only Republican member of the Council wants legal advice, and the Councilmember does not have the funds for legal advice in the Councilmember’s budget. The member would need a 3/5 vote of the Council to agree to hire an attorney to represent the member’s view.

Mr. Skalny asked if Delegate Terrassa’s ability to do her job as a councilwoman was compromised by her inability to have her own attorney.

Delegate Terrassa discussed that it was burdened.

Delegate Terrasa discussed the inability of the Council to move money among departments in the Budget, and her belief that the power to do so should be in the Charter. There are consequences for having a strong Executive and a weaker Council. She discussed her belief that the issue of noninterference with the Executive branch and access to department heads by Councilmembers is an issue worth addressing. She discussed that performance audits would be very helpful to have. There is not a conflict between the two branches each having an auditor. One auditor is for the Council that is provided for by the Charter. The County Executive brought on an auditor for good reason. She does not believe the authority for the County Executive auditor needs to be in the Charter.

Ms. Stansky discussed the issue of access to audit documents if both the Executive and the Council have internal audit functions.

Mr. Gwynn discussed that the Charter allows the County Auditor to have access to information. The Office of Law has opined that the access stops when the investigation is over. The County Auditor can have access to what relates to the audit but not free-range access to anything.

Mr. Walsh discussed that if there is an internal auditor, a department could drag its feet either way. The internal audit function adds an additional level of financial security. In public accounting functions, you rely on an internal auditor.

Delegate Terrasa discussed the issue of what is an emergency? Is an emergency what four out of five Councilmembers say it is. You can say anything is an emergency, if you have the votes. She discussed the need for parameters.

Mr. Howard discussed that an emergency is what is unforeseeable. How can you foresee?

Ms. Popp discussed the idea of a threshold vote relating to does this meet the parameters of an emergency and then vote on the merits of the emergency.

Ms. Sager discussed that there must be a finding in the legislation that there is an emergency.

Ms. Popp discussed an example of stun gun legislation. The Council felt pressure to vote on the merits prior to voting on is this an emergency. The Office of Law advised it was an emergency. The Council did not have its own attorney to advise on the discussion regarding is this an emergency prior to voting on the merits of the legislation.

Delegate Terrasa discussed the issue of should the office of Councilmember be considered part time or full time. She believes it should be full time. It would be better for constituents and would result in a more socioeconomic diverse Council if Councilmembers do not need to have another job.

Mr. Skalny discussed the possibility of keeping the office as part time and having more staff for constituent services. A lot of the conversation concerns if there is sufficient constituent service. What is the opinion of Delegate Terrasa regarding having additional staff for constituent services?

Delegate Terrasa discussed that more can always be done for constituent services.

Mr. Skalny discussed what should be the compensation of a full-time Councilmember.

Ms. Popp discussed that compensation is not a Charter issue.

Mr. Skalny discussed that if the current pay is inadequate to attract a socioeconomically diverse Council, how much more do Councilmembers need to earn so that the Council is more socioeconomically diverse.

Delegate Terrasa discussed that she does not have information on median incomes in Howard County.

Ms. Popp discussed that this is a Compensation Review Commission issue.

Mr. Howard discussed that pegging the salary to the County median income would force the Council to focus on the economy of the County.

Ms. Sonnier requested Delegate Terrasa to comment on the issue of altering the number of councilmanic districts.

Delegate Terrasa discussed the addition of two councilmanic districts, resulting in seven councilmanic districts, but not at large.

Ms. Stansky discussed the Councilmanic Redistricting Commission that defines districts. She discussed that there are issues relating to Columbia and areas outside of Columbia. She discussed an 1868 map that show five distinct areas.

Delegate Terrasa discussed her experience with redistricting, including the complexity of redrawing the lines. There are complicated issues that cannot always be resolved.

Ms. Sonnier discussed that Delegate Terrasa served on the County Council for twelve years, and asked if Councilmembers should be able to serve more than three terms.

Delegate Terrasa discussed that she does not like term limits and would not recommend reducing the current term limit of three terms to two terms. She does not recommend separating Councilmembers from serving as members of the Board of Zoning.

Mr. Klugh discussed the issue of the office of a Councilmember becoming full-time and if it would result in more socioeconomic diversity. He discussed that a full time office could have the opposite effect. He discussed the example of a full time job with benefits and a pension

that a person feels locked into and the difficulty of someone leaving that job. It seems that a full time Councilmember office would not allow an average income person to serve on the County Council.

Mr. Howard discussed the portability of pensions in some instances.

The Commission members discussed that the Charter is silent regarding if members are full time or part time. The Charter provides that a Councilmember cannot be employed in another County office. The Compensation Review Commission sets the salary of Councilmembers.

Mr. Skalny discussed that due to the high cost of living in Howard County, a lot of people are considered middle income. He discussed the potential loss of talent of people who would not want to serve full time on the Council.

Mr. Howard discussed that there were people with a broad range of economic status running for office in the 2018 election. He discussed that it is not failing to get people to run, it is failing to elect them.

Delegate Terrasa discussed the difficulty of finding employment that is consistent with work on the County Council. It is difficult to find employment when you are working with the County Council when employers know you must take off for the responsibilities of the County Council.

Ms. Center discussed stating a minimum salary amount in the Charter.

Mr. Howard discussed that under State law the Register of Wills is a full time position.

Ms. Stansky discussed that there are budget issues with whatever recommendations the Commission makes, for example, if the Commission were to recommend seven councilmanic districts.

Delegate Terrasa discussed that the length of time between the time of election and the oath of office works its way out.

Mr. Leong discussed the release of the budget in April to receive better revenue projections and the need to balance consideration of that with the time of the County Council to review the budget and have public hearings. Is there enough time for the County Council to do this? Should there be a point in time when the County Executive is required to present the budget sooner?

Delegate Terrasa discussed the balancing of the need for good projections and adequate opportunity for public comment, which is very important.

Mr. Leong asked about the appropriate balance of power in the County. Did you have enough insight prior to delivery of the budget to begin to work on it?

Delegate Terrasa discussed the lack of adequate time to review the budget. There is also an issue of who bears the cost to print the budget, and who receives physical copies of the budget.

Mr. Skalny discussed public testimony and access to information about hearings. There has been discussion of the timing of notice and format of notice. There are highly debated issues when the Council hearing room is packed, and there is the run of the mill work. He discussed if the public has adequate access to information about hearings and if there has been debate about how to provide adequate notice to the public of public hearings? Or, is this an issue of people being busy and may not care and do not attend for those reasons.

Delegate Terrasa discussed that she believes people care a lot, particularly about land use issues affecting where you live and education issues. She did not have any comments on how to address notice of hearings.

Mr. Skalny discussed that he understands that people care, but do they care enough to attend a public hearing. Is it an issue of notice or an issue of caring?

Delegate Terrasa discussed that people do care.

Ms. Stansky discussed the need for more sources of information about the Commission public hearings and the need for the County Council to push the issue out.

Mr. Leong discussed the lack of a consolidated place for providing notice for all County meetings. He discussed that people are busy with full time jobs, in addition to having only so much attention they can give to County issues. He does not think it is unreasonable to have notice of all County meetings consolidated in one place.

Delegate Terrasa agreed on the need for a consolidated place to provide notice of all County meetings. There is technology to do this consolidation. She discussed that this may not be a Charter issue.

Mr. Leong discussed that there are notice requirements throughout the Charter for publication in the newspaper. There could be a provision added to the Charter specifying that all notice requirements under the Charter be published in one place.

Delegate Terrasa agreed. She further discussed record retention issues relating to continuity of government. The retention of records is an issue that needs to be addressed in the Charter or elsewhere.

Ms. Jafri requested additional details on the retention issue.

Delegate Terrasa discussed the loss of records of the work that has been done. There is some value in knowing Council history as a County Council member. She discussed the need for a County archivist to regulate what information is retained.

Ms. Sonnier thanked Delegate Terrasa for her comments.

Mr. Skalny discussed posting notice of ideas that are under consideration by the Commission on the notices of Commission public hearings.

Mr. Howard discussed the need for a public hearing on the draft Commission report.

Ms. Sonnier referred to earlier Commission discussion of the possibility of a fourth hearing that was deferred until after the draft report is completed or after seeing how the first three public hearings go.

Mr. Leong discussed the idea of highlighting five ideas for the public to understand the work of the Commission.

Ms. Stansky asked Mr. Gwynn about the record retention policy of the County Council.

Mr. Gwynn discussed that the State has certain requirements. There are certain County records that must be sent to the State. The County must have a retention plan for documents that do not have to be sent to the State. The County has discretion to put into the retention plan what it wants in the plan.

Ms. Stansky asked about the retention requirements for former members of the Council.

Mr. Gwynn referred to the retention schedule in the County policy.

Mr. Howard discussed that he has never been directed to retain documents that have his personal notes on them. He does not believe his personal notes would fall under retention policies.

Ms. Sonnier discussed the future schedule of planned meetings and if a meeting should be scheduled in December.

Mr. Leong discussed a time table for making recommendations after completing analysis of the Charter.

Ms. Sonnier discussed that she hopes to be done with review of the Charter by the end of the year and then to begin the review of parking lot issues and work on recommendations. A draft report can be shared with the public, and the Commission can request public input on issues at a fourth public hearing. She further discussed completing review of the Charter by the end of the November 20 meeting and beginning discussion of parking lot issues at a meeting in December.

The Commission members decided to meet on December 10, 2019.

Ms. Stansky discussed requesting the Councilmembers to put out a notice about the October 24, 2019 public hearing.

The Commission members discussed requesting an announcement at the October 21, 2019 public hearing of the County Council about the Commission public hearing on October 24, 2019 and requesting that Councilmember notices of the public hearing include a list of ideas under consideration by the Commission. Members should submit ideas to be included on Councilmember notices of the public hearing by noon on October 10, 2019.

The meeting was adjourned at 10:34 a.m.