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Memorandum

To: Charter Review Committee
From: Michael D. Ford, Town Counsel
Re: Review of Charter Review Committee Questions
Date: January 5, 2021

Charter Review Committee Questions:

1. Is there a statutory difference between a Town Administrator and a Town Manager, if any?

Answer:

Mass Department of Revenue Division of Local Services, City & Town - July 21st, 2016 states:

In a town, executive authority is vested in an elected board of selectmen. The selectmen may choose to appoint a full- or part-time professional to manage town affairs on a day-to-day basis, and the incidence of such an administrator generally correlates to the town's population size. The creation of this type of position can be effected through a charter, bylaw or town vote.

MGL c. 41, sec. 23A is the general law that authorizes selectmen "to appoint an executive secretary or town administrator." Although the statute makes no distinction between these two titles, in practice, a greater degree of management and appointing authority tends to be delegated to town administrators, either by formal job description or bylaw.

Furthermore, some towns choose to give a different job title to the administrator position, such as town coordinator or executive director.

As a well-established best practice, the DOR Technical Assistance Bureau consistently endorses centralized government structures with clear lines of authority because they enable better oversight and accountability.

In pursuit of this, many progressive communities refashion the town administrator position and retitle it to town manager, oftentimes doing so through a charter or special act.

On a case-by-case basis, though, the difference between a town administrator and town manager can also be purely semantic.

The vast majority of towns statewide now have an appointed, professional, administrator-type position (260 towns, 88%). The ranges of work hours, salaries, oversight authority, and appointing powers among these officeholders vary quite widely, however. In 35 towns (12%), the select boards have appointed no administrator position, although there is usually a person performing at least a clerical function for the selectmen. Statewide, the job titles for the professional administrator in towns break out as follows:

- Town administrator: 172 (58%)
- Town manager: 63 (21%)
- Executive secretary: 8 (3%)
- Town coordinator: 6 (2%)
- Other titles: 7 (2%)

(Note the above statistics are from the 2017 article and may have changed.)

Also, the Municipal Law & Practice § 6.13 (5th ed.) entitled “Town manager—Town administrator—Executive secretary” states in pertinent part, that:

A number of Massachusetts towns have town manager forms of government. Such a form is not provided for in the general laws of the Commonwealth. Each charter providing for a town manager is different due to the desires of the individual communities. Some towns favor a “strong” town manager, with greater personal responsibility and power, and more secure tenure, while other towns favor a “weaker” town administrator, who serves under the direction and supervision of the selectmen, at their pleasure, and who may be, in effect, little more than an administrative assistant. When the duties, powers and rights of a town executive are at issue, the charter pertaining to the town in question must be studied.¹ The purpose of city or town manager governance is to concentrate administrative authority and responsibility in a professional manager, to the end of efficient and economic administration of municipal affairs.² A town, by vote or by-law, may authorize its selectmen to appoint an executive secretary or town administrator for a term of one or three years. Such executive secretary or town administrator may be removed at the discretion of the selectmen. During his term of office, he or she may hold no elective town office. He or she may, however, be appointed to any other town office, consistent with the duties of executive secretary or town administrator, either by the selectmen or, with the approval of the selectmen, by any other town officer, board, committee or commission. The duties will be those assigned by the selectmen and relating to the administration of town affairs or any town office or department under their jurisdiction or control. With the selectmen's approval, the executive secretary or town administrator may perform such other duties as may be requested by any town officer, board, committee or commission.³

2. Is a Charter Commission necessary to change the job description of the Town Administrator if the position becomes a Town Manager?

M.G.L. c. 43B § 10. Amendments to charter previously adopted or revised under this chapter; procedure, states in pertinent part that: a) Amendments to a city or town charter

previously adopted or revised under this chapter may be proposed by the city council of a city or the town meeting of a town by a two thirds vote in the manner provided by this section; provided, that amendments of a city charter may be proposed only with the concurrence of the mayor in every city that has a mayor, and that only a charter commission elected under this chapter may propose any change in a charter relating in any way to the composition, mode of election or appointment, or terms of office of the legislative body, the mayor or city manager, or the board of selectmen or town manager. In this section, the word “mayor” shall mean an officer elected by the voters as the chief executive officer of a city or an officer lawfully acting as such, and the term “two thirds vote” shall mean, in cities, a vote, taken by yeas and nays, of two thirds of the members of a city council present and voting thereon, and shall mean, in towns, the vote of two thirds of the voters present and voting at a duly called meeting.

(b) In addition to any amendment proposed by a city council or town meeting under subsection (a) the city council or town meeting shall consider and vote upon any suggested charter amendment which it would have the power to propose under subsection (a), and which is not substantially the same as an amendment already considered and voted upon by it within the last twelve months, and which is suggested to it in a written request signed by the mayor or city manager or any member of the city council in a city or by the town manager or any selectman of a town, or is suggested to it by a petition in substantially the form set forth in section fifteen, signed and completed in accordance with the instructions contained therein by at least ten registered voters in the case of a town and by as many registered voters, in the case of a city, as would be required to nominate a charter commission member in such city under section five, which written request or petition shall be filed with the city or town clerk.

A charter commission is necessary for the changes underlined above.

3. Is it necessary to have the Select Board change hats to Park Commissioners to conduct business about Parks issues at a meeting?

If the Select Board is acting on matters as Park Commissioners then notice should be given by the Select Board acting as Park Commissioners and when they act on such matters at such meeting then they should announce that they are acting as Park Commissioners.

4. Is there any State statute or other enabling authority the outlines the procedure for an elected board being changed to an appointed board in a town charter?

You would have to follow M.G.L. c. 43B, §10 set forth above.

M.G.L. c. 41, § 1. Town officers to be elected; tenure

Every town at its annual meeting shall in every year when the term of office of any incumbent expires, and except when other provision is made by law or by charter, choose by ballot from its registered voters the following town officers for the following terms of office: ... Three or more members of the board of health for the term of one or more years if the town provides for such board, otherwise the selectmen shall act as a board of health.

M.G.L. c. 41 § 1B. Appointed town offices and boards; acceptance by voters

Any office or board, except the board of selectmen and the school committee, elected under the provisions of section 1 may become an appointed position or board by a majority vote of the annual or special town meeting and acceptance by the voters of the town at the annual town elections; provided, however, that any vote by a special town meeting taken under the provisions of this section shall take place at least 60 days prior to the acceptance of the voters at the annual town election. ...

5. Is there any State Statute or other enabling authority that makes a Town Board of Health necessarily an elected board?

M.G.L. c. 41, § 1 provides in pertinent part that “Every town at its annual meeting shall in every year when the term of office of any incumbent expires, and except when other provision is made by law or by charter, choose by ballot from its registered voters the following town officers for the following terms of office: Three or more members of the board of health for the term of one or more years if the town provides for such board, otherwise the selectmen shall act as a board of health.

M.G.L. c. 41 § 1B. Appointed town offices and boards; acceptance by voters, provides in pertinent part that “Any office or board, except the board of selectmen and the school committee, elected under the provisions of section 1 may become an appointed position or board by a majority vote of the annual or special town meeting and acceptance by the voters of the town at the annual town elections; provided, however, that any vote by a special town meeting taken under the provisions of this section shall take place at least 60 days prior to the acceptance of the voters at the annual town election. ...

Under the Orleans Charter 5-1-1 the board of health is an elected board.