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OFFICE OF THE ATTORNEY GENERAL

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October 12, 2022

William Abbott, Charter Commission Chair
Plymouth Charter Commission
26 Court Street
Plymouth, MA 002360

**RE: Preliminary Report of the Plymouth Charter Commission
Case # 10723**

Dear Mr. Abbott:

Pursuant to the provisions of General Laws Chapter 43B, Section 9, we have reviewed the Preliminary Report of the Plymouth Charter Commission (“Commission”) received on September 15, 2022. General Laws Chapter 43B, § 9 (b) requires that, within four weeks after receipt of the preliminary report, the Attorney General submit a written opinion citing any conflict between the proposed charter and the Constitution or laws of the Commonwealth. Pursuant to G.L. c. 43B, § 9 (b), the opinion of the Attorney General is advisory only. “Under G.L. c. 43B, § 9 (b)...the Attorney General’s role is...limited to the issuance of an opinion, that is advisory only, as to whether the proposed charter or charter revisions are consistent with the constitution and the laws of the Commonwealth.” Quigley v. Reilly, 13 Mass.L.Rptr. 480, 2001 WL 950904 * 1 (Mass.Super. Aug. 17, 2001) (No. C.A. 1-1218-A)

We have determined that the proposed Charter does not conflict with the Constitution or laws of the Commonwealth. However, we offer comments for the Commission to consider when drafting its Final Report.

I. General Overview of the Charter

The proposed Charter establishes the Town’s organizational structure and the division of authority among government officials. The Charter proposes to continue the Representative Town Meeting (RTM) form of government with a Select Board and a Town Manager. The Commission states that the Charter “creates a strengthened and balanced Town meeting form of government, sharing appropriate powers with a strong non-partisan Town Manager who would be responsible to a Select Board” The Commission further states that the Charter:

makes substantial changes to the make-up and functioning and relationships of all the present components of Plymouth's government, and adds many additional features so that overall Plymouth's government will operate more efficiently, with better balance, more transparency and open communications, and increased accountability, while stressing democratic participation.

See “Introduction,” Town of Plymouth Preliminary Report of the Charter Commission Elected May 15, 2021

Under the proposed Charter, the RTM exercises the legislative powers of the Town. The RTM shall consist of nine members elected from each precinct in the Town. The RTM shall meet at least three times per year: (1) a Spring Annual Town Meeting that must occur in March or April; (2) a second meeting that must occur in the last four months of the year, and (3) a third town meeting to occur in “January of the calendar year following the Spring Annual Town meeting.” Section 2-41. Section 2-6-1 requires the RTM members from each precinct to meet within fourteen days of the Town Election and elect from its precinct’s RTM members a chairperson, vice-chairperson and clerk. Each precinct chairperson shall meet within twenty days of the Town Election and form the Committee of Precinct Chairs. Section 2-6-4. The Committee of Precinct Chairs functions as a “Town Meeting standing committee” whose purpose is to “establish legislative branch continuity between Town Meetings and provide a voice for the legislative branch as a co-equal branch of government.” Section 2-7-1.

The proposed Charter increases the Select Board from a five-member Board to a seven-member Board that exercises the Town’s executive powers. Section 3-2-1. The Select Board is comprised of four at-large members and three district members. The Select Board shall appoint a Town Manager who shall be the Chief Administrative Officer of the Town. Section 3-3-1. The Town Manager “shall be responsible to the Select Board for the effective management of all Town affairs . . .” Section 3-5-1.

The proposed Charter also includes provisions governing elected town boards; town elections, including referendum and recall provisions; and timely and effective public communication and engagement. The Charter also includes sections on enforcement and transition provisions.

II. Attorney General’s Standard of Review of Proposed Charters

Pursuant to G.L. c. 43B, § 9 (b), the opinion of the Attorney General is advisory only and is limited to whether the proposed charter is consistent with the Constitution and the laws of the Commonwealth. Quigley, 13 Mass.L.Rptr at *1. ¹ The Attorney General’s opinion does not preclude the Town from placing the proposed charter revision on the ballot for a vote of the voters; nor does it create any constitutional or statutory impediment to adoption of the proposed charter. Id. at *1.

¹ This advisory opinion procedure of G.L. c. 43B, § 9 (b) is different from the binding AG opinion issued after review of charter revisions proposed pursuant to in G.L. c. 43B, § 10. Under G.L. c. 43B, § 10 (c), “[i]f the attorney general reports that the proposed amendment conflicts with the constitution and laws of the commonwealth, the order proposing such amendment shall not take effect...”

In our review of the proposed Charter, 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 consistency 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. See Town Council of Agawam v. Town Manager of Agawam, 20 Mass. App. Ct. 100, 103 (1985) (because the Town’s charter was effectively adopted pursuant G.L. c. 43B, its provision for appointment of local officials by the Town Manager without confirmation by the Town Council was consistent with state law). “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, 20 Mass. App. Ct. at 103. So long as the proposed charter amendment is not in conflict with state law, it is not for the Attorney General to substitute her judgment for that of the Town’s. See Amherst, 398 Mass. at 798-99. (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”)

Because a town has considerable authority pursuant to G.L. c. 43B to regulate the structure of its government and to determine whether a local office is elected or appointed, we determine that the proposed Charter does not conflict with the Constitution or laws of the Commonwealth. See G.L. c. 43B, § 20; see also Town Council of Agawam, 20 Mass. App. Ct. at 103. However, we offer the following comments for the Commission’s consideration when drafting its final charter report.

III. Comments for the Commission to Consider When Drafting Its Final Report

A. Chapter 2 “The Legislative Branch: Representative Town Meeting”

1. Reopening of Town Budget

Section 2-4-1 of the Charter allows the “budget, as adopted at the spring annual representative Town Meeting, to be reopened by a citizen-petitioned article pursuant to G.L. c. 39, § 10, or any other applicable law.” The authority to amend the Town’s budget must be applied consistent with municipal finance laws. According to input we received from the Department of Revenue, Division of Local Services, once the Town’s tax rate is set pursuant to state law, the Town cannot further amend its budget. See G.L. c. 59, § 23 (once the tax rate for any fiscal year is set it cannot be changed after it has been approved by the Commissioner). The Commission may wish to amend this text in its Final Report to address this issue.

2. Caucus Meeting of RTM Members Governed by OML

Section 2-6-1 requires RTM members from each precinct to meet in a “caucus” and elect a chair, vice-chair, and clerk. The RTM members from each precinct “shall hold a caucus meeting” to review subjects on the upcoming RTM warrant. Section 2-6.2. Section 2-6-3 states that the Open Meeting Law (OML) will apply to these caucus meetings.

The OML specifically exempts all Town Meetings from its requirements. See G.L. c. 30A, § 18, cl. 5 (e) (Town Meeting is excluded from the definition of “Meeting”); see also Open Meeting Law Determination of the Office of the Attorney General, OML 2022-97, dated May 20, 2022 (the OML does not apply to any aspect of Town Meeting). The Town could elect to adopt a charter provision that exceeds the terms of the OML in this respect and requires the caucus meetings to comply with the OML requirements. However, such a charter provision could not vest the Attorney General with enforcement authority of such a requirement. See e.g., Greater Lawrence Sanitary District v. Town of North Andover, 439 Mass. 16, 21 (2003) (towns do not generally have the power to require a state or federal agency to perform certain functions). The Commission may wish to amend this text in its Final Report to address this issue.

B. Chapter 4 “Elected Town Board and Officers”

Section 4-1-1 states that the Town shall elect a housing authority of five members, with “four (4) to be elected, and one (1) to be appointed in accordance with applicable law.” General Laws Chapter 121B, Section 5 requires a town with a housing authority to have three elected members, one member to be a tenant member appointed by the Board of Selectmen, and one member to be appointed by the State as follows:

Every housing and redevelopment authority shall be managed, controlled and governed by five members, appointed or elected as provided in this section, of whom three shall constitute a quorum. Every member of a housing or redevelopment authority shall be a fiduciary of the housing or redevelopment authority.

* * *

Notwithstanding section 20 of chapter 43B or any other general or special law to the contrary, in a town, 1 member of a housing authority shall be a tenant member appointed by the board of selectmen and 3 members shall be elected by the town; provided, however, that of the members originally elected at an annual town meeting, the candidate who received the highest number of votes shall serve for 5 years, the candidate who received the next highest number of votes shall serve for 4 years and the candidate who received the next highest number of votes shall serve for 2 years. Notwithstanding the preceding sentence, upon the initial organization of a housing authority, if a town so votes at an annual or special town meeting called for the purpose of organizing a housing authority, 3 members of the authority shall be appointed immediately by the board of selectmen to serve only until the qualification of their successors; provided, however, that the successors shall be elected at the next annual town meeting as provided in this paragraph.

* * *

In a . . . town, one member of a housing or redevelopment authority shall be appointed by the department for an initial term of three years. If the department does not fill a vacancy in the position of that member within 120 days from the date that the vacancy is created, the board of selectmen shall appoint, in writing, a person by a majority vote to fill such vacancy for the unexpired term. . . .

Section 4-1-1 does not provide for a tenant member appointed by the Town. We understand that in the past the Town has received a waiver from the Department of Housing and Community Development that exempts the Town from the statutory requirement that the Town appoint a Tenant Board Member to its Housing Authority. ² However, the Commission may wish to amend Section 4-1-1 to comply with the provisions of G.L. c. 121B to avoid a conflict with the statute in the event the Town does not receive future waivers from DHCD.

IV. Conclusion

The Attorney General determines that the proposed Charter submitted to this Office under G.L. c. 43B, Section 9, does not conflict with the Constitution or laws of the Commonwealth. However, we suggest that the Commission consider further amending those portions of the Charter discussed above in the Commission's Final Report and after discussion with legal counsel.

Very truly yours,
MAURA HEALEY
ATTORNEY GENERAL

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cc: Attorney Mark R. Reich, Town Counsel
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² See Letter to Ms. Riendeau, Executive Director Plymouth Housing Authority, from Benjamin Stone, Director Division of Public Housing at DHCD [boardMemberWaiver.pdf \(plymha.org\)](#)