

## **Charter Review Committee of 2011**

February 28, 2012

There being a quorum present, Chairman, M.J. Caldwell called the meeting to order at 6:00 p.m. with the following members in attendance: Allen Brown, Brad Gillis, Cathy Keim, Christina Rodriguez, Dr. Greg Belcher, Ed Urban, John Cannon, Katrina Purnell, L.C. Jones, M.J. Caldwell, Mark Kilmer and Orvill Penn.

Excused: Fran Starkey

Absent: William Hall

Representing the County Executive's Office: Wayne Strausburg,  
Director of Administration

Assigned Staff: Ed Baker, Maureen Lanigan, Matthew Creamer

In attendance: Bob Culver

Mr. Caldwell noted that the committee may want to name a new Vice Chair of the committee, in the event the Chair may be absent and suggested the committee discuss this later in the meeting. Mr. Brown asked whether the committee or the County Council names the Vice Chair, to which Mr. Caldwell replied the Council names the Chairman and the committee elects a Vice Chair.

Mr. Caldwell noted two corrections in the minutes; Mr. Creamer advised that those corrections have already been made in the minutes. On motion by Mr. Penn and seconded by Mr. Brown the minutes were unanimously approved as corrected.

**Section 412. Director of Administration** - Mr. Caldwell asked whether there were any comments on Section 412. Following discussion there were no recommendations for changes to Section 412.

**Section 413. Administrative appointments** – It was noted that this section gives discretion to the County Executive to appoint all

department heads in the Executive Branch, which appointments are subject to confirmation by the County Council and the County Executive appoints all members of boards and commissions in the Executive Branch, which appointments are also subject to confirmation by the County Council.

Mr. Baker stated that it is unclear what the meaning is of the work “agencies” as there are no agencies as such in the present, or previous organizational structure of the government. Mr. Caldwell asked Mr. Creamer if there had ever been an entity in the county government that was called an agency, to which Mr. Creamer replied that he did not think so, at least there had been none since the advent of charter government in this county. After further discussion there was consensus that “agency” is intended to be synonymous with “department”. Mr. Urban noted that the inclusive nature of the language would assure that if an agency of the county government is ever established, it will be covered by the Charter in the same manner as would be a “department”. **Mr. Caldwell observed that usage of “or agencies” in the next to the last line of Section 413 be consistent with use of “agency” elsewhere in the section.** Otherwise, there were no recommendations for changes in Section 413.

**Section 414. Temporary administrative appointments** – There was **concurrence in Section 414 B to correct the spelling of the word “calendar”.**

There was further discussion of 414 B, whether there is need for a limitation of a temporary appointment, with Mr. Caldwell commenting that the clause concerning an appointee not possessing all the qualifications required for the position may be unnecessary. **Mr. Kilmer made a motion to strike the phrase “... does not possess all the qualifications of the office as required by this Charter”.** **The motion was seconded by Mr. Penn.** There was discussion whether a temporary appointment should be limited to 90 days. Mr. Strausburg questioned whether the 90 day limitation on a temporary appointment may be in conflict with FMLA, creating a potential vacancy. There followed discussion of the meaning of the term “vacancy”, with Mr. Caldwell noting that the term is not defined in the Charter, so it may be a situation for the County Attorney to decide. He further opined that federal regulations change frequently and so does the definition of terms used in them, thus definitions should be applied locally.

Mr. Urban suggested taking out the limitation of an extension of a temporary appointment to 4 months and give the County Council the discretion extend a temporary appointment as it sees fit. Mr. Caldwell noted that the Charter (Section 413) requires the Executive to appoint directors of departments within 6 months and Section 414 B may be interpreted to be in conflict with Section 413. **The question was called on Mr. Kilmer's motion, seconded by Mr. Penn and a vote being taken, the motion passed unanimously.**

Mr. Cannon asked to **go back to Section 410 Temporary absence or disability of the County Executive.** The Chairman acceded to Mr. Cannon's request. **Mr. Cannon made a motion to require the County Council to confirm the Director of Administration, or the County Executive's written designation of some other person in the Executive Branch assuming the duties of the County Executive, in the event of the temporary absence or disability of the County Executive, and to limit that assumption to 90 days.** Mr. Caldwell stated that such a change could easily become a political issue and he questions the wisdom of addressing political issues in the Charter, adding that the Executive is elected by the voters and this change could enable the Council to step on the authority of the Executive for political purposes. Mr. Cannon stated that if the person assuming the responsibilities of the Executive in Section 410 were unqualified, that person could pose real problems with the operation of the government. There are 7 members of the County Council and the temporary executive would be one person, but one with great power. Ms. Starkey added that one cannot look at Section 410 in this way without looking at Section 408, which could apply to the removal of a temporary executive and it includes a 6 month time limit, so Section 408 protects Section 410 by providing a remedy. Mr. Caldwell concurred, saying that if the County Council perceives a serious problem with a temporary executive, it could exercise its authority in Section 408. Mr. Caldwell further commented that the 90 day limitation could be subverted by the Executive making repeated 30 day appointments consecutively. Mrs. Keim suggested that such a move would be gaming the system. Mr. Cannon stated that his motion is not because he objects to temporary appointments; his objection is there should be time limits to them. Mr. Baker commented that these two sections of our Charter are identical in their language to other Charters and those counties have experienced no

problems. Mr. Strausburg expressed concern that Mr. Cannon's motion sets the County Council up to judge the performance of the Executive Branch, adding that the Executive has no voice, or veto of appointments the County Council makes in the event a vacancy occurs on the County Council. Mr. Cannon replied that he still has concern that there is no way to remove a person who is patently unqualified and whose performance demonstrates the fact. Mr. Strausburg, again, referred to the need for checks and balances. **Mr. Caldwell suggested that committee think about the need for checks and balances in Section 410 and come back to it again.** Mr. Urban expressed his concern with Section 410 being the language where the Executive could appoint another department head as the acting Director of Administration. Mr. Caldwell asked Mr. Creamer what department head could be qualified to assume the duties of the Executive according to Section 410. Mr. Creamer responded that someone who was responsible for a large department may have the type of experience that would be needed, the Finance Director may have enough understanding of the budgeting process, but it would probably be unlikely that a department head would be in a position of have the broad overall grasp of the county which the Director of Administration should have. Mr. Kilmer asked whether only the Deputy Director of Administration should be the only other person than the Director of Administration to assume the duties of the Executive under Section 410. Mr. Urban replied that is his thinking and that the Deputy should not be passed over for a lower department head who would not know the workings of the county. Ms. Starkey added that the committee should consider the U.S. Constitution as a pattern. It gives a specific chain of succession from the President on down. Mr. Creamer commented that in our county government, none of the department heads in the Executive Branch are elected officials except for the Sheriff and the State's Attorney and they are not department head within the meaning of this section of the Charter. As there had been on second to the previous motion, **Mr. Cannon offered a substitute motion deleting language in Section 410 so that it would stipulate that only the Director of Administration could assume the duties of the County Executive in Section 410. The motion was seconded by Mr. Kilmer.** Mr. Urban asked whether the motion will solve anything, to which Mr. Cannon replied it is a starting place and we can come back and refine it. Mr. Urban said if the Executive is out for a month, its one

thing; if he's out for a year it's another thing. Mr. Caldwell said that's when Section 408 (removal of the Executive) come in, adding that a temporary absence implies a short period of time. Dr. Belcher added that "temporary" is not defined. Mr. Caldwell said he thinks it will never be a problem and as Mr. Baker noted, it has not been a problem in any other of the Charter Counties. Mr. Urban asked if temporary means a short period of time; at what point does the situation change. Mr. Caldwell said he likes the idea of keeping a dark line between the branches of the government and he would be against the motion. **Mr. Penn called for the question on Mr. Cannon's substitute motion. There were 7 votes for the motion and 3 opposed and one abstained.** Mr. Cannon commented that the committee could revisit the question at its next meeting. There was no response.

Mr. Caldwell called the committee's attention back to Section 414. There were no further comments on Section 414.

## **Article V Administrative Organization**

**Section 501 Supervision and control** There were no comments.

**Section 502 General provisions** There were no comments on Section 502 A, or 502 B. In Section 502 C Mr. Cannon suggested adding wording "in accordance with the Personnel Manual in extant". Mr. Caldwell asked Mr. Baker what would be the implication of making such a change. Mr. Baker replied that the additional wording would allow a simple administrative procedure to override the Charter. Mr. Caldwell replied that he thought so, too. Mr. Baker commented that this would apply only to the Executive's direct appointments, which are "at will" positions. Mr. Penn asked whether there are only 2 such positions, to which Mr. Baker answered, there is a difference; the Executive appoints the Director of Administration and all department heads. Mr. Penn followed asking whether there is a difference between "appointed" and "hired". Mr. Baker answered that there is a difference here, too; "appointed" positions are "at will" positions. Mr. Urban said does that mean there might be an excellent department head with 30 years experience in the job and he could be dismissed with no right of appeal? Mr. Baker said yes, the Executive has that authority. There was no further discussion of Section 502.

**Section 503 Composition; restrictions on creation** Mr. Kilmer asked whether if some of the departments listed in 503 A were deleted from the Charter, would it eliminate the department's existence. Mr. Caldwell replied that Section 503 B authorizes the Executive and the County Council to merge, or abolish departments. There followed discussion whether the long list of specific departments is essential in the Charter. Mr. Baker summed up the discussion noting that some Charters have the bare minimum departments listed in the Charter and some Charters have every little thing listed. There being no further discussion there was concurrence to move on.

Dr. Belcher recalled the Chairman's recommendation that the committee elect a Vice Chair. Mr. Caldwell concurred. Mr. Urban nominated Mr. Cannon as Vice Chairman. Mr. Kilmer seconded the motion. There being no other nominations, Mr. Cannon was elected Vice Chairman by unanimous vote.

There was concurrence that a convenient stopping point had been reached and on motion by Mr. Urban, seconded by Mr. Kilmer the Meeting was adjourned at 7:55 p.m.

Matthew Creamer