

Charter Review Committee of 2011

March 27, 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: Cathy Keim, Christina Rodriguez, Ed Urban, John Cannon, Katrina Purnell, L.C. Jones, M.J. Caldwell, Mark Kilmer and Orvill Penn.

Excused: Allen Brown, Brad Gillis, Greg Belcher and Fran Starkey

Absent: William Hall

Representing the County Executive's Office: Sharon Morris, Deputy Director of Administration

Assigned Staff: Ed Baker, Maureen Lanigan, Matthew Creamer

In attendance: Bob Culver

Mr. Creamer reported that the minutes of the previous meeting are not ready for distribution or approval and that they will be submitted at a later date.

Mr. Penn noted that the committee is beginning to be under a time crunch to complete its task, in that the committee has been working for 4 months and has only 3 months left. Mr. Caldwell added that there are really only 2 months left in order to assure the County Council sufficient time to review the committee's recommendations and to decide what charter amendments to put before the voters.

Mr. Caldwell said the committee will pick up where it left off at the last meeting, which is **Article VI. Section 601.1 Collective Bargaining**. He asked Mr. Baker to give a brief history of this section and its current status. Mr. Baker that the effort to obtain collective bargaining was initiated in the Sheriff's Office with the Fraternal Order of Police circulating petitions to gain enough signatures to place a question on

the ballot to amend the Charter to grant Sheriff's Deputies below a certain rank collective bargaining rights. The petition was successful and the ballot question was approved by the voters in 2006. The Charter language required the County Council to provide for collective bargaining with binding arbitration with an authorized representative of Sheriff's Office Deputies. Legislation proposed by the Executive included binding arbitration on the Executive and the County Council. The Council amended and in due course unanimously pass the bill to require binding arbitration only on the Executive. The Executive vetoed the bill and the County Council unanimously overrode the Executive veto. The FOP filed suit against the county. **The court at the Circuit and Appellate levels upheld the county and ruled that the Charter Amendment, Section 601.1 is unconstitutional.**

He added that the Charter language is similar to that of other counties, so the Legislature passed a bill that provided if counties have code in place at the effective date of the passage of the bill, those counties could retain that language. He added that Wicomico County has since provided for collective bargaining in the County Code with language that passes constitutional muster. Mr. Caldwell observed that Section 601.1 in the Charter is unnecessary, to which Mr. Baker agreed. Following discussion **Mr. Urban moved to recommend deleting Section 601.1 from the Charter, because it is now covered under state law and the County Code. The motion was seconded by Mr. Jones and voted for unanimously.**

Section 602 Appointments, promotions and actions – Mr. Cannon questioned 602 A, the language "...shall be made on the basis of merit and fitness..." whether the word "fitness" is discriminatory to individuals who may have physical disabilities. Mr. Baker replied that "fitness" refers to aptitude, or qualifications, rather than physical fitness. **There were no recommendations for changes to 602A, or 602 B.**

Section 603. County Personnel Board There was discussion regarding the Personnel Board and its function. Mr. Baker commented that the Charter provides the foundation needed for Human Resources management. State and federal law changes often and wherever state or federal law is more expansive than the Charter, the county will have to comply. He added it is the county's responsibility be knowledgeable of current federal and state laws and regulations in the

area of employee relations, personnel management and the rights of employees, as well as the rights of employers. **There were no recommendations for changes to Section 603.**

After discussion, there were no recommendations for changes to Section 604.

Section 605. Prohibition against conflict of interest – Mr. Baker commented that in the early 1970's the state required counties and municipalities to adopt ethics laws which were similar to those of the state. A later change in the state law required local ethics laws to be substantially similar to the states. Recently the state law has changed to require local ethics laws cover much broader areas, including extensive financial disclosure of interests, even outside the county. He added that this section of the Charter was revised by the last Charter Review Committee. The county ethics committee said that if the section is applied literally, a county employee could not rent a pavilion in a county park, or buy a ticket to an event at the civic center. The most recent Charter amendment allows limited interest provided that it is disclosed. Mr. Caldwell posed the question: Do we want provisions in the Charter to prohibit actions that would be less restrictive than in the Charter? Another question was: would it be bad to have our Charter more restrictive than the state requirements? Still another question is should we eliminate this section because the state ethics code is more stringent than the Charter and we have to abide by the state ethics laws, anyway? Mr. Caldwell asked Mr. Baker whether the state ethics law requires a criminal penalty, because Section 605 in our Charter does require a criminal penalty. Mr. Baker responded that forfeiture of office is not in the state code, whereas our Charter does call for forfeiture of office on conflict of interest.

Mr. Cannon said he sees more in this section than establishing boundaries for ethics, he sees establishing the role of the Ethics Commission. Mr. Baker added that there is a conflict of interest provision in Section 605 B. Either the Ethics Commission, the County Council, or a citizen could contact the States Attorney to make a charge of conflict of interest against someone under Section 605 C. Mr. Kilmer asked whether the proceedings and decisions of the Ethics Commission open to the public. Mr. Baker replied, yes under state

law. **Following further discussion there were no recommendations for changes in Section 605.**

606 Prohibition against appearing as attorney in litigation- There were no recommendations for changes to Section 606.

Section 607 Prohibition against political activities- Mr. Cannon observed that the language of this section would even prohibit the placement of political signs in someone's yard and he believes that is too restrictive.

Mr. Caldwell likened the section to a mini Hatch Act (at the federal level). He added that a political sign could be put on property that is jointly owned, provided both owners are not covered by the ethics law, meaning that the spouse of a covered person could erect a sign. Mr. Kilmer asked what is meant by "officers and employees", would that include the Executive and the County Council, to which Messrs. Baker and Caldwell concurred "yes". Mr. Penn asked would this apply to a county employee, who if on a weekend, on his or her own time, that he, or she, can't campaign for a local candidate? He added it says "any political activity". Mr. Baker said the prohibition only applies to "in the course of their employment", which means only during time in which an employee is being paid. Mr. Caldwell asked whether the committee wants to make it more restrictive. Mr. Cannon referred to Section 709 D in the Howard County Charter, citing that employees can do anything they want, as long as it's not when they are being paid and they can't be required to donate to a candidate.

Following further discussion, **Mr. Cannon moved to replace Section 607 with the language of Section 709 D of the Howard County Charter. Mr. Kilmer seconded the motion.** Mr. Cannon read aloud the referenced section from the Howard County Charter: *Section 709 (d) Political activity. No officer or employee of the county shall be prohibited from participating in politics or political campaigns; however, no officer or employee shall engage in political activity while on the job during working hours; advocate the overthrow to the government by unconstitutional or violent means; or be obligated to contribute to an election campaign, political party or political club, or to render political service.*

In order to enable further discussion, **Mr. Cannon withdrew his motion, as did the second.** Mr. Urban suggested revising the order, to make the beginning of Section 607 as is in our Charter now and at the end use the language in the Howard County Charter.

Mrs. Purnell asked that Mr. Baker put the language of Mr. Cannon's motion in draft form so Committee members can read it and consider at the next meeting. Mr. Baker agreed to provide a draft at the next meeting.

Section 608. Prohibition against rendering personal services. Following review, **there were no recommendations for change.**

Section 609. Prohibition against additional compensation. Following review, **there were no recommendations for change.** It was noted, however, that that **609 B could benefit from clarification** of the wording.

Mr. Baker commented that in both Sections 607 and 608, there are prohibitions, but the Charter does not specify any penalty for their violation.

Mr. Caldwell concurred, adding that the County Council has the authority to enact penalties, if they are needed.

At 7:00 pm the Chairman called a 5 minute break. **The committee reconvened at 7:05 pm beginning with Article VII. Budgetary and Fiscal Procedures.**

Section 701 Fiscal year and tax year. Following review there were no recommendations for change.

Section 702. Definitions. Following review there were **no recommendations for change.**

Section 703. Comprehensive scope of budget. Following review there were **no recommendations for change.**

Section 704. Capital program and budget. Mr. Cannon noted that John Palmer had written a letter recommending that all capital projects be subject to referendum. Mr. Caldwell noted that the County Council

suggested the County Executive be required to hold a public hearing on the Capital Budget and Program before he submits them to the County Council. He asked Mr. Creamer to explain the Council's concern. Mr. Creamer responded that with both the Capital budget and the Expense Budget, there is no requirement that the Executive hold a public hearing on his budgets to allow public input, before either is submitted to the County Council. The County Council is required to hold public hearings before it adopts either budget, but public comments then can have little affect, because the Council can only make cuts, except in the Board of Education budget. If residents want to appeal for restoration or enhancement of something in the Executive's Capital, or Expense budget, there is no opportunity for the public to make that case. Mr. Caldwell noted that the Committee could recommend that the County Council have the authority to add funding to the Executive's budget, if that would solve the problem. Mr. Creamer said the Council had no discussion about it having the authority to add to the budget, so that is not the reason for the recommendation. The issue is to give the public an opportunity to make its wishes and concerns known at a point in the budget process when they could make a difference in the end product. Mr. Penn said adding this step would tremendously slow things down and asked whether this has been a problem. Mr. Cannon noted that hearings on the Capital budget involve little public interest. It was noted that the recent Bennett Middle School project had been a stark exception, as it had evoked considerable interest from the public. Speaking to Mr. Palmer's recommendation, Mr. Kilmer said that out west referendums are held on everything. Ms. Rodriguez noted a **spelling error** in the word "**therefor**", which **should be "therefore" in Section 704 D-3.**

On motion by Mr. Cannon, seconded by Mr. Kilmer the Committee voted on amending Section 704 D to require the County Executive to hold a public hearing on the Capital Improvements Budget and Program. By a vote of 2 in favor and 7 opposed, the motion failed.

Mr. Caldwell noted that the Committee had held a vigorous discussion of Section 704 thus far and there is still more ahead. There being no further discussion considering the hour, on motion by Ms. Purnell seconded by Ms. Rodriguez and unanimously carried, the Committee adjourned at 8:10 pm. Mr. Caldwell said **the Committee will resume at Section 704 F at the next meeting.**

Matthew Creamer