

## **Open Work Session**

### **Discussion on Update to State Law on Process to Fill Vacancy on School Board of Education**

**February 18, 2020**

Mr. Taylor said there is no specific Agenda item on this, at least he has not seen any. He said his general understanding is they are still working towards the endgame of how the State Code should be changed, if at all, in regard to the vacancy procedures for members of the School Board. He said, since that involves a change in State law, he will point out that the comment made earlier during Public Comments about a student member of the School Board would also require a similar change in this particular chapter of the Maryland Code. He said she mentioned Montgomery County, and they do in fact have a student member, and there are other Counties that do. He clarified, he does not know how many, but there are others. He said, at least in the case of Montgomery County, she is correct that the student has certain voting rights, but they do not include voting on disciplinary matters for teachers, administrators, and School Board staff, and that appears to be the only thing that is exempted. He said there is also a pretty elaborate process where they have conventions among the students to decide who the student member is going to be, so it can be complicated. He said he thinks some of the other Counties' student members are just simply appointed by the County Council or Legislative Body. He clarified, that was just a quick comment because, if they were going to amend the Code, that could also be done too. He said, as Council probably knows, they are not going to amend the Code this year because it is too late for filing, so what they are talking about now would be for next year at the earliest.

Mr. Taylor said, as far as working towards that endgame, his thought on that is there has been a lot of discussion at the last several meetings about what he will just generally call the nitty gritty of how the Nominating Commission would operate, what would happen if people do not attend meetings, who would replace them, how that would happen, and things of that nature. He said his suggestion would be to put as little of that as possible in the State Code for the simple reason that, once they have it in there, it is more or less cast in stone and they have to go through what they are going through now, which will eventually be to go to the General Assembly and try to get the law changed. He said he thinks most, if not all, of those matters that have been discussed by the members of the Commission who have come before Council and spoke have been things that could either be done by Code amendment by Council, or probably just by the Board itself if they want to adopt their own rules and regulations. He said he would suggest, as far as the endgame is concerned, to leave those off to one side to be handled locally rather than in Annapolis, and only concentrate on the things they absolutely have to do in Annapolis to make changes they want to make. He said, with that kind of preface, he will say, in terms of preparing Legislation, this could certainly wait until later for obvious reasons because it will not be introduced until the next Session, but he can go through a punch list of things he has of matters he thinks, if Council wants to change them, they are going to have to do it through Maryland Code amendment. Mr. McCain said, before Mr. Taylor does that, does Council want to do that? He said they have not even seen what Mr. Taylor has, to which Mr. Taylor responded, he can run through it fairly quickly. He said Council can put the things he has talked about off to one side because that would take a lot of time to go through, and he thinks Council would be much better off to discuss that separately, and perhaps have Mrs. Hurley work with the Commission Members and come up with something. Mr. Dodd said this is a Work Session, so they can go through that. Mr. Taylor said he does not know exactly what is wanted by either the Commission or by Council because it has really not been discussed with that level of finality, to which Mr. McCain responded, well, actually it has. He said they have discussed this in at least four different Work Sessions, and they keep narrowing it down to literally just two or three items, but then keep going back to the beginning, to which Mr. Taylor responded, when he goes back and listens to the Work Sessions, particularly the last one, his head is spinning as to what Council actually wants to do. He said,

again, talking about these nitty gritty things he thinks are much better to hand off to one side for local action, unless something in that is absolutely important to Council and they want it as an absolute requirement that can only be altered by changing the State Code. He said, for example, if Council absolutely wants in the Code a mandatory requirement on the number of Public Hearings either by the Nominating Commission or by Council. He said, as far as he knows, the State law does not require any for either group, but if Council wants some and it cannot be waived, right now there is something in the Code. Mr. Dodd then asked Council if that is something they want to discuss, to which Mr. Davis responded, no. Mr. Taylor said that would be one matter if the feeling is they do not want to have at least one or two, or however many meetings by either this Nominating Commission or Council, then absolutely it can go in the Code. He said, if it is not in the Code, they can have any Public Hearing they want. He clarified, there is nothing that says they cannot have a Public Hearing if they want one. Mr. McCain said they have already discussed that, and he thought they came to a consensus that they were looking at having language saying "may" have up to two because right now it says they "have" to have two, and that way they would not necessarily have to do two Public Hearings. He said he knows they have talked about that, to which Mr. Taylor responded, another alternative is just to be silent about it and do as many as they want. He said, if it so happens they want to have three, they could do it, but if they say "may have up to two" then they have a ceiling of two. He said there are tradeoffs to any way Council wants to do this. He said, to him, the ideal thing is to maintain as much flexibility as they can because, once it is in the State Code, their flexibility is pretty much shot unless they word it so they have some flexibility, and then they are going to get into more statutory language.

Mr. Taylor said, to give Council his punch list of things they have discussed, and he thinks Council wants to go along with, one thing that is up in the air and he is not quite sure which way Council wants to go is the duration of the appointment to fill the vacancy, whether Council wants that for the remainder of the term, or the way it is now. He said, if the person is appointed to fill the vacancy early during that four-year term, they would have to stand at the interim election, which is the case now, and what will happen this November for the lady who was appointed to fill the vacancy last summer. He then asked if Council wants to change that or not, and said that is one item.

Mr. Taylor said another item is what happens if nobody files to run for an election. He said, obviously, if nobody files and nobody is elected, there is going to be a vacancy. He then asked if Council wants to have that set up so they can then appoint somebody, and do they want that to go through the Nominating Commission, or does Council just want to simply appoint someone? He said how to fill that is another aspect of this. Mr. Dodd said that could very well happen, to which Mr. Taylor responded, it could happen, and it has happened in some Counties.

Mr. Taylor said another item they had was what happens if the vacancy occurs very close to the end of the four-year term. He said they know the process with the Nominating Commission is going to require some period of time, probably somewhere at a minimum of 60 to 90 days for the Commission to act and then Council to act, so does it make sense to go through the process if the person is going to be appointed and then a week later the term is going to end? He said that is another matter he thinks is what he would call a State Code matter rather than a local matter.

Mr. Taylor said these are things he thinks Council needs to really look at. He said another one he had on the list that they had talked about several months ago was, if someone has declared to run, should they be eligible to fill the vacancy for the duration of that term before the term they are standing for election, or should they just be ineligible for that? He said, once they appoint somebody who is actually running for the following term, it seems to him like that is almost like a Council endorsement of that person, and it would make it very hard for anybody else to challenge them.

Mr. Taylor said those are four of what he would call State Code items, and the rest of it, frankly, he thinks he would discuss and do locally.

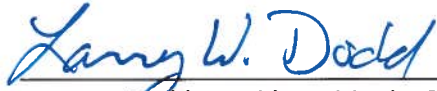
Mr. Holloway said he thought one of the issues was people not showing up to the meetings and not having a quorum. He said 14 people is a lot of people on a committee, but, apparently, they were not even getting enough to make a quorum. He then asked if they could do what a jury does where they have 14 members and 3 alternates, to which Mr. Taylor responded, they could do that. He suggested, another way to skin that cat would just be to not have a quorum as there is no requirement they have a quorum. He said, if they have a Commission of 14 members and 5 people show up, the rules are that whoever shows up is going to be the quorum. Mr. Holloway said he thought he asked that question at another meeting and everybody said they had to have a quorum, to which Mr. Taylor responded, he does not think so. He said there is nothing in the State Code requiring it, and they can do their meetings any way they want to, or any way Council wants to tell them to do them. Mr. Holloway asked if they can vote without a quorum, to which Mr. Taylor responded, yes. He said, as far as he knows, there is no law that says they have to have a quorum. Mr. McCain said they mentioned that, but then when they asked Mr. Brumbley how many times that happened, Mr. Brumbley said once, and he said the person actually showed up late. Mr. Holloway said that was an issue, to which Mr. McCain responded, but obviously it was not. Mr. Taylor said the more people they have, the less likely they are to have a quorum. He said, if they have 5, they are more likely to have at least 3 or 4 there than if they have 10, it just works that way. He said he knows from condo meetings he has attended that with the big condos it seems like it is harder to get a quorum than in the small condos, but that is just life. He concluded, he does not think there would necessarily be any requirement that they have any number of people there for a quorum.

Mr. Hastings asked, since they have been going over this for about a year now, what is the best way to put it to bed? He said they met with the School Board folks, and they gave a couple recommendations, and he feels like they had a good back and forth. He then asked what the best way is to take it piece by piece and get a draft put together, to which Mr. Taylor responded, there are two things, and, as he suggested, he thinks he would take what needs to be done locally, as he calls it, in one bag, and take what needs to be done through the State Code in another bag. He clarified, if they are going to change the number of members on the Commission, that is going to have to be done in the Code. He said, if they are going to change the period of appointment, that is going to have to be a State Code change. He said they need to take those things and have them in one bag, and then have the other issues, such as replacing people if they do not come to meetings, the quorum issue, etc., and put that in another bag, and that would just be something that is decided locally and can be changed locally. He said that is the reason for having it local, so Council can change it easily as things develop, and they might want to change it and not have to go back to Annapolis. He said, to him, that is the answer to the question.

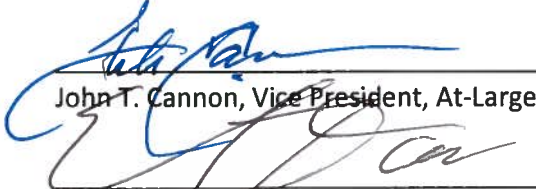
Mrs. Hurley said she has a letter ready to go to the County Executive asking for his input on the policy aspects. She said, if Council remembers, there were several items the Commission included the County Executive on, so this would be just to get his input. She then asked if everybody would be in agreeance to send a letter asking for their input, to which there was a consensus. Mr. Taylor said that is a good point, and he meant to also say that another reason for trying to put this stuff in this local bag is because the Commission wants to involve the Executive, and the current Executive may or may not like it, but the next Executive may or may not like it and may want to change it, so why go to Annapolis to do that when they can have that in their local bag. Mr. Dodd advised Mrs. Hurley to send the letter, and then said Mr. Hastings beat him to it, but they need to put this to bed. There was no further discussion.

*Signatures on next page*

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Larry W. Dodd, President, District 3




John T. Cannon, Vice President, At-Large



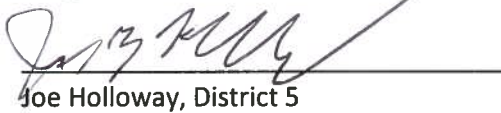
Ernest F. Davis, District 1



Nicole Acle, District 2



Josh Hastings, District 4



Joe Holloway, District 5



William R. McCain, At-Large



Laura Hurley, Council Administrator