

Charter Review Committee of 2011

January 24, 2012

Chairman, Wayne Strausburg called the meeting to order at 6:00 p.m. with the following members in attendance: Wayne Strausburg, Mark Kilmer, Christina Rodriguez, Katrina Purnell, Fran Starkey, William Hall, M. J. Caldwell, John Cannon, Dr. Greg Belcher, L. C. Jones, Allen Brown and Ed Urban.

Excused were: Orvill Penn, Cathy Keim, Brad Gillis

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

Assigned Staff: Ed Baker, Maureen Lanigan, Matthew Creamer

Mr. Strausburg informed the Committee that he has enjoyed serving on the Charter Review Committee and he thanked all members for their participation and their contributions thus far. He stated that this will be his last meeting as Chairman and a member of the Committee, as having been appointed by the County Executive and confirmed by the County Council, he will assume the duties of the Director of Administration on a full time basis on February 16th and until then he will be devoting as much time as possible to county affairs, while also wrapping up his personal business. Mr. Strausburg said he was stepping down from the Committee immediately to avoid any perception of conflict, because of his appointment. He turned the meeting over to Vice Chair, M. J. Caldwell, who continued to conduct the meeting. Mr. Strausburg took a seat in the audience.

On motion by Mr. Hall and second by Mr. Urban the minutes of the January 10, 2012 meeting were unanimously approved as amended.

Referring to the previous meeting, Mr. Caldwell asked whether the voter information promised by Ms. Purnell had been received. It being noted in the affirmative and distributed to the Committee, he asked

that the information be made a part of the minutes of this meeting, as follows:

As of the last week in December 2011 there were 53,526 registered voters in Wicomico County. As was noted at the last Committee meeting, this figure is adjusted monthly, resulting from deaths and new registrations. As of today's date (1/11/12), the number 8,028 represents 15% of the registered voters.

If a petitioner were to submit a petition to the Board of Elections, the number of signatures needed would be determined as of the date of the petition's receipt by the Board of Elections. As a practical matter the Board of Elections always recommends that petitioners gather more signatures than the number required when the petitions are turned in, because many signatures turn out to be not valid. (One of the most frequent reasons that signatures are rejected is that the person who signed the petition is not a registered voter.) Signatures on a petition are valid only for a six month period.

To assist petitioners, the Board of Elections offers a voluntary service. Petitioners may submit a proposed petition to the Board of Elections prior to beginning to collect signatures. The Board of Elections forwards the proposed petition to the County Attorney, who will assure that the proposed petition is properly worded to meet the requirements of a ballot question. The County Attorney returns the proposed wording to the Board and it is returned to the petitioner.

Mr. Kilmer stated that in 2010 Wicomico County had approximately 64,000 registered voters, and that the turnout was about 80% for the Presidential election and about 55% for the off year election. He added that it would make petitioning easier if the required number of signatures was 15% of the number of voters in the Presidential election, as there would be about 1,700 fewer signatures needed. Following discussion Mr. Kilmer moved to amend the Charter as to the number of signatures required to place a question on the ballot to be calculated as 15% of the number of voters who voted in the most recent Presidential election. The motion was seconded by Mr. Urban and was unanimously approved.

Mr. Cannon referred back to Section 305 and asked whether if the Executive, or his office were the subject of an investigation by

the county Internal Auditor, would the Executive have access to the Internal Auditor's report. Mr. Baker responded in the affirmative, unless the report showed criminal impropriety, in which case the matter would be referred to the States Attorney. Mr. Urban asked who would measure compliance in such a case. Mr. Baker responded that generally it would be the County Council, unless criminal impropriety had been found; then it would ultimately be the court.

Section 312, Referendum on bond issues and other local laws. There were no recommendations.

Section 313. Limitations on Bond Issues. There were no recommendations.

Section 314. Non – Interference with the executive branch. Mr. Cannon stated that Section B. should be removed completely from the Charter, citing that in practice, County Council members cannot even ask department heads, or employees questions that any member of the public can ask. There was discussion of lack of clarity between “formal” communication and informal communication.

Mrs. Morris said that informal communication, if it expects a response, makes it formal communication. She added that there is an intimidation factor if a Council member asks questions of a department head. She said a department head may know what he would answer, but he may not know what answer the Executive would want given, or he may not even be aware of and for that reason communication from the Council needs to go through the Executive's office. There followed discussion that part of Section 314 B could be combined with 314 A and the rest eliminated. Mr. Brown noted that as a matter of structure, if there is an A, there has to be a B. Ms. Starkey suggested modification to 314 B. Mr. Caldwell said that the last two Charter Review Commissions did not want to shut off all communications between the Executive and the Legislative Branches, that A and B were intended to provide a frame work, within which administrations and councils would develop effective means of communicating and working together, respecting the separate roles of the two branches of government. Mr. Kilmer asked whether this section hinders Council members presently. Councilman Bob Culver, responded from the audience, that it does hamper communications because 4 to 5 people

have to be involved to answer a simple question. He added that constituents call council members in their district, or council members who they know personally and they don't want to be told to call the Executive's office. Ms. Starkey suggested looking at the language in the Anne Arundel County Charter which says "except for purposes of informal inquiry..." Mr. Caldwell said it doesn't appear that previous Charter Review Commissions focused on Section 314 B at all, but rather devoted their attention to Section 314 A. Mr. Strausburg suggested that any changes should be very discreet in defining "formal" and "informal" to avoid inviting a challenge. Mr. Cannon said that the two terms are defined in 314 A. Mr. Caldwell noted that in the federal model it is very common for members of Congress to communicate with federal departments; they are subpoenaed for congressional hearings routinely and noted that in our Charter, "formal" is there for a reason. He further noted at the state level, communication between members of the legislature and cabinet secretaries, or department directors, is common place. Ms. Morris said she believes that the reference means all communication should go through the Executive's office. Mr. Kilmer suggested that all communications should be allowed between the Executive Branch and the Legislative Branch, as long as guidelines are developed and they are followed.

Ms. Starkey, again, noted that Section 314 B should not be eliminated, but modified, as in Anne Arundel County, that there have to be limits and control on content between the Council and department heads. Ms. Morris noted that if council members are free to contact department heads directly they can be overrun by the council. She continued that under the new Charter the County Council has a new, more limited role, that the County Executive runs the county. Dr. Belcher asked are there problems? Mr. Baker responded that yes, there can be. Using code enforcement as an example, if a council member asks the department head, or the code enforcement officer a question about a code enforcement issue, the response to a council member may include more information than would be released to a member of the public and it could quickly go beyond a council member's authority as a member of the legislative body. Mr. Cannon suggested striking the first section of 314 B, that council members cannot give orders to employees of the Executive Branch and put that in 314 A -2. Mr. Cannon made a motion to eliminate 314 B entirely. Dr. Belcher seconded the motion.

Mr. Brown again questioned structure of the Charter as a document and requested verification whether there could be a Section 314 A alone.

Seeking clarification of the motion Ms. Rodriguez asked whether the limitation on communication would apply to the County Council only, or to all elected officials. The consensus reply was that it would apply only to the County Council, to which Mr. Cannon added that the reason was to assure separation of powers between the Executive and the Legislative branches. Ms. Starkey proposed an amendment to the motion to add language in the Anne Arundel Charter. Mr. Cannon added that it would be a question of the definition of "inquiry", that a Council member could say "I'm only making an inquiry". Ms. Starkey said there needs to be some limitation, it sounds like the motion will make it all or nothing and that she is not comfortable with that. There was no second to Ms. Sarkey's motion. Someone called for the question, which ended discussion. The vote on the motion was 9 in favor and 1 opposed. The motion to recommend eliminating Section 314 B was passed.

Section 315. Confirmation of Appointments. Mr. Kilmer asked that the Committee pause between these sections. He referred to the Dorchester and Harford County Charters, which give the County Council the power to issue subpoenas and asked why our Charter doesn't give the County Council that authority. Mr. Creamer responded that the County Council does have that authority. Mr. Baker cited the Council's subpoena authority is in Section 906. There was discussion that the County Council does not have authority of a "pocket veto" because if the Council does not confirm or reject an appointment within thirty days, the appointment stands. Ms. Morris referred to a question to the Committee from the Executive Office, which suggested that since the Executive does not have confirmation authority over the Council Administrator, the County Council should not have confirmation authority over Executive appointments. In response there followed general discussion that there is a significant difference between the Council Administrator, who has very limited authority from a policy making perspective, compared to the Director of Administration, or county department heads, all of whom can significantly influence policy decisions. Mr. Kilmer noted that throughout the Charter the County Executive is given broad authority

over the operation of the government. He added that to remove the County Council's ability to confirm, or reject Executive appointments would tip the scale even further toward the Executive and would disrupt the balance of power the Charter has established. Following the discussion, there was consensus to recommend no changes to Section 315.

Article IV. The Executive Branch

Section 401. Composition There were no changes recommended.

Section 402. Executive powers and duties. Mr. Cannon suggested additional wording to Section 402 C. to require the Executive to provide information requested by the County Council in a timely manner. There followed discussion that in the past information has been requested and it has taken so long to get the information requested that the Council finds itself against a deadline without adequate information make an intelligent decision. Budget issues in previous years were cited as examples. Mr. Caldwell suggested that the Council's subpoena powers could remedy that situation. Mr. Cannon made a motion to recommend striking Section 402. H. Mr. Brown seconded the motion. On the question by a vote of 9 in favor and 1 opposed, the motion to recommend striking Section 402. H (Oversight of the Purchasing Agent by the Executive) passed.

Section 403. Election of the County Executive. There were no recommendations for amendments.

Section 404. Term of the County Executive. Mr. Caldwell pointed out that the previous Charter Review Committee had recommended that the County Executive be limited to two terms in office. He added that when the proposed Charter was submitted to the County Council, the only change which the Council made was to eliminate the two term limit for the County Executive. Mr. Caldwell suggested that the Committee will likely have a lot of discussion on this section and that given the hour, this is a good place to stop for the evening. He asked Committee members to think about it over the next two weeks and the Committee will begin its next meeting with this section. It was noted that the normal meeting date for the next meeting will be on

Valentine's Day. After brief discussion, there was consensus to move the next meeting to Wednesday, February 15th. at 6:00 pm in the Council Chamber. On motion by Ms. Starkey, second by Mr. Hall and unanimously carried, the meeting was adjourned at 8:00 pm.

Matthew Creamer