

Charter Review Committee of 2011

March 13, 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, Christina Rodriguez, Greg Belcher, Fran Starkey, John Cannon, Katrina Purnell, L.C. Jones, M.J. Caldwell, Mark Kilmer, Orvill Penn and William Hall.

Excused: Ed Urban and Cathy Keim

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

Assigned Staff: Ed Baker, Maureen Lanigan, Matthew Creamer

On motion by Mr. Hall and seconded by Mr. Kilmer, the minutes of the February 28, 2012 meeting were approved as corrected.

The Committee began deliberations of Section 503. Composition; restrictions on creation. There was discussion whether it is necessary or advisable to have every department which is at this time part of the county government listed in this section of the Charter, or whether it would be preferable to list only those departments which, at a bare minimum, would be required for the county to exist. This would be in order to more efficiently establish and abolish departments for which a need has come into existence and those for which there is no longer a need. It was questioned whether the county had ever eliminated a department. Mr. Creamer said yes, under the previous charter a department had been eliminated when the County Council had determined that the county was paying a fire marshal, fire safety inspectors and clerical support, when the State Fire Marshal's Office performed that same service for our neighboring counties at no cost to the county tax payers. This involved abolishing the office of the Wicomico County Fire Marshal and the elimination of 3 or 4 positions, with no appreciable diminution of service to the public. In another

instance a start up department for juvenile assistance was established by the county with input, but no funding from Salisbury. Within a couple of years it was evident that the effort would not likely produce the outcomes intended and the county pulled the plug on the entire operation. The most visible and successful example of making changes was abolishing the Tourism Department and the Civic Center as a department by folding both of them into the Recreation and Parks Department. This greatly expanded the mission of Recreation and Parks and most importantly it tore down some silos. The change resulted in greatly improved utilization of labor, cross fertilization, sharing of resources and better span of control, resulting in greatly improved efficiency, performance and revenue. In none of those instances did the county have to go through the cumbersome, time consuming and costly process of passing legislation to abolish, or create a department, like the Charter now requires. In the original charter, the only required offices were an Administrative Director, Director of Finance, Director of Public Works and the County Attorney. It is different now with a separate Executive and Legislative Branch. Mr. Baker said that in other charter counties the charters handle this from one extreme to the other. Some, like our first charter list only the bare essentials and in other counties, the charter lists every entity the county has, no matter how small, or inconsequential.

Following further discussion there were no recommendations for changes to Section 503.

Section 504. Reorganization. The committee questioned what constitutes a “substantial reorganization” within the intent of this section? Mr. Baker replied, the Law Department has opined that a substantial reorganization is when the functions of one department are transferred to another. This is what occurred with Recreation-Parks-Civic Center and Tourism as Mr. Creamer described. While the Charter does not mention it, a non-substantial reorganization would involve only moving people around. Mr. Cannon said he thinks Sections 503 B and C are redundant to Section 504 A. Mr. Baker replied that it would be cleaner to incorporate Section 503 B and C, merging them with Section 504. He concurred that if they were done today the abolition of the Fire Marshal, Juvenile Service, etc would be done by legislation. In addition, the legislation must be at the request of the County Executive. This would prohibit a County Council from

essentially abolishing the county government from under a County Executive, if it chose to do so. This requirement maintains balance between the branches of government. **Mr. Caldwell asked Mr. Baker to propose language for the Committee to consider regarding Section 503 B and C, merging them into Section 504.** He added that the Committee will come back to this at another time. **Upon further discussion there were no additional recommendations for change to Section 504.**

Section 505. Department of Finance. Committee members took time to review this section, after which Mr. Cannon asked should the Committee consider whether the Charter should require the Director of Finance be a CPA? Mr. Creamer responded that the Director of Finance is a senior management official. As a department head he/she is appointed by the County Executive and confirmed by the County Council. Thus it is incumbent upon the Executive to select someone from a broad range of qualifications. Being a CPA may be a plus for a Director of Finance, but it may not be the most important qualification. As senior management, a Director of Finance is a Chief Financial Officer. Such a person would need high level skill and experience in an array of financial management areas, such as long range planning, statistical modeling, budgeting, trending analysis, municipal finance, organizational skills, understand the morass of GASB regulations, and while he or she would not need to be an attorney, knowledge about tax laws at the state and federal level would be a must, along with a host of other things. Mr. Creamer added that the county had a very difficult time finding a suitable person to hire as Internal Auditor. This is another position required by our Charter and it required that this person be a C.P.A. Last year the voters approved a Charter amendment which broadened the professional qualifications a person could have and be Internal Auditor for Wicomico County. Thus for Director of Finance, a C.P.A. could be a plus, but it should not be a requirement. Another question was should the Charter require the Director of Finance and other Department Heads to live in the county? Mr. Baker responded that the Charter now requires only the Director of Administration and the County Attorney reside in the county. He said a residency requirement should have as strong relationship to the requirements of and the ability to perform the job. By example he said, the County Attorney is not really a policy maker, yet is required to be a

resident of the county and the Committee might want to consider this. Mr. Kilmer said residency requirements narrow the pool of qualified applicants. Mr. Cannon added its' important to hire the right department heads, not the required residents. Mr. Caldwell said residency really doesn't reflect a person's ability to perform what is required of a county attorney. Mr. Baker added that Howard County has a unique set of requirements for its County Attorney. In order that the Executive and the County Council can be assured of the county attorney's independence and freedom from being pressured in any way, once the County Attorney is appointed and completes a settling in period, the County Attorney cannot be dismissed except by agreement of the County Executive and a super majority of the County Council. This assures the Executive and the Council of having a completely independent legal advisor. Ms. Starkey noted that Section 505A refers to the Director of Finance and "his" salary shall be set ... She asked shouldn't the Charter language be gender neutral? Mr. Cannon referred to Article XI. Definitions and Rules Section 1101. A. 13, which reads "Whenever in this Charter the masculine gender is used, such words shall be construed to include the feminine gender, except where such construction would be absurd or unreasonable." **Ms. Starkey made a motion to recommend in Section 505 A. that the word "his" be changed to "their". The motion was seconded by Mr. Brown and was unanimously approved.**

Mr. Caldwell suggested the Committee members keep in the back of their minds to revisit the level of detail recommendations go, considering that all Charter changes will have to be put in the form of ballot questions for the voters to consider.

Mr. Cannon referred to 505 B 5, inappropriate, or illegal actions discovered by the Director of Finance "shall be referred to the County Attorney for further action in accordance with law". He suggested that the wording may be too vague and leave too much discretion to the County Attorney in matters which perhaps should be decided by the States Attorney. Mr. Baker noted that the establishment of the fraud hotline by the County Executive could be a good example of 505 B 5 in practice. He reminded the Committee that hotline calls which report alleged fraudulent activity are referred to the Legislative

Branch for investigation. He added that inclusion of the word “erroneous” pertaining to an act, or actions could refer to a failure to follow procedures and could be corrected by disciplinary measures by the Executive Branch. He suggested it would be appropriate to leave the wording as it is written. Ms. Starkey added that the County Attorney is a neutral reviewer and has a trained legal mind. He has a responsibility to represent and refer matters to the Executive, or the County Council as needed. The attorney’s Code of Responsibility would require the County Attorney to follow proper procedures. **There being no further discussion, the Committee recommended no changes in Section 505 by consensus.**

Section 506. Department of Public Works Mr. Caldwell noted it seems unusual that the Charter requires the Director of Public Works to be a graduate engineer, but it does not require that he be a licensed professional engineer. Mr. Creamer replied that a common distinction between a graduate engineer and a licensed engineer is that only a licensed engineer is authorized sign and affix his seal to engineering documents. Both are likely to have the same educational training as an engineer. It is important that the Director of Public Works be well versed and experienced in engineering principles and practices, particularly in civil engineering, but seldom would the director be required to sign plats, or other engineering documents. In addition a director would likely have one or more licensed engineers on staff. He noted that the Charter requires that the director has “graduated with an engineering degree”. There are many engineering disciplines, electrical, mechanical, nuclear, etc., but only a civil engineer would likely fill the bill as a director of public works.

Mr. Caldwell suggested the Mr. Redden be invited to attend a meeting to discuss with the Committee any provisions in this section which may need to be addressed. **It was agreed that the Committee will come back to Section 506 when Director of Public Works Director, John Redden, meets with the Committee.**

Section 507. Department of Law. Mr. Caldwell noted that the County must be a member of the bar for at least 5 years prior to appointment. Mr. Cannon commented that the Talbot County Charter requires the County Attorney shall have at least 2 years experience. Messrs. Hall and Caldwell each opined that a minimum requirement of 5 years is

much better. **Mr. Caldwell**, recalling the Howard County Charter's intentional protection of the County Attorney's independence and citing recent experience in the City of Salisbury with its City Attorney, **suggested the Committee might want to consider language similar to Howard County's.** He also opined that he doesn't think a residency requirement is reasonable. A question was raised whether the County Attorney can effectively advise the County Executive and the County Council, particularly when at times the Executive and the Council may have differing views. Mr. Baker responded that in larger counties there are several lawyers in the Law Department. In some cases one attorney will advise the Executive and another will advise the County Council in a situation where the views were divided. In our county the County Attorney is the county's attorney. The client is the county, including all departments, the Council and the Executive. He added, the County Attorney gives advice on matters of the law and is not a policy maker. Advice on policy matters comes more from department heads and the administrators. Mr. Creamer added that Section 403 C of the Charter gives the County Council the authority, subject to provisions in the budget, to engage the services of experts, consultants, or attorneys to aid in its inquiries, investigations, or in the drafting of legislation. Mr. Caldwell commented that he has no problem whether the County Attorney is a county resident, or whether he is in private practice. Mr. Baker commented that while he was part time county attorney, he also served as town attorney for a few municipalities, all of which were outside of Wicomico County. He noted in one instance the town had considered only attorneys whose law practices were outside of the municipality, to assure the attorney would not be a "local" attorney, who could possibly be influenced by anyone inside the town. Ms. Starkey said that with her residency is not an issue, but she thinks that only 5 years is minimal experience. Mr. Hall reiterated that he sees no problem whether the attorney is a county resident and agreed with 5 years being minimal experience for such a responsible position. **Mr. Kilmer moved to recommend amending Section 507 A to remove the sentence "The County attorney shall be a resident of the county at the time of appointment and shall continue to reside in the county for the duration of his term of office." The motion was seconded by Ms. Starkey.** Dr. Belcher asked for a clarification of the change in the motion. Mr. Caldwell said the motion is to delete the next to the last sentence in Section 507 A in its entirety. There being no further

questions Mr. Caldwell called for the question. **The vote was 11 in favor and 2 opposed, Mr. Jones and Ms. Rodriguez. The motion passed. Mr. Caldwell referred further to Section 507A regarding appointment and removal of the County Attorney.** He asked the committee whether anyone wants to consider Howard County type language, particularly since our County Attorney serves both branches of government. Following discussion **there was consensus to ask Mr. Baker to present draft language for Section 507 A along the line of Howard County for the Committee to consider.** Mr. Jones asked that a super majority of the County Council be required for removal. Mr. Cannon asked whether in 507 B the members of the County Council can ask questions of the County Attorney, or does it have to be a written request from the entire Council. Mr. Baker replied the County Attorney can give advice to individual Council members, as well as to the entire body. **There were no other recommendations for changes to Section 507.**

Section 508. Citizen advisory boards. Mr. Strausburg commented that there is clarity lacking on what these boards may do in contrast to Section 315 B. Mr. Baker commented that temporary “kitchen cabinets” do not require Council confirmation. Ms. Starkey suggested that language is needed to clarify that such bodies are temporary in nature and do not require confirmation by the County Council. It was noted to the contrary that Section 508 specifically cites that “Advisory boards appointed by the County Executive under the provisions of this section shall be subject to the confirmation procedures set forth in Section 315 of this Charter.” Mr. Caldwell commented that the word “official” could be added to boards requiring confirmation. Mr. Kilmer asked what makes a body, or commission “official”, adding that Section 413 says “all boards and commissions” with stated exceptions, are subject to Council confirmation. Mr. Baker said that Section 508 is offset to Section 315 B. Mr. Penn noted that ad hoc and temporary are synonymous. **Ms. Starkey made a motion to recommend adding the word “not” between “shall” and “be” in the last sentence of Section 508. The motion was seconded by Mr. Gillis. Mr. Caldwell called for the question. There were 10 votes in favor and 3 opposed, Mr. Cannon, Dr. Belcher and Mr. Kilmer. The motion passed. There were no further recommendations for amendments to Section 508.**

Article VI Personnel Provisions

Section 601. Personnel System

Section 601 A There were no recommendations for amendments to Section 601 A.

Ms. Starkey made a motion to remove assistant directors from Section 601 C, to change their status from “at will” to “merit”. Dr. Belcher seconded the motion. Mr. Caldwell commented that the protection of a merit employee is so great that a person in a merit position as an assistant director could be an obstacle to making change within the county as an Executive may desire. This could be particularly critical with the Assistant Director of Administration for the Executive, or the Assistant Council Administrator for the County Council. Mr. Kilmer added that voters elect an Executive and persons in key positions in the Executive's office should be relied upon to advance the Executive's goals. The Charter should give the Executive broad latitude to advance those goals. Mr. Caldwell said it could diminish the power of an Executive, or the County Council if persons in their immediate staff were there when the elected officials came in and who knew they they'd still be there when the elected officials were gone. **Mr. Cannon called for the question to eliminate the Assistant Directors of Administration and Assistant Council Administrator from the provisions of Section 601 C. There were 3 votes in favor of the motion, 9 votes opposed and Mr. Caldwell abstained. The motion failed to pass.**

Mr. Kilmer, referring to the last line of Section 601 asked whether the Council should be able to initiate change in the Personnel System, as the present language requires the Executive to initiate and the Council to follow through with legislation. Mr. Baker replied that the balance of power in the Charter between the Executive and the Legislative branches is for the Executive to propose and for the Council to dispose. That's the difference between the two functions. In matters of governance, such as having a personnel system, the Charter intends there to be action by the governing body, which includes both the Executive and the Council. Each branch has the opportunity to concur or disagree. Either branch can bring an issue to a halt, the Executive by declining to introduce an issue, or by vetoing a bill. The Council can refuse to introduce a bill proposed by the Executive, or can vote

against a bill's passage. For an initiative to pass, it takes the cooperation of both branches of the governing body.

On motion by Mr. Hall, seconded by Mr. Jones and unanimously approved, the meeting adjourned at 8:00 pm. The Committee will reconvene on March 27, 2012 commencing with Section 601.1 Collective Bargaining.

Matthew Creamer