

Approved – 2/19/04

CHARTER REVIEW COMMISSION
Thursday, January 29, 2004 – 8:00 a.m.
6th Floor Front Conference Room
Council Office Building

Minutes

Commission Members Present:

Kenneth Muir, Chair

Barbara Smith Hawk, Vice Chair

Julie Davis

Mollie Habermeier

Cheryl Kagan

Michael McKeehan

Javier Miyares

Sylvia Brown Olivetti

Robert Skelton (via telephone)

Shelton Skolnick

Commission Members Absent:

Randy Scritchfield

Staff:

Joe Beach, Assistant Chief Administrative Officer

Carol Edwards, Legislative Services Coordinator

Michael Faden, Senior Legislative Attorney

Justina Ferber, Legislative Analyst

Marc Hansen, Chief, Division of General Counsel,
Office of the County Attorney

Sonya Healy, Legislative Analyst

Guest:

Dale Tibbitts, Representative

Montgomery County Civic Federation

Chairman Muir began the meeting at 8:00 a.m. Mr. Muir welcomed Joe Beach, Assistant Chief Administrative Officer to the meeting. Mr. Beach replaces Bill Mooney, who retired from County Government, as the Executive's representative to Charter Review Commission meetings.

I. Discussion of new issue

A. Technical amendment to clarify Section 208 of the County Charter to clarify the timing of an Executive veto

Mr. Hansen discussed Section 208, Veto, and the language drafted to clarify the Executive's veto timetable. (New language is indicated by underline – deleted language is indicated by brackets)

Sec. 208. Veto.

Upon the enactment of any legislation by the Council, [it] the Council President shall [be delivered within three days] promptly deliver it to the County Executive, who within ten days [thereafter] after receiving it shall approve or disapprove it. If the [County] Executive disapproves such legislation, [it] the Executive shall [be returned] return it to the Council [within three days after the Executive disapproves it] within ten days after receiving it with the reasons for the disapproval stated in writing. Not later than 60 days after receiving the Executive's message of disapproval, the Council may, by the affirmative vote of six members, enact

legislation over the disapproval of the [County] Executive. Any legislation which has been neither approved nor disapproved by the [County] Executive shall become law on the [fourteenth] eleventh day after [enactment] the Executive receives it. The Council may by law further specify how any period of time mentioned in this section is measured.

Mr. Hansen commented that this Charter change is necessary to clarify the timing of an Executive Veto. The State Code, County Code, and Court Rules of Procedure all have a method of counting days. The Council could specify through a law (there is a provision already in the County Code) that simply says that days are counted in the Charter the same way that days are counted in the County Code. Then it would be up to the Council to decide whether holidays and weekends are included in the count.

Mr. Skolnick asked if 10 days is a sufficient amount of time for the Executive to approve or disapprove legislation.

Mr. Hansen replied that historically 10 days has been sufficient. Mr. Beach noted that since it takes a while for legislation to go through the legislative process, the Executive Branch has adequate time to consider its position, and he sees no problem with the 10-day period.

Mr. McKeehan asked Mr. Hansen if he and Mr. Faden looked at adopting the judicial way of counting days.

Mr. Hansen replied that under the County Code the judicial method for counting days has been adopted. What they envision happening, if the amendment is adopted, is the Council would enact a law to count days using the judicial method under the Charter.

Mr. McKeehan suggested that instead of including the last sentence specifically state that we are adopting the judicial method of counting days.

Mr. Hansen replied that it could be done in this manner, but there is the risk that when you incorporate something by reference, the court could change the way days are counted that may not be particularly convenient for County Government. If the Council is authorized by law to determine how days are counted, you maintain more control.

Mr. Skolnick made a motion to adopt the technical amendment language changes except leave the three days in on line 2.

The motion was seconded and approved.

II. Discussion of existing issues

A. Council members positions full- or part-time jobs

Mr. Muir commented that there was an opinion among members of the Commission that there should be language to specify that being a Councilmember is a full-time job. Part of the rationale for that idea was to clear up questions that the previous Compensation Committee had

raised which included whether being a Councilmember is a full- or part-time job and if Councilmembers should be paid at a rate commensurate with the time they put into the job.

The Commission reviewed language drafted by Julie Davis and Marc Hansen to amend the Charter (Section 102 Composition and Elections) to provide that Councilmembers positions are full-time jobs with limits on outside employment. A memorandum to the Commission dated January 23 from Justina Ferber pertaining to full-time employment was also distributed.

Two alternative amendments to amend Section 102 were presented as follows:

Alternative A added the following sentence: Each member of the Council shall devote full time to the duties of the office and shall not participate in any substantial private occupation for compensation.

Alternative B added the following sentence: Each member of the Council shall devote full time to the duties of the office and shall not participate in any private occupation for compensation, except an occupation that the entity that interprets the code of ethics and related law under Charter Section 410 has approved after determining that engaging in the occupation will not interfere with the member's duties of office.

Commissioners expressed concern about the term “substantial”. A suggestion was made to indicate a specific time period instead of using the term “substantial”. Some Commissioners were concerned about measuring and tracking Councilmembers’ time. There was also concern about the term “office of profit”.

Mr. Hansen stated that the language comes from the State Constitution, which prohibits people from holding two offices for profit. He noted that the State Attorney General advised that an individual cannot escape the impact of the rule by waiving compensation. If an individual is entitled to compensation and holds an office for profit, he or she cannot escape the rules that govern the office by refusing to take a salary.

Ms. Kagan asked if there is any precedent to require disclosure of Councilmembers’ outside employment on an annual basis, which would make information available to the voters and the press.

Mr. Hansen responded that that information about all sources of income is required currently on financial disclosure forms, which are available to the public. All Councilmembers have to file a public disclosure form and state all sources of income; however, the form does not require Councilmembers to state the number of hours spent on Council business.

Mr. McKeehan suggested that the Commission leave all the language in Ms. Davis’s amendment, but add the words “this is a full time position”.

Ms. Ferber commented that many people believe that the Council position currently carries a full-time salary. Compensation was previously established in the Charter. Now there is Compensation Committee that meets every 4 years to determine the compensation level for

public officials. She suggested that the Commission may not want to discuss the level of compensation, but instead focus on the full-time part-time employment issues. The Commission could make the recommendation in its report, and then the Compensation Committee can determine the appropriate level of compensation.

Ms. Davis asked Mr. Hansen to explain the role of the Ethics Commission. Specifically, the type of oversight function it serves.

Mr. Hansen replied that the Ethics Commission has no authority to evaluate the number of hours Councilmembers spend on Council business. The Ethics Commission could evaluate conflict of interest claims related to outside employment or dereliction of duty claims. In this case, the Commission would evaluate whether the outside employment would create a conflict of interest between a Councilmember's official duties and the outside employment.

B. Conference Call with William Somerville, Legal Counsel, Maryland Department of Legislative Services

Mr. Muir asked Mr. Somerville to advise the Commission on the issue of the number of signatures required to amend the Charter verses changing legislation.

Ms. Kagan also asked Mr. Somerville to comment on the ethical considerations associated with making Montgomery County Councilmember positions full-time jobs with a loophole for outside employment.

Mr. Somerville commented that in the Maryland General Assembly legislators may have outside jobs. The Council's legislative calendar is much longer than the Maryland General Assembly's calendar. As a result, in Maryland, most legislators have full-time jobs in addition to their legislative responsibilities. On the State level, the only restriction to outside employment is when outside activities pose a conflict of interest. Mr. Somerville suggested that an argument can be made that since the Council meets all year that it is a full-time job.

Chairman Muir reiterated the conflict between the requirements to amend the Charter verses changing County laws. He also commented that in the past, Senator Ida Ruben had introduced a bill at least three times to change the State Constitution to increase the number of signatures required for a Charter amendment. The Council has also tried to make a change but could not get any other jurisdictions to support the amendment.

Mr. Somerville suggested that it is a good idea to get the support from the Maryland Association of Counties in order to create a broader base for pushing this type of legislation. He also suggested that proposed language to change the number of required signatures in the Charter should be reflected as a percentage instead of a specific number.

Ms. Kagan asked Mr. Somerville to comment on the issue of the Ethics Commission and its enforcement powers verses public or public pressure.

Mr. Somerville replied that most enforcement at the State level is informal and consists of a lot of peer pressure and guidance on the expectations of constituents. Technical violations are generally handled by a conference or a confidential letter. It's rare for a complaint to proceed to a formal hearing. His role as ethics advisor to members of the General Assembly is to remind legislators that they are being scrutinized by the news media, their constituents, and the general public. His best advice to legislators is to question if they would like to read about what they are doing the next morning in the newspaper. If the answer is no, they shouldn't do what they are contemplating.

Dale Tibbitts, representative from the Civic Federation, asked if Councilmembers are required to provide reasons as to why they are absent on a particular day and if this information is recorded anywhere? That way voters would have the ability to determine if an absence is reasonable.

Mr. Faden replied that Councilmembers do tend to have the Council President put something on the record as to why they are absent (whether it's for other Council business or family commitments). This is not a requirement, and it is not 100 percent adhered to in the case of the members who have had conflicts with job requirements such as court dates. Sometimes Councilmembers are just not there or they will come to the meeting late and there is nothing that regulates that.

Ms. Kagan asked if the Commission has the authority to modify Councilmembers annual disclosure of outside income to include the number of hours devoted to outside employment verses Council business.

Mr. Faden replied that it could be done, and the easiest, most direct way is to amend the County Ethics Law. The problem would be estimating the hours spent on Council business because it would be a fairly subjective average. He reminded the Commission that full Council meetings and an increasing number of major Committee meetings are televised; so the public can see who is sitting there and who is not.

Ms. Davis commented that a very good gauge of Councilmembers' participation is data that staff already provided and is already available--who is present for votes. Participation by Congressional members is gauged on votes, and she thinks that that is a good measure for Councilmember's participation as well.

Ms. Hawk asked for clarification on what the Commission is trying to solve: 1) is the Commission trying to make Councilmembers accountable and make sure they serve a set amount of time the Commission thinks citizens deserve; or 2) is the Commission trying to open up the process by making these positions more attractive to groups that aren't currently present on the Council?

Ms. Davis commented that the second issue is what the Committee initially discussed which is the premise that virtually all Councilmembers are currently working full time. The difficult task is trying to deal with the compensation issue and give guidance to the Compensation Committee by clearing up in the Charter that service on the Council should be

considered a full-time position for compensation purposes and leave it at that. It should be left up to the voters to decide what the appropriate level of effort is for a particular representative.

Chairman Muir recalled that this issue came up when Mr. McKeehan described the discussions of the previous Compensation Committee on which he served. The Compensation Committee had a problem recommending a salary for Councilmembers because it was not clear whether to compare Montgomery County with full-time Councils like Baltimore City or whether to compare the County to part-time Councils like most of the other Charter counties.

Mr. McKeehan (speaking as an individual and not on behalf of the previous Compensation Committee) noted that the Compensation Committee ended up recommending a median salary. It was his impression that the Committee may have recommended a higher salary if the Council had been considered full time. Conversely, if it had been determined that the Council was part time; he believes that they would have recommended a smaller raise.

Chairman Muir recalled that Mr. McKeehan and Ms. Davis proposed to insert language that being a Councilmember is considered a full-time job with no additional language. This strategy would clarify the salary issue for the Compensation Commission, or at least give them some guidance for comparisons, and would provide flexibility in interpreting what it means to have a full-time job as a Councilmember.

Ms. Davis and Mr. McKeehan recommended the following language: Membership on the Council shall be considered a full-time position for the purpose of determining compensation.

Mr. Skolnick suggested that they should delete “determining compensation”. He noted his concern that in these tight fiscal times this looks like the Council is trying to increase its salary.

McKeehan commented that the Council could not recommend a salary increase for itself. Any increase would apply to the next Council and would still have to be based on recommendations from the Compensation Committee.

Mr. Muir stated that the attorneys would draft the appropriate language based on Ms. Davis and Mr. McKeehan’s recommendations and share this at the next meeting.

At this point in the meeting, Mr. Muir requested that Council staff distribute former Councilmember Esther Gelman’s letter to the Commission and asked the Commissioners to review her comments.

C. Number of signatures required for Charter amendments

Mr. Muir asked the Commissioners if they were interested in making a recommendation on the number of signatures required to amend the Charter versus the number of signatures required to change County laws.

Mr. Skolnick suggested that the Commission not spend any more time on the issue. The Chair then asked if the Commission wanted to pursue the issue on signatures and/or to include a recommendation in the report.

McKeehan suggested that the Maryland Association of Counties would be a good place to get input from on this issue.

Ms. Olivetti commented that the Commission should continue to pursue the issue and include a statement in the report but take no position at this time.

Dale Tibbitts from the Civic Federation alluded to the fact that the Commission had asked the public to comment on all the issues, including the petition signature issue, at the public forum. He recalled that representatives from the public commented that this is an issue that should be pursued.

The Commissioners decided that the issue should be tabled until the next meeting.

D. Council Structure

The Commissioners decided to take a vote on this issue at the February 19 meeting.

E. Petitions filed by Mr. Ficker

The Chairman stated that Councilmembers had asked for the Commission's opinion on the petitions filed by Mr. Ficker dealing with term limits and a tax cap.

III. Other Issues

Ms. Kagan suggested that the Commission invite Karl Aro from the Maryland Department of Legislative Services to discuss the issue of having Council districts aligned with State districts and to expand on the advantages and disadvantages of such a proposal.

Mr. Miyares asked if a proxy could be submitted if a commissioner could not attend the February 19 meeting.

Ms. Ferber commented that it had not been done in the past, but previous Commissions did accept telephone votes. She noted that a proxy could be used if it clearly reflects the Commissioner's intent.

At this point in the meeting the Commission discussed potential dates and times for an interim meeting to discuss the remaining issues.

Ms. Hawk asked about the letter that Council staff prepared to solicit feedback from various groups such as the NAACP, CASA, the Korean-American Association, the Chamber of Commerce, and others. Ms. Healy responded that the letter had been mailed to these groups but to date no additional responses had been received.

IV. Administrative Items

The Chair asked for a motion to approve the December 18 meeting minutes. A motion was made, seconded, and approved (by members present). The minutes will also include the corrected version of the chart on Council structure information for other jurisdictions as an attachment. Mr. Skelton abstained from the vote because he was absent from the December 18 meeting.

Meeting adjourned at 9:52 a.m.

Council Structure Information for Nationwide Counties Similar to Montgomery Co, MD

County	Population 2000	Council Size	Population per CM	District or At-large	County Budget (000s)	Council Budget	Outside employment permitted	Part-time or Full-time Job	Salaries	For position
Baltimore Co, MD	754,292	7	107,756	All district	\$ 1,200,000	\$ 1,500,000	Yes	Part-time	\$50,000	Chair
Bergen, NJ	884,118	7	126,303	All at-large	\$ 350,000	\$ 1,000,000	Yes	Part-time	\$45,000 \$28,000	CMs Chair
DuPage, IL	904,161	18	50,231	All district	\$ 514,000	\$ 1,500,000	Yes	Full-time	\$27,000 \$97,000	CMs Chair
Fairfax, VA	969,749	10	96,975	9 dist./ 1 at-large	\$ 2,600,000	\$ 4,200,000	Yes	Not clearly defined	\$44,000 \$59,000	CMs
Hennepin Co., MN	1,116,200	7	159,457	All district	\$ 1,700,000	\$ 2,300,000	Yes	Full-time	\$84,300	
King County, WA	1,737,034	13	133,618	All district	\$ 3,000,000	\$ 12,600,000	Yes	Full-time	\$104,000	
Lake, IL	646,356	23	28,102	All district	\$ 378,000	\$ 1,200,000	Yes	Not clearly defined	\$66,000 \$33,000	Chair CMs
Mecklenburg, NC	695,454	9	77,273	6 dist./ 3 at-large	\$ 1,000,000	\$ 334,000	Yes	Part-time	\$23,000 \$19,000	Chair CMs
Montgomery, PA	750,097	3	250,032	All at-large	\$ 400,000	\$ 1,200,000	Yes	Part-time	\$54,000 \$51,000	Chair CMs
Oakland, MI	1,194,156	25	47,766	All district	\$ 600,000	\$ 2,800,000	Yes	Part-time	\$31,000	
Palm Beach, FL	1,131,184	7	161,598	All district	\$ 2,800,000	\$ 2,600,000	Yes	Full-time	\$84,000	
San Mateo, CA	707,161	5	141,432	All district	\$ 1,200,000	\$ 1,700,000	Yes	Full-time	\$79,000	
Westchester, NY	923,459	17	54,321	All district	\$ 1,400,000	\$ 2,800,000	Yes	Part-time	\$43,000	
Montgomery, MD	873,341	9	97,038	5 dist./ 4 at-large	\$ 3,000,000	\$ 6,700,000	Yes	Not clearly defined	\$72,500	

Source: County governments.