

LEGAL AND REGULATORY NOTES, JUNE 2016

Town's authority to comment on proposed charter change upheld

The Vermont Supreme Court recently upheld the authority of the selectboard of the Town of Brattleboro to comment on voter-initiated charter amendments by distributing an information sheet about those amendments. *Kurt Daims & Craig Newbert v. Town of Brattleboro*, 2016 VT 55.

Prior to the Town of Brattleboro's March 2015 annual town meeting, plaintiffs Kurt Daims and Craig Newbert submitted voter-backed petitions to amend the town charter. Among the proposed changes, the petitions sought to give voters the right to seek a referendum on articles (1) authorizing the town to spend more than \$2 million, (2) have the town officials be elected in November rather than March, (3) require employers within the town to provide two hours' paid leave for employees to vote at town meetings, and (4) have the town grand juror enforce the minimum wage and function as a district attorney for the town.

After receiving the petitions, the selectboard "met and resolved to endorse an 'information sheet' regarding the petitions and distribute the information to media outlets in the area." The information sheet was emailed to town meeting representatives, the media, selectboard members, town staff, and others who requested it. The information sheet expressed the selectboard's opinion on the petitions stating, in part, that "setting separate rules for voter review of budget items over \$2 million is confusing and arbitrary," moving elections from March to November would leave the town out of step with the rest of Vermont, and giving powers to the town grand juror is unnecessary and would only cause confusion as enforcement is handled through other town officials. In short, the information sheet made arguments against approving the petitioned charter changes. Ultimately, the town voted against the proposed petitions.

The plaintiffs sued the town in superior court, alleging, among other things, that the selectboard violated Chapter I, Article 8 of the Vermont Constitution, which states that elections be free and without corruption. The plaintiffs sought to nullify the vote and order a new election, and to prevent the selectboard from issuing any further statements opposing the petitioned articles. The town filed a motion for summary judgment arguing that the selectboard's actions were consistent with the state law concerning charter amendments. The superior court found in favor of the town.

On appeal to the Vermont Supreme Court and now represented by counsel, the plaintiffs' argument boiled down to one point: that distributing the information sheet was unauthorized under the statutory framework for municipal charter changes, found in 17 V.S.A. § 2645. Daims and Newbert claimed that once a voter-backed petition is submitted to the selectboard, it is "authorized to do only what it is required to do under statute: provide notice, hold hearings, add articles to the warning, order an election, and refrain from altering the petition in any way."

The basis for this argument – that the selectboard lacked authority – came from the well-known principle, Dillon’s Rule, which states municipalities “owe their origin to, and derive their powers and rights wholly from, the legislature.” Vermont is a Dillon’s Rule state and as such its municipalities only have authority to do what State law explicitly authorizes. In other words, as the court explained: “[i]n essence, plaintiffs argue that any action taken by the selectboard beyond that set forth in the statute with respect to a voter-initiated petition to amend the charter – including taking a position on the petition – is beyond the selectboard’s authority.”

The Vermont Supreme Court disagreed and affirmed the superior court’s decision. The court explained that Dillon’s Rule, when fleshed out further, also “stands for the broad proposition that municipalities’ powers ‘include both those powers granted in express words by statute and those powers necessarily or fairly implied in the powers expressly granted.’” The court said that “while there is no explicit authority under the statute to allow municipal bodies to comment on voter-initiated petitions, such authority, within limitations, is fairly and reasonably implied under the statute and the town charter.” In other words, the statute presumes an active role in charter amendments by the selectboard because 17 V.S.A. § 2645(a)(1) allows proposed charter amendments to be proposed by not only voters, but also by the local legislative body.

The court further validated the selectboard’s actions by stating that the selectboard could in good faith comment on the petitions because they concerned government functions and operations. Citing several federal cases, the court agreed “that municipalities may present views for or against proposed legislation or referendum of the people of questions which in their judgment would adversely affect the interests of their residents.”

Finally, the court said that even assuming the selectboard had gone beyond its authority by distributing the information sheet, its conduct did not rise to the level that would mandate a reelection. The court explained that reelections are ordered only as extraordinary remedies and in the event of “extreme circumstances.” In this case, the circumstances were far from extreme. Namely, the information sheet was not handed out with the ballot or at the polling place and secondly, the plaintiffs offered no evidence that showed that the sheet actually caused any voters to change their minds. Therefore, there was an absence of culpable intent (for example, that the selectboard had acted willfully to deceive voters) and no reelection was necessary.

You can read the decision in its entirety [here](#).

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