



OFFICE OF THE COUNTY ATTORNEY

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MEMORANDUM

TO: Nancy Floreen, President
Montgomery County Council

VIA: Marc P. Hansen *Marc Hansen*
County Attorney

FROM: Edward B. Lattner, Chief *EBA*
Division of Government Operations

DATE: November 28, 2016

RE: Term Limit Charter Amendments--Reconciliation

All parts of a county charter are to be reconciled and harmonized so as to avoid conflict, if at all possible. But if two irreconcilable charter amendments are adopted at the same time, neither amendment can be given effect. In November 2016, County voters approved a charter amendment (Question B) imposing term limits on elected officials. The amendment states that neither the County Executive, nor a Council member, can serve more than three consecutive terms and that “[s]ervice of a term includes complete service of a full term and **partial service of a full term.**” At the same time, County voters also approved another amendment to the same Charter provisions (Question C) stating that “**partial service of a full term means service . . . of more than two years of a term.**”¹

These two Charter amendments can be harmonized and both should be given effect. The first amendment provides that service of a term in office includes “partial service of a full term.” The second amendment specifies, and clarifies, that partial service of a full term means “service . . . of more than two years of a term.” These amendments can be read together, giving effect to both amendments, and thereby effectuating the legislative will.

The Proposed Charter Amendments

The full text of the successful Charter amendments is set out below. The original amendment submitted by voter petition is denoted by single underlining and appeared on the ballot as Question B. The amendment proposed by the County Council is denoted by double

¹ Question B was approved by 299,438 voters and Question C was approved by 321,380 voters.

underlining and appeared on the ballot as Question C.

ARTICLE 1. LEGISLATIVE BRANCH

Sec. 105. Term of Office

Members of the Council shall hold office for a term beginning at noon on the first Monday of December next following the regular election for the Council and ending at noon on the first Monday of December in the fourth year thereafter. In no case shall a Council Member be permitted to serve more than three consecutive terms. Any Member of Council who will have served three or more consecutive terms at noon on the first Monday of December 2018 shall be prohibited from commencing to serve a successive term of office at that time. For purposes of this Section, service of a term includes complete service of a full term and partial service of a full term. Partial service of a full term means service by a Councilmember of more than two years off a term.

ARTICLE 2. EXECUTIVE BRANCH

Sec. 202. Election and Term of Office

The County Executive shall be elected by the qualified voters of the entire County at the same time as the Council and shall serve for a term of office commencing at noon on the first Monday of December next following the election, and ending at noon on the first Monday of December in the fourth year thereafter, or until a successor shall have qualified. In no case shall a County Executive be permitted to serve more than three consecutive terms. Any County Executive who will have served three or more consecutive terms at noon on the first Monday of December 2018 shall be prohibited from commencing to serve a successive term of office at that time. For purposes of this Section, service of a term includes complete service of a full term and partial service of a full term. Partial service of a full term means service by a County Executive of more than two years of a term.

The amendments were presented on the ballot as follows:

Question B

Charter Amendment by Petition

Term Limits—County Council and County Executive

Amend Sections 105 and 202 of the County Charter to:

- limit the County Executive and members of the County Council to 3 consecutive terms in office;
- provide that a County Executive and any member of the County Council who will have served 3 or more consecutive terms on December 3, 2018, cannot serve another successive term in the same office; and
- provide that service of a term includes complete service of a full term and partial service of a full term

Question C

Charter Amendment by Act of County Council

Term of Office—County Council and County Executive—Partial Service of a Full Term

Amend Sections 105 and 202 of the County Charter to provide that partial service of a full term for either a Councilmember or the County Executive means service of more than two years of a term.

Analysis

“Charters are subject to the same canons of statutory construction that apply to the interpretation of statutes. Just as the cardinal rule of statutory interpretation is to ascertain the intention of the legislature, so it is the cardinal rule of charter interpretation.” *Fraternal Order of Police Montgomery County Lodge 35 v. Montgomery County Executive*, 210 Md. App. 117, 138, 62 A.3d 238, 250 (2013) (internal citation and quotation omitted).

As noted above, the courts strive to read all parts of a statute (or charter) harmoniously so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless, or nugatory. *Thomas v. State*, 277 Md. 314, 317, 353 A.2d 256, 258 (1976). “We are obligated to construe the statute as a whole, so that all provisions are considered together and, to the extent possible, reconciled and harmonized. A statutory provision should be interpreted in the context of the entire statutory scheme, and reading the various provisions together and giving effect to each can aid in determining the intent of the legislature.” *Fraternal Order of Police Montgomery County Lodge 35 v. Montgomery County Executive*, 210 Md. App. 117, 139, 62 A.3d 238, 250–51 (2013) (internal citation and quotation omitted).

Because the voters can be presented with multiple charter amendment questions on the same ballot, and because those amendments can offer conflicting outcomes, it is possible for the voters to approve two (or more) charter amendments that provide an irreconcilable result. Traditionally, charter amendments questions are presented individually on the ballot and citizens vote yes or no on each proposed amendment. Md. Const. XI-A, § 5 provides that “if at the election the majority of the votes cast for and against the amendment shall be in favor thereof, the amendment shall be adopted.” But where potentially conflicting amendments are presented and more than one passes, how do you determine which is the successful amendment? For example, one proposed charter amendment could provide for seven councilmembers while another proposed charter amendment provides for eleven.

The Maryland Attorney General has opined that if the voters simultaneously approved two completely irreconcilable charter amendments, neither can be given effect because it is not possible to determine the legislative intent of the voters. 87 Md. Op. Att’y Gen. 99 (2002). The Attorney General noted that a court would first attempt to reconcile the various amendments but, if they were completely irreconcilable, then none of them could be given effect.

[I]t has been said that where a section of the constitution is amended at the same

time by two different amendments, and the amendments adopted are directly in conflict, and it is impossible to determine which should stand as a part of the constitution or to reconcile the same, then they must both fail. The same has been said to be true with respect to simultaneously enacted, irreconcilable statutes. These rules would appear to be premised on the view that in the absence of a constitutionally sanctioned way for resolving such conflicts, the courts should not attempt to bring clarity to that which is inherently confused.

87 Md. Op. Atty. Gen. 99, 105 (2002) (internal citations and quotations omitted).

Here, the two Charter amendments can be read harmoniously without difficulty. The first amendment imposes a three term limit for county executive and councilmembers. A full term remains four years long. The amendment also states that “service of a term includes complete service of a full term and partial service of a full term.” The second amendment specifies and clarifies that “partial service of a full term means service . . . of more than two years of a term.” Thus, an incumbent elected official who serves two years or less has not served one of the three potential terms available under the County charter.

Construing Question B and Question C harmoniously to give effect to both is consistent with the evidence that indicates the intention of both the Council and the voters. The legislative packet prepared by Senior Legislative Attorney, Robert Drummer, described the use of the term “partial service” and “full term” in Question B as ambiguous. Mr. Drummer’s packet indicates that Question C would clarify and define the phrase “partial service of a full term”.² The ballot questions reflected the Council’s intent that Question C was clarifying in nature. Ballot Question B told the voters that this proposed Charter amendment imposing term limits “provide[s] that service of a term includes complete service of a full term and partial service of a full term.” Question B was immediately followed on the ballot by Question C, which proposed to the voters that “partial service of a full term” means “service of more than two years of a term.” Hence, it is reasonable to presume that the voters intended that Question C would clarify and define what was meant by “partial service of a full term” in Question B, which imposed a three consecutive term limit on the offices of County Executive and County Council.

If you have any questions, please do not hesitate to contact us.

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cc: Isiah Leggett, County Executive
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16-007231
OCA opinion term limits

² See Council packet memorandum, Agenda 10, August 2, 2016, p. 4.