

**Board of Election Commissioners Meeting
Tuesday, May 23, 2017
6:30 p.m.
Levi Lincoln Chamber, City Hall**

Call to Order by the Chairperson

Pledge of Allegiance

Roll Call

Approval of the Minutes of the April 26th Meeting

New Business

- 1. Discussion concerning the city solicitor opinion on the legality of an individual running for both city councilor-at-large and district councilor.**

Old Business

- 2. Update concerning Nomination Papers and the 2017 Municipal Election Season.**
- 3. Update concerning the 2017 Street Listing and Inactivation/ Confirmation Notices.**
- 4. Update concerning the 2017 Polling Locations.**

Adjournment:

Next Meeting Date:



CITY OF WORCESTER, MASSACHUSETTS
Law Department

David M. Moore
City Solicitor

May 18, 2017

Board of Election Commissioners
City Hall Room 208
City of Worcester

Re: *Legal Opinion: Can an Individual Run For Councilor-At-Large and District Councilor in the Same Election?*

Dear Members of the Board:

You requested a legal opinion on the question whether one individual can run simultaneously for Councilor-At-Large and District Councilor in the same election.

I am advised that one individual has submitted nomination papers seeking to have his name printed on the official ballot as a candidate for election to the office of city councilor both as a Councilor-At-Large and District Councilor.

For the reasons set forth below, one individual may not have his name placed on the ballot for election both as a Councilor-at-Large and a District Councilor.

First, state election laws prohibit any candidate from having his or her name appear on the ballot more than once as running for the same office:

“The name of any person shall not be printed on the official ballot ... more than once as a candidate for the same office” G.L. c.54 §41.¹

The office involved is “city councilor.” Section 2.1(a) of the city charter establishes the city council as consisting of “eleven members” with six members (“to be known as councilors-at-large”) elected at-large by the voters at-large and five members (“to be known as district councilors”) elected by the voters in each election district. WHRC §2-

¹ The full text of this provision reads: “The name of any person shall not be printed on the official ballot or on ballot labels more than once as a candidate for the same office nor more than once for any office wherein a full term and a partial term running concurrently are to be filled.”

1(a)². Once elected as members of the city council, councilors-at-large and district councilors have identical powers and duties.³ The city charter is very clear that the terms “councilor-at-large” and “district councilor” indicate only that there are two separate methods of election as a member of the city council.

Therefore, a fair read of the statute in light of the city charter indicates that running for election both as a councilor-at-large and district councilor is tantamount to taking two roads to the same office: city councilor; a path which, as noted above, is prohibited by section forty-one of chapter 54 of the General Laws.

Second, interpreting the city charter so as to allow one individual to serve on the city council both as a councilor-at-large and a district councilor would lead to multiple absurdities.

- If one person can hold two seats on the city council, then the city council would have 10 members, not 11, and one of members would presumably have two votes. (If the dual member were allowed only one vote then at least a certain group of voters would be denied their representation on the city council).
- On the committee level, the city council has numerous committees consisting of three members. If the individual holding two seats is appointed to a three-member committee, would that member have two votes in committee?
- And, if that member has two votes, then is that member in a constant state of violation of the Open Meeting Law because two members of a three-member committee constitute a quorum of that committee and the law prohibits a quorum of a governmental body from deliberating on matters under the jurisdiction of the body.
- And, if one individual can hold an at-large seat and a district seat, then up to five individuals could do the same. Then, the “eleven member” city council would have three members: five with two votes each and one with one vote.

² Section 2.1(a) reads: There shall be a city council of eleven members which shall exercise the legislative powers of the city. Six of these members, to be known as councilors at-large, shall be nominated and elected by and from the voters at large. Five of these members, to be known as district councilors, shall be nominated and elected by and from the voters of each district; one such district councilor to be elected from each of the five council districts into which the city is divided in accordance with section 7-6 of this charter.

³ The “mayor” does possess additional powers beyond those of other members of the city council. However, the office of mayor is filled through a charter mechanism that makes all candidates nominated for election as councilor-at-large eligible for election on a separate ballot for the office of election of the mayor. The councilor-at-large receiving the highest number of votes on the ballot for mayor is elected mayor and that individual holds both offices: councilor-at-large and mayor. WHRC §2-2(b).

- Finally, if the dually elected member is allocated one vote, then that impacts the requirement in the city charter that a majority vote of the council requires six votes, especially if more than one individual holds two seats. WHRC §2.6(b) (“The presence of six members shall constitute a quorum ... the affirmative vote of six members shall be required to adopt any measure.”).

The city charter does not resolve these issues because the framers of the city charter never contemplated the possibility of one individual being elected as both councilor-at-large and district councilor. This novel contemplation should not, via interpretation, be written into the charter more than thirty years after it was drafted by an elected charter commission and adopted by the voters.

Third, serving in two seats on the city council would present likely violations of the state Conflict of Interest Law.

The Conflict of Interest Law (G.L. c. 268A), as a general rule, makes it unlawful for any city employee, including any elected official, to have a second “contract” with the city. The contracts can be ordinary supply, services or construction contracts, or employment contracts, and they need not be in writing but can arise, especially in the case of employment, appointment or election to city positions. G.L. c. 268A 20.⁴ Just as appointment to a city position creates a legal contract relationship with the city, election to the city council creates a similar ‘employment’ contract. Entering into any other contractual relationship with the city creates a second, prohibited, contract. While the ethics commission has never ruled specifically on this issue, it is highly likely that they would conclude that election to a second seat on the city council would create a second contract which would violate the general rule of section 20.

Section 20 has some exemptions, two of which come close enough to addressing this circumstance so as to require explanation.

Section 20 allows elected officials in towns to hold multiple elected positions.⁵ By its text, this exemption applies only in towns.

Another exemption, known as the “councilors exemption,” allows a city employee to be elected as a city councilor and to keep both positions, subject to certain limitations: the employee-elected councilor must forego the salary of one position; and, is not eligible to

⁴ Violations of section 20 carry fines of up to \$10,000 and imprisonment of up to 5 years in state prison.

⁵ “This section shall not prohibit any elected official **in a town**, whether compensated or uncompensated for such elected position, from holding one or more additional elected positions, in such **town**, whether such additional elected positions are compensated or uncompensated.” (emphasis added).

be promoted in his/her city job. The "councilors exemption" also requires the city councilor not to vote on any matter "which is within the purview of the agency by which he is employed or over which he has official responsibility." In the ordinary course, this prohibition that the individual elected to a city council has been a city employee in one department or another of the city government. It operates to allow the election to stand but it prevents the individual, acting as a city councilor, from voting on matters involving the city department where he or she works. Since an individual holding two seats on the city council would be twice employed in the "city council department," the individual's "other" department would be, in mirror fashion, the city council. Therefore, this prohibition, at least in theory, would mean that any individual holding two seats on the city council could not vote on any matter that involved the city council (because that is the department of his/her "second" contract).

I have presented these scenarios to illustrate the absurdity of interpreting the city charter in any way other than that presented by section 41 of chapter 54.

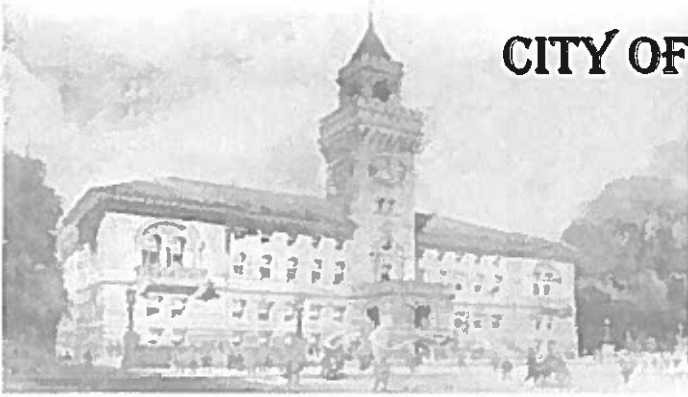
It is therefore my opinion that the Board of Election Commissioners would be on solid legal ground should it determine that it will not print on the official ballot the name of the same individual as a candidate for both city councilor-at-large and district councilor.

Sincerely,

A handwritten signature in black ink that reads "David M. Moore". The signature is written in a cursive style with a large, stylized initial "D".

David M. Moore
City Solicitor

cc: Susan M. Ledoux, City Clerk
Nikolin Vangjeli, Assistant City Clerk



CITY OF WORCESTER, MASSACHUSETTS

CITY CLERK DEPARTMENT

Susan M. Ledoux, City Clerk

Stephen A.J. Pottle, Assistant City Clerk
Niko Vangjeli, Assistant City Clerk

Candidates nominated for election to the offices of City Councilor and School Committee in the City of Worcester.

COUNCILOR-AT-LARGE (6)

JOSEPH M. PETTY * – 2 Grove Heights Dr
KATE TOOMEY * – 50 Ideal Rd
KHRYSTIAN E. KING * – 9 Victoria Ave
KONSTANTINA B. LUKES * – 24 Hadwen Rd
MICHAEL T. GAFFNEY * – 21 Illinois St Apt. 105
MORRIS A. BERGMAN * – 11 Kensington Heights
WILLIAM S. COLEMAN, III – 36 Acushnet Ave
JOSEPH C. O'BRIEN – 17 Oread Pl
GARY ROSEN – 11 Herbert Rd
BENJAMIN R. STRAIGHT – 11 Forest Hill Rd

DISTRICT 1 COUNCILOR (1)

WILLIAM S. COLEMAN, III – 36 Acushnet Ave **
EDWARD L. MOYNIHAN – 68 Blue Bell Rd
GERARDO SCHIANO – 47 Laconia Rd
SEAN ROSE – 14 Dubiel Dr

DISTRICT 2 COUNCILOR (1)

CANDY F. MERO-CARLSON * – 42 Benedict Rd
TODD WESLEY WILLIAMS – 42 Merrifield St Apt. 3

DISTRICT 3 COUNCILOR (1)

GEORGE J. RUSSELL * – 30 Dolly Dr
DAVIS K. ASARE – 10 Honeysuckle Rd

DISTRICT 4 COUNCILOR (1)

SARAI RIVERA * – 7 Lucian St
COREEN A. GAFFNEY – 21 Illinois St Apt. 105

DISTRICT 5 COUNCILOR (1)

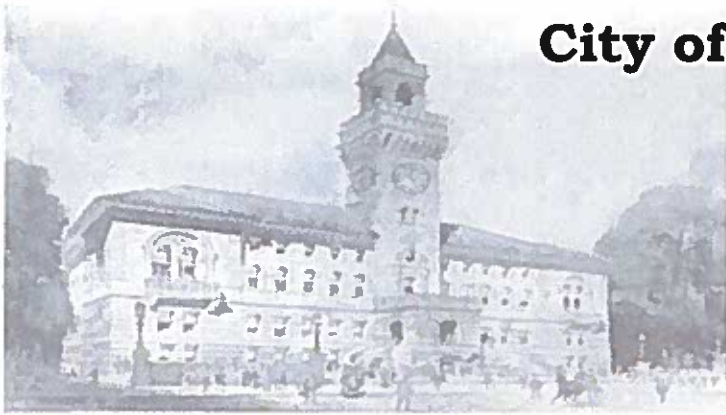
MATTHEW E. WALLY – 61 Berwick St
DOUGLAS F. ARBETTER – 112 Moreland St
PAUL J. FRANCO – 57 Olean St
BENJAMIN D. CHAMPAGNE – 11 Mohawk Ave

SCHOOL COMMITTEE (6)

BRIAN A. O'CONNELL* – 54 Providence St
DIANNA L. BIANCHERIA * – 8 Ventura Rd
DONNA M. COLORIO * – 10 Homer St
JACK L. FOLEY * – 6 Winter Hill Dr
JOHN F. MONFREDO * – 8 Cherokee Rd
MOLLY O. MCCULLOUGH * – 195 Fairhaven Rd
DANTE A. COMPARETTO – 16 Alden St

* Candidate for re-election

** Nomination Pending Interpretation of the City Charter.



City of Worcester, Massachusetts CITY CLERK DEPARTMENT

Susan M. Ledoux, City Clerk

Stephen A.J. Pottle, Assistant City Clerk
Niko Vangjeli, Assistant City Clerk

2017 MUNICIPAL ELECTION CALENDAR

- Tuesday, March 7, 2017, 9:00 am** First day & hour to access nomination papers @ the offices of the Board of Election Commissioners, Room 208, City Hall.
- Tuesday, May 16, 2017, 5:00 pm** Last day & hour for submitting nomination papers to the Board of Election Commissioners for certification of signatures.
- Thursday, May 25, 2017, 5:00 pm** Last day & hour to file a withdrawal or objections to nomination of candidates with the Board of Election Commissioners.
- Wednesday, Aug. 23, 2017, 8:00 pm** Last day & hour to register to vote in the Preliminary Election.
- Tuesday, Sept. 12, 2017** **Preliminary Election, Polls are open 7:00 am to 8:00 pm.**
- Tuesday, Sept. 19, 2017, 5:00 pm** Last day & hour to decline nomination for election to Mayor, Council, or School Committee and for submitting non-binding public opinion advisory questions for certification of signatures.
- Wednesday, Oct. 18, 2017, 8:00 pm** Last day & hour to register to vote in the Municipal Election
- Tuesday, November 7, 2017** **Municipal Election, Polls are open 7:00 am to 8:00 pm.**