

OFFICE OF THE CORPORATION COUNSEL OPINION



To: Hon. Jorge Perez, President, Board of Aldermen
From: Victor A. Bolden, Corporation Counsel
Date: October 19, 2012
Re: Amendments to Redistricting Plan

DRAFT

Issue:

Whether the ward redistricting plan adopted by the Board of Aldermen on May 21, 2012 may be amended now?

Short Answer:

No.

Relevant Legal Provisions

Charter, Article III, Section 3
Charter, Article III, Section 4
Conn. Gen. Stat. Section 9-169

Discussion

As a preliminary matter, any exercise of authority by a municipality, such as the City of New Haven, must be conferred upon it by the State of Connecticut. “A municipality is a creature of the state.” *Keeney v. Town of Old Saybrook*, 237 Conn. 135, 145 (1996). Indeed, “[i]t is well established that a city’s charter is the fountainhead of municipal powers.” *Id.* (quoting *State ex rel., Raslavsky v. Bonvouloir*, 167 Conn. 357, 362 (1974)). “The charter serves as an enabling act, both creating power and prescribing the form in which it must be exercised.” *Id.* (citing, *inter alia*, *Food Beverage & Express Drivers Local Union v. Shelton*, 147 Conn. 401, 405 (1960); *Thomson v. New Haven*, 100 Conn. 604, 606 (1924); *State ex rel. Southey v. Lashar*, 71 Conn. 540 (1899)).

As described in fuller detail in an Opinion of this Office dated October 19, 2009, the Charter expressly authorizes the redistricting process to occur when the State’s General Assembly districts change: “the board of aldermen of the city of New Haven shall, within

six months of the date such change becomes effective, by ordinance, enact a plan of redistricting the wards of the City of New Haven.” Charter, Article III, Section 4.

If the Board of Aldermen fails to meet Article III, Section 4(b)’s six-month deadline, the Mayor must appoint a redistricting commission “to consider the alteration of ward boundaries in accordance with federal constitutional standards of proper appointment,” Charter, Article III, Section 4(c), and would “have the power to change the boundaries of the wards and to change the number of wards.”

On December 1, 2011, the State’s newly drawn General Assembly districts became effective,¹ triggering the six-month period referenced in Article III, Section 4(b) of the Charter. In response to the State’s change, the Board of Aldermen passed a resolution on January 3, 2012 establishing a Special Committee on Ward Redistricting (hereinafter “Special Committee”).² On May 21, 2012, within the six-month deadline provided for under the Charter, the Board of Aldermen unanimously approved an ordinance amendment redistricting New Haven’s thirty wards.

After the expiration of the six-month deadline provided for in Article III, Section 4(b), two ordinance amendments have been introduced to amend the ward redistricting plan that has now become law. The permissibility of these two legislative measures is wholly dependent on the language contained in Article III, Section 4(b) with respect to the time period by which the Board of Aldermen must adopt a redistricting plan: within six months of the date [a change in the State’s General Assembly districts] becomes effective”

As the Connecticut Supreme Court has made clear, the first step in determining legal obligations under an ordinance or statute is to begin with its language. See *Paul Dinto Electrical Contractors, Inc. v. Waterbury*, 266 Conn. 706, 716-17 (2003) (Courts “begin with the a searching examination of the language of the statute[s] . . . [and] attempt to determine [their] range of plausible meanings, and, if possible, narrow that range to those that appear most plausible.”).

¹ While the Charter does not define the term “effective,” this Opinion adopts the meaning provided in the Connecticut Constitution. Therein, once a plan for redistricting the State’s Assembly districts, certified by a sufficient number of the Reapportionment Commission members, is received by the Secretary of State, the Secretary of State “shall publish the same forthwith, and, upon publication, such plan of districting shall have the full force of law.” Article 3, Section 6, Connecticut Constitution. On November 30, 2011, the Reapportionment Commission submitted a plan of redistricting to the Secretary of State for the State Senate and State House of Representatives. See Letters of Reapportionment Commission to the Secretary of State, dated November 30, 2011 (attached as Exhibit A). The Secretary of State published the two plans on December 1, 2011. See Electronic Correspondence from the Office of the Secretary of State to Town Clerks and Registrars of Voters, dated December 1, 2011 (attached as Exhibit B).

² While the aldermanic resolution establishing the Special Committee referred to Article III, Section 3 of the Charter, rather than Section 4(b), this is a distinction without a difference. First of all, the common legal meaning of the words “et seq.” when referencing legislation is the incorporation of additional statutory provisions beyond that one. See Black’s Law Dictionary at 574 (defining “et seq.” as “[a]nd those (pages or sections that follow,”). Second, even if the words “et seq.” had not been used expressly, Section 4(b) would still be the appropriate statutory provision. The plain language of Section 3 limits the redistricting process to, “[t]he boundaries of each ward as the same may be revised from time to time in accordance with this article” The reference to “article” means Article III in its entirety, which would include Section 4, the only provision applicable to the redistricting process undertaken by the Board of Aldermen earlier this year.

The text of Article III, Section 4(b) of the Charter makes clear that the Board of Aldermen only has “within six months of the date such [Assembly District redistricting] becomes effective” to “enact a plan of redistricting the wards of the City of New Haven.” It also is clear that this time period for enactment by the Board of Aldermen lapsed on or around June 1, 2012. As a result, after this time period, the Board of Aldermen lacked the legal authority to make any further changes to the redistricting plan under Article III, Section 4(b). Indeed, if they had not adopted a plan at all or had not completed one, the Mayor would have been legally obligated to create a redistricting commission for the development of a ward redistricting plan through the means provided in Article III, Section 4(c) of the Charter, rather than through Section 4(b). Accordingly, any such proposed changes are not within the scope of the redistricting process established under Article III, Section 4(b).

Now, the plain language of Conn. Gen. Stat. Section 9-169 suggests legal authority to redistrict the City’s wards at any time. The relevant portions of this statute read as follows: “The legislative body of any town, consolidated town and city or consolidated town and borough may divide and, from time to time, redivide such municipality into voting districts.”

Long ago, however, in *Lacava v. Carfi*, 140 Conn. 517, 519 (1953), a case involving the city of New Britain, the Supreme Court held that this language did “not authorize the common council of New Britain to change the number or the boundaries of the wards as fixed by the charter” because a “ward” as used in the Charter is not the same as a “voting district” in the state statutes. Consequently, this statute likely does not provide an alternative time frame for redistricting outside of the procedure outlined in the City’s Charter. The City therefore must undertake redistricting in accordance with the Charter and within the time period provided for therein, a time period which has now lapsed.

This opinion is limited to the issue set forth and does not apply to any other situation not discussed herein.

Victor A. Bolden
Corporation Counsel

The Connecticut General Assembly

REAPPORTIONMENT COMMISSION

SECRETARY OF THE STATE
CAPITOL OFFICE

2011 NOV 30 PM 5:20
HOUSE

SENATE

Senator Donald E. Williams, Jr., Co-Chair

Senator John McKinney
Senator Martin M. Looney
Senator Leonard A. Fasano

Sandra Norman-Eady, Project Coordinator



Honorable Kevin P. Johnston

Representative Lawrence F. Cafero, Jr., Co-Chair

Representative Christopher G. Donovan
Representative Sandy H. Nafis
Representative Arthur J. O'Neill

November 30, 2011

Honorable Denise Merrill
Secretary of the State
State Capitol
Hartford, Connecticut

Dear Madame Secretary of the State:

Pursuant to Article III, Section 6 of the Constitution of the State of Connecticut, as amended by Articles XII, XVI, XXVI, and XXX of the Amendments to the Constitution of the State of Connecticut, we the undersigned members of the Reapportionment Commission hereby transmit to you the redistricting plan for the State Senate.

Attached hereto is the report to the geographic boundaries of each new Senate district and a statewide map with boundaries of each district displayed.

Very truly yours,

Handwritten signature of Donald E. Williams, Jr.

Donald E. Williams, Jr.
State Senator

Handwritten signature of John McKinney.

John McKinney
State Senator

Handwritten signature of Martin M. Looney.

Martin M. Looney
State Senator

Handwritten signature of Leonard A. Fasano.

Leonard A. Fasano
State Senator

Handwritten signature of Lawrence F. Cafero, Jr.

Lawrence F. Cafero, Jr.
State Representative

Handwritten signature of Christopher G. Donovan.

Christopher G. Donovan
State Representative

Handwritten signature of Sandy H. Nafis.

Sandy H. Nafis
State Representative

Handwritten signature of Arthur J. O'Neill.

Arthur J. O'Neill
State Representative

Handwritten signature of Kevin P. Johnston.

Kevin P. Johnston
Elector of the State of Connecticut

The Connecticut General Assembly

SECRETARY OF THE STATE
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Attached hereto is the report to the geographic boundaries of each new House district and a statewide map with boundaries of each district displayed.

Very truly yours,

Handwritten signature of Donald E. Williams, Jr.

Donald E. Williams, Jr.
State Senator

Handwritten signature of John McKinney.

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Arthur J. O'Neill
State Representative

Handwritten signature of Kevin P. Johnston.

Kevin P. Johnston
Elector of the State of Connecticut

From: "Bromley, Ted" <Ted.Bromley@ct.gov>
To: "vbolden@newhavenct.net" <vbolden@newhavenct.net>
Date: 10/19/2012 11:50 AM
Subject: FW: 2011 House and Senate Plan
Attachments: ct bill language.pdf; ctbilllanguage - 2011 senate plan.pdf

-----Original Message-----

From: Bromley, Ted
Sent: Thursday, December 01, 2011 10:17 AM
To: Womack, Taffy
Subject: 2011 House and Senate Plan

To all Town Clerks and Registrars of Voters:

Attached please find copies of the 2011 Apportionment plans for the State Senate and State House of Representatives. The Commission did not complete a plan for Representative in Congress at this point.

You should begin the process of speaking with your local IT departments or Town Planning Departments regarding their assistance with creating a detailed map for your use as you re-district your state voting districts in accordance with this new plan (many of you have indicated that you received assistance using GIS or related technology in the past). We will be sending you much more detailed information in the near future; including district specific maps.

For those registrars who have survived the 2001 process, please reach out and assist the new registrars as they begin to understand this process.

Below is a link to the 2011 State Senate and State House of Representatives maps on the reapportionment committee website.

<http://www.cga.ct.gov/red2011/maps.asp>

Sincerely,
Ted Bromley