



LAW OFFICE OF
W. MARTYN PHILPOT, JR., L. L. C.
409 ORANGE STREET, NEW HAVEN, CONNECTICUT 06511-6406

W. MARTYN PHILPOT, JR.
TIFFANY L. SABATO

TEL (203) 624-4666
FAX (203) 624-5050
EMAIL: lawoffice@philpotlaw.net

December 13, 2012

HAND-DELIVERED

Jorge Perez, President
New Haven Board of Aldermen
165 Church Street
New Haven, CT 06510

Re: Opinion re: Amendments to Redistricting Plan

Dear President Perez:

I. Issue

May the Board of Aldermen, by a majority vote, amend the redistricting plan adopted on May 21, 2012?

II. Legal/Provisional Background

As explained in the legal opinion authored by the city of New Haven's Corporation Counsel, "a city's charter is the fountainhead of municipal powers," and "serves as an enabling act, both creating power and prescribing the form in which it must be exercised." *Keeney v. Town of Old Saybrook*, 237 Conn. 135, 145 (1996) (internal citations and quotation marks omitted).

The New Haven City Charter, at Article IX, creates the Board of Aldermen and endows it with certain legal powers and authorities. *See* Charter, Article IX, Section 37, *et seq.* These powers include enacting ordinances and resolutions; codifying those ordinances; entering into contracts for expert and/or professional services on behalf of the City; regulating and ordering the laying out or making of new highways, streets, wharves, docks, bridges, and railroads; providing and regulating drainage or sewage; taking property by right of eminent domain; limiting and/or regulating the height of buildings and the safety guidelines related to fire hazards; limiting and/or regulating awnings, marquees, overhanging signs, and other projects; and abating taxes. *See* Charter, Article IX, Section 41, *et seq.* Notably, the Board of Aldermen also has the authority to "enact, *amend, alter or repeal* ordinances, orders, etc." Charter, Article IX, Section 49 (emphasis added).

In addition, the City Charter authorizes the Board of Aldermen with explicit responsibilities and limitations during the process of redistricting the wards of New Haven when the Connecticut State General Assembly districts change. Specifically, "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(b). Should the Board of Aldermen fail to meet the six-month deadline, the Mayor of New Haven must then appoint a commission to perform the redistricting of the wards. Charter, Article III, Section 4(c).

III. Factual History

On December 1, 2011, the state's new General Assembly districts went into effect. In response, the New Haven Board of Aldermen passed a resolution on January 3, 2012 establishing a Special Committee on Ward Redistricting ("Special Committee"). On May 21, 2012, within the six-month period prescribed by Article III, Section 4(b) of the City Charter, the Board of Aldermen unanimously approved an ordinance amendment that established new boundaries for New Haven's thirty (30) wards. The Board of Aldermen now seeks to amend the ward redistricting plan by way of two proposed ordinance amendments.

IV. Analysis

There is no dispute that, in putting the redistricting ordinance into effect on May 21, 2012, the Board of Aldermen met the deadline and restrictions set forth in Article III, Section 4 of the New Haven City Charter. What remains to be settled, then, is whether the Board of Aldermen can now amend that ordinance, subsequent to the lapsing of that deadline. It must be stated that there is no specific language in the City Charter that explicitly allows for this, and there is no case law, as far as I can tell which definitively answers this question. However, it is reasonable to argue that the Board of Aldermen may amend the ordinance it put into effect and, in fact, it is consistent with public policy and the applicable provisions within the City Charter.

On the other hand, such amendments should not be countenanced without a substantial basis or rationale for doing so. One of the most untenable results of introducing an amendment to the redistricting plan, which was previously unanimously approved by the Board of Aldermen, is what is called a "slippery slope." A hypothetical scenario is possible, in which each Alderman who may want to modify their ward boundaries could arbitrarily introduce an amendment to do such, with the result being that the boundaries are never deemed to be "permanent." If every Alderman were permitted to alter ward boundaries at any time, this would inevitably lead to chaos and would undermine the efficacy of the initial vote adopting the originally approved boundaries of the redistricting plan.

A. Amendment is Consistent with the Board's Police Power

In *Konigsberg v. Board of Aldermen of the City of New Haven*, the Supreme Court of Connecticut discussed the standard of review and deference to be applied when considering decisions made by Boards of Aldermen. 283 Conn. 553 (2007). The Board of Aldermen's vote to approve amendments to already established ordinances is to receive significant deference, as long as it is "in accordance with the city's comprehensive plan, and reasonably related to the board of aldermen's police power [purposes enumerated in the city's enabling legislation]" *Id.* at 594.

Jorge Perez

Page 3

December 13, 2012

Having viewed the proposed amendments that the Board of Aldermen seeks to make to the redistricting ordinance here, it is safe to suggest that the amendments are in keeping with the city's comprehensive plan in regard to the State Assembly districts. The remaining factor - reasonable relation to the Board's police power - is grounded upon the legal authority that the Board has been given to "exercise all of the powers conferred upon [the city of New Haven]," Charter, Article IX, Section 37, and to "enact a plan of redistricting the wards of the city of New Haven, and, in so doing, . . . change the boundaries and the number of wards." Charter, Article III, Section 4(b). The Board's decision regarding redistricting is to be made in consideration of political and demographic factors within the community, including the location of polling places. Therefore, any amendments the Board may deem vitally necessary, subsequent to the enactment of its redistricting ordinance, are also within the Board's police power over the equity and continuity of the community's demographic, political, and density distribution for purposes of access to polling places. *See Konigsberg*, 283 Conn. at 583, 594.

B. Amendment is Not Prohibited By the Town Charter

It is true that Article III, Section 4(b) of the New Haven City Charter gives the Board of Aldermen only six months to "enact a plan of redistricting the wards of the City of New Haven." Here, the Board has met this requirement, and has enacted a plan of redistricting. However, the Board now wishes to amend that plan, and it is illogical to conclude that a plan must be enacted, and also that any amendments ever to be considered must also be proposed and/or enacted, within the space of that six month window. Again, the Charter is silent with respect to this requirement.

Lacava v. Carfi, as cited by Corporation Counsel Bolden in his legal opinion, establishes that wards and voting districts are not synonymous, such that § 9-169 of the Connecticut General Statutes does not give the Board of Aldermen the authority to divide and re-divide wards at any time. 140 Conn. 517, 519 (1953). While it is true that cities, such as the city of New Haven, are creatures of the state and, further, that election laws are the province of the General Assembly, *id.*, this is not to suggest that the Board of Aldermen is without authority to make minor amendments and/or adjustments to its own redistricting plan. Moreover, it is well-established in Connecticut that city legislative bodies - such as the Board of Aldermen - can exercise powers "expressly granted to [them] to discharge the duties and carry into effect the objects and purposes of [their] creation." *Bredice v. Norwalk*, 152 Conn. 287, 292 (1964).

Jorge Perez
Page 4
December 13, 2012

Here, the Board of Aldermen was created and granted express authority to "exercise all of the powers conferred upon [the city of New Haven]," Charter, Article IX, Section 37, and to "enact a plan of redistricting the wards of the city of New Haven, and, in so doing, . . . change the boundaries and the number of wards." Charter, Article III, Section 4(b). The Board of Aldermen has also been granted express authority to:

by majority vote of all the members thereof, present or absent, with the written approval of the mayor, or over said mayor's veto, as herein provided to enact, alter or repeal ordinances to be called the ordinances of the city of New Haven; and to make, alter and repeal orders or resolutions by a majority vote of the members present . . . which orders, resolutions or ordinances may be for any of the following purposes, to wit:

...
(y) To do all things necessary to make effectual the powers herein otherwise provided.

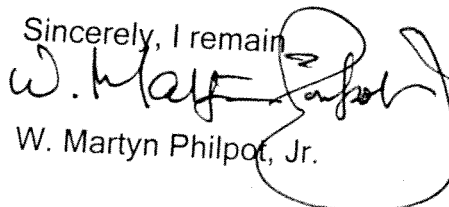
Charter, Article IX, Section 49. Therefore, the Charter grants the Board of Aldermen the authority to amend ordinances (i.e., its budget and the like), as deemed essential and necessary, to make effectual its powers otherwise provided, including the power conferred on it to redistrict the wards of the city of New Haven. Accordingly, it is reasonable to conclude that the Board of Aldermen may amend its ordinance redistricting the wards of the city of New Haven, for the sole and limited purpose of modifying boundaries which were established as a result of the adoption of its initial redistricting plan.

V. Conclusion

The Board of Alderman may, pursuant to Chapter IX § 49 of the New Haven City Charter, vote to amend the enacted ordinance redistricting the wards of the city of New Haven, provided the Board follows the procedural provisions provided by that and other sections of the Charter.

In the event you have any further questions or concerns, please do not hesitate to contact the undersigned at any time.

Sincerely, I remain


W. Martyn Philpot, Jr.

WMP:tls