

MEMO

TO: Leadership of the City of New Haven's Board of Alders

FROM: W. Martyn Philpot, Jr., Esq.

DATE: December 4, 2015

I. Questions Presented:

- A. Would a Board of Education comprised of eight (8) members in or after January 1, 2016 comply with the current Charter?
- B. Is a motion to rescind or amend the last reappointment to the Board of Education that was approved by the Board of Alders to extend the expiration date of a Board member's term to December 31, 2015 be an appropriate method of reducing the current number of Board of Education members into compliance with the Charter?

II. Legal Assessment

A. With respect to the city's relatively newly minted Charter revision which took effect as of January 1, 2014, a Board of Education comprised of eight (8) members in or after January 1, 2016 *would not* be in compliance with the city's current Charter. Specifically, Article VII, Sec. 3A(2) provides:

Effective January 1, 2016, the Board of Education shall consist of seven (7) members as follows: the Mayor, four (4) members appointed by the Mayor, *subject to approval by the Board of Alders*; and two (2) elected by district... (emphasis added).

It is my view that it is uncontroverted that a Board of Education consisting of eight (8) members would be contrary to the letter and spirit of the revised Charter provision which specifically concerns itself with the composition of the Board. Of worthy mention is the fact that the above-referenced Charter provision unequivocally states that the four (4) members of the Board of Education who are appointed by the Mayor, are subsequently required to obtain approval from the Board of Alders.

B. It would appear that a motion to rescind or amend the last appointment to the Board of Education that was approved by the Board of Alders in order to extend the expiration date of that Board Member's term may well be an appropriate method in which to bring the total number of Board of Education members into compliance with Article VII, Sec. 3A(2) of the revised Charter.

While those members appointed to the Board of Education by the Mayor are subject to approval by the Board of Alders, it is important to note that Connecticut General Statutes Sec. 9-206(a) serves as a caution to those who would seek to modify the term of any person elected to a Board of Education. More specifically, Connecticut General Statutes Sec. 9-206(a) provides in relevant part:

(b) No person serving *an elected term* to a Board of Education on the effective date of any such ordinance or Charter provision shall have his term shortened or terminated by virtue of such ordinance or Charter provision (emphasis added).

However, the above-cited statutory provision appears to concern itself exclusively with persons who have not been appointed by the Mayoral authority, but rather elected to a specific term on the Board of Education by the electorate. Therefore, while the spirit of the above-referenced statutory provision implicitly suggests that modification of the term of a person selected to the Board of Education is not preferable, as it unambiguously applies to those who have been elected to the Board of Education, it is readily distinguishable from the situation which presents itself with respect to the composition of the city of New Haven's Board of Education as of January 1, 2016.

When turning to the authority vested in the Board of Alders by the city's revised Charter, as well as Connecticut General Statutes, one need only look to the broad authority vested in municipalities pursuant to Connecticut's Home Rule Act ("Home Rule Act"). The purpose of the Home Rule Act is twofold: (1) to relieve the General Assembly of the burdensome task of handling and enacting special legislation of local municipal concerns; and (2) to enable a municipality to draft and adopt a Charter or ordinance which shall constitute the organic law of the city, superceding its existing Charter and any inconsistent Special Acts. The underlying rationale of the Home Rule Act is that issues of local concern are most appropriately resolved locally pursuant to a municipality's Charter, rather than looking to guidance from the Connecticut General Statutes or the General Assembly. See *Board of Education v. Town and Borough of Naugatuck*, 268 Conn 295, 843 A.2d 603

(Conn. App. 2004). It has been clearly articulated that the Home Rule Act was enacted in order to enable municipalities, such as the city of New Haven, to conduct their own business and to control their own affairs to the fullest possible extent in their own way, given the overarching principal that the municipality itself knows better what it wants and needs rather than the state at large. See e.g., *Ganim v. Smith and Wesson Corp.*, 258 Conn. 313, 366-67 (2001).

It would appear abundantly clear that the composition of the city of New Haven's Board of Education is uniquely a local issue which, pursuant to the Home Rule Act, the city of New Haven's Board of Alders are in a position of legal authority to resolve. While the interests in education of the city's children can certainly be considered a matter of concern for the people of the state, whether or not the city of New Haven's Board of Education contains seven (7) or eight (8) members appears to be exclusively a matter of local concern. See e.g., *Caulfield v. Noble*, 178 Conn. 81, 86-87, 90 (1979).

In light of the foregoing, it would appear that the Board of Alders clearly has the requisite authority to rescind or amend any approval that it has previously extended to a Mayoral appointment or reappointment to the Board of Education. Inasmuch as the Home Rule Act favors a municipality's exercise of authority to regulate their own affairs in recognition that municipalities are best suited to address their local needs, it is my view that the Board of Alders is well within its legal authority, if it deems it appropriate and in the best

interest of the city and its citizenry, to rescind any approval previously extended to a Mayoral appointment to the Board of Education. See e.g., *Norwich v. Housing Authority*, 216 Conn. 112, 118 (1990).