




CITY OF STAMFORD, CONNECTICUT
INTER-OFFICE CORRESPONDENCE

To: Kathryn Emmett, Esq.
From: Dana B. Lee, Esq. 
Copy:
Date: June 19, 2019
RE: Issues Relating to Items on Appointments Committee Agenda

CONFIDENTIAL ATTORNEY COMMUNICATION

I. ISSUES:

A. First Issue:

As to the individuals nominated for appointment on the June 25, 2019 Agenda for the Appointments Committee, when do the respective terms of these appointments expire?

B. Second Issue:

Who currently has the authority to nominate those individuals for appointment?

II. BRIEF ANSWER

For item # A30.069, concerning the appointment of an alternate member of the Zoning Board, the term of this appointment would ordinarily expire on 12/1/20, but in order to comply with the Charter's requirement relating to when alternate terms should expire, the term should be made to expire on 12/1/19. For item #A30.070, concerning the appointment of a regular member of the Zoning Board, the term of this appointment should expire on 12/1/19. For item #A30.074, concerning the appointment of a member of the Social Services Commission, the term of this appointment should expire on 12/1/20.

In all cases, the Mayor currently has the authority to nominate the individuals.
See Discussion, below.

III. FACTUAL BACKGROUND:

Note: the analysis of this issue is based on the following set of facts that have been communicated to this office. Any suggested correction to these facts, particularly with respect to the years the terms expired, should be provided immediately.

The following issues concern three (3) items that are on the June 25, 2019 Agenda of the Appointments Committee.

Item # A30.069 concerns the appointment of an alternate member to the Zoning Board. This seat was last held by a Mr. Kaufman. Its term expired in 2011 and no individual was appointed to fill that seat.

Item # A30.070 concerns the appointment of a regular member to the Zoning Board. This seat was last held by a Mr. Mills. Its term expired on December 1, 2016, whereupon Mr. Mills held over until his passing in 2018. No individual was appointed to fill that seat.

Item # A30.074 concerns the appointment of a member to the Social Services Commission. This seat was last held by Mr. Aponte. Its term expired on December 1, 2017 and no individual has been appointed to fill that seat since.

According to the Agenda, the terms of these appointments are intended to expire on December 1, 2021.

IV. DISCUSSION

A. First Issue Re: Term Expiration

The terms of the regular members of the Zoning Board and the Social Services Commission are designated in § C6-00-2(a) of the Charter of the City of Stamford. Under that section, the Zoning Board and the Social Services Commission are each designated five (5) members who serve three year terms. *Id.* Three (3) alternate members of the Zoning Board are designated in § C6-00-2(c).

The Charter overlaps the terms of these members, and does so specifically. Charter § C6-00-4(b) provides:

The terms of members of Boards and Commissions designated in Sec. C6-00-2(a) shall overlap so that one term ends in the first of three (3) successive years and two (2) terms end in each of the second and third years. The terms of alternate members designated in Sec. C6-00-2(c) shall overlap so that one term ends in each of three (3) successive years.¹

This overlapping of terms has a very specific intent. It is designed to ensure that at all times, there are members with experience in office. *State ex rel. Rylands v. Pinkerman*, 63 Conn. 176, 189 (1893). In order to give “complete effect” to such a provision, “appointments to fill vacancies” are confined to the “residue of the unexpired term.” *Id.*, (Where Bridgeport Charter provided that the terms of police commissioners overlapped, the Connecticut Supreme Court held that appointment of a commissioner to fill mid-term vacancy was only for remainder of current term, and not a full term.).

¹ This overlapping of the terms effectively creates three year terms for such alternate members.

In other words, the term is tied to the seat, not the individual sitting in it. This is the only construction that ensures that the very specific overlapping mandated by the Charter continues *in posterum*.²

Consequently, in order to determine duration of an appointment, we must consider the dates of the term attached to the seat that will be filled. Item # A30.069 concerns the appointment of an alternate member to the Zoning Board. The term of this seat expired in 2011 and no individual was appointed to fill that seat. The three year terms attached to that seat were December 1, of 2011-2014, 2014-2017, and 2017-2020. For item # A30.069, concerning the appointment of an alternate member of the Zoning Board, the term of this appointment would expire on 12/1/20.

However, in order to comply with the Charter's requirement that the terms of the three alternates expire on successive years, this appointment should be made to expire on 12/1/19. There is already an alternate seat set to expire on 12/1/20, currently held by Mr. Silver. The third alternate seat currently held by Mr. Rosenfeld is set to expire on 12/1/21.

Item # A30.070 concerns the appointment of a regular member to the Zoning Board. The term of this seat expired on December 1, 2016. No individual was appointed to fill that seat. The applicable three year term attached to that seat is December 1, of 2016-2019. For item #A30.070, concerning the appointment of a regular member of the Zoning Board, the term of this appointment should expire on 12/1/19.

Item # A30.074 concerns the appointment of a member to the Social Services Commission. The term of this seat expired on December 1, 2017 and no individual has been appointed to fill that seat since. The applicable three year term attached to that seat is December 1, of 2017-2020. For item #A30.074, concerning the appointment of a member of the Social Services Commission, the term of this appointment should expire on 12/1/20.

B. Second Issue Re: Authority to Nominate for Appointment

The authority to nominate for appointment to the Zoning Board and Social Services Commission is governed by the provisions of Stamford Charter § C6-00-3. That section initially

² This conclusion is also consistent with two long standing, well settled, general rules. First, "(o)ne appointed to fill a vacancy holds office only until the expiration of the term established for the person whose place he takes." *State ex rel. Rundbaken v. Watrous*, 135 Conn. 638, 645 (1949); see *State ex rel. Rylands v. Pinkerman*, 63 Conn. 176, 189, 28 A. 110, 22 L.R.A. 653; *State ex rel. Mathewson v. Dow*, 78 Conn. 53, 56, 60 A. 1063; *Cummings v. Looney*, 89 Conn. 557, 561, 95 A. 19; See., 3C Am. Jur. 2d Public Officers and Employees § 150 ("(A) holdover does not change the length of the term, but merely shortens the tenure of the succeeding officer.").

Second, where both the duration of the term of an office and the time of its commencement or termination are fixed by a constitution or statute, a person elected or appointed to fill a vacancy in such office holds for the unexpired portion of the term and until the qualification of a successor. 3C Am. Jur. 2d *Public Officers and Employees* § 146; *Andersen v. Sundlun*, 625 A.2d 213, 215 (R.I.1993)("In other jurisdictions that have addressed the issue, the law is fairly well settled..."); See also, *People ex rel. Lynch v. Budd*, 114 Cal. 168, 45 P. 1060 (1896); *In re Advisory Opinion to the Governor*, 31 Fla. 1, 12 So. 114 (1893); *State ex rel. Tobias v. Seitz*, 161 Ohio St. 269, 119 N.E.2d 47 (1954).

grants the authority to the Mayor. If the Mayor fails to submit a nomination within 120 days after expiration of the term of office, the authority shifts to the President of the Board of Representatives. However, the authority shifts back to the Mayor if the Board of Representatives also fails to act within another 120 days.

Specifically, Charter § C6-00-3(a) provides, in pertinent part, the following:

...if the Mayor shall fail to submit a nomination to the Board of Representatives within one hundred and twenty (120) days after the expiration of a Board or Commission or alternate member's term of office, then, at any time during the one hundred and twenty (120) day period thereafter, the President of the Board of Representatives may nominate and the Board of Representatives may approve a successor to fill the position. Provided further, however, if said Board of Representatives shall fail to act within the allotted time period, the Mayor shall again be empowered to nominate an individual to fill the vacancy and the Board of Representatives shall have ninety (90) days to approve or reject such nomination as set forth above.

In all three cases, enough time has passed from the expiration of the respective terms for the nomination authority to have shifted from the Mayor to the President of the Board of Representatives, and then back to the Mayor. Consequently, the power to nominate the individuals for appointment currently rests with the Mayor.