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Background Memorandum Re: Term Limitations 10 February 2021

The Middletown Charter Revision Commission has been asked to consider term limits to “two terms” or “eight years in office”¹. This memorandum is a review of the issues involved in resolving home rule questions.

Proponents of term limits may assume that because the President of the United States is limited to two terms, such term limits could be applied to any elected position, including municipal officials. However, the presidential term limit was established by the Twenty-Second Amendment to the U.S. Constitution and only applies to the President. On the other hand, term limits, if legally permissible, would be established municipal ordinance or charter provisions, which fall within the limits of authority set forth under Article Tenth of the Constitution of the State of Connecticut entitled “Of Home Rule.” Section 1 of Article Tenth provides as follows:

The general assembly shall by general law delegate such legislative authority as from time to time it deems appropriate to towns, cities and boroughs relative to the powers, organization, and form of government of such political subdivisions. The general assembly shall from time to time by general law determine the maximum terms of office of the various town, city and borough elective offices. After July 1, 1969, the general assembly shall enact no special legislation relative to the powers, organization, terms of elective offices or form of government of any single town, city or borough, except as to (a) borrowing power, (b) validating acts, and (c) formation, consolidation or dissolution of any town, city or borough, unless in the delegation of legislative authority by general law the general assembly shall have failed to prescribe the powers necessary to effect the purpose of such special legislation².

Thus, the validity of such municipal laws rests upon the authority of the city or town to create them. The fact that such authority is limited provides a means through which provisions which are not explicitly or expressly granted to municipalities by the General Assembly. In this sense the term “home rule” as general understood by the public and many public officials is a misnomer. It implies a degree of discretion that is not consistent with the application of the notion in our “legislative home rule” state.

As you will see, municipalities are creatures of the state and have no inherent legislative powers. Their powers are limited to those that are expressly granted by state statute or necessary to fulfill municipal duties. The state legislature has not explicitly given municipalities the authority to establish term limits. Accordingly, term limits are not permitted in the State of Connecticut³.

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Discussion

There is no authority in the general statutes for *term limitations* to be conferred upon elected municipal officials. I will address this issue in more detail; however, I would like to enumerate a few principles that should guide you through this issue and others that may present themselves in the next few weeks:

- Municipalities...are creations of the state (and thus) have no inherent legislative authority⁴;
- They can wield only those powers expressly granted to them by the legislature⁵; or necessary to the exercise of an expressly delegated power⁶.
- The rules that determine whether a power has been delegated to a municipality are also well established:
 - The legislature has been very specific in enumerating those powers it grants to municipalities⁷.
 - An enumeration of powers in a statute is uniformly held to forbid the things not enumerated⁸.
 - Delegation of authority to municipalities is therefore narrowly construed⁹.
 - In determining whether a municipality has the authority to adopt a challenged charter provision, "we do not search for a statutory prohibition against such an enactment; rather, we must search for statutory authority for the enactment¹⁰.

In other words, if the authority is not expressly granted or necessarily implied or derived from the express grant of authority there is no authority. There is no authority conferred by state law to impose such term limits.

¹ Written submission of Brian Robillard: 11/17/2020 and supported by Commissioners Greaves (2-3 terms) and Wilson (2 terms): 12/30/2020. Defenders of term limits claim that they ensure the presence of new candidates with fresh ideas and less stagnation, entrenchment or possible abuse of power. Meanwhile, opponents of term limits point out that that the electoral process can accomplish the same goals because voters are always free to elect a candidate who represents a new perspective or vote any incumbent board member out of office.

² In sum, the sole basis of municipal authority is legislative delegation in the form of a general statute or a special act adopted prior to the effective date of Article Tenth.

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³ It has been brought to my attention that the Town of Wilton has included term limits for members of the Board of Selectmen, although the First Selectman is not so covered. I confirmed that the provision, does, in fact, exist. When I discussed the matter with the First Selectman and the Town Attorney it was determined that became clear that the provision was added by a Charter Commission on the theory "...that we could include whatever provisions we wanted in the Town Charter as long as they did not conflict with any state statutes, and we were not aware of any state statutes that conflicted with our term limits." The Town Attorney, who not in office at the time the provision was added to the charter agreed that the standard applied was not correct. This underscores another general rule: when a town has a provision that goes against the grain or the legal standard under home rule analysis you need to determine whether the municipality has a provision that was granted under a special act prior to the adoption of home rule in the late 1950s. Thus, as a general rule I advise Charter Commissions not to lift provisions from other charters without doing some significant due diligence.

⁴ **Municipalities, because they are creatures of the State have no inherent legislative authority:** See **New Haven Commission on Equal Opportunities v. Yale University**, 183 Conn. 495, 499, 439 A.2d 404 (1981); **Connelly v. Bridgeport**, 104 Conn. 238, 252, 132 A. 690 (1926); **State ex rel. Bulkeley v. Williams**, 68 Conn. 131, 149, 35 A. 24 (1896), aff'd sub nom. **Williams v. Eggleston**. 170 U.S. 304, 18 S.Ct. 617, 42 L.Ed. 1047 (1898); **Webster v. Harwinton**, 32 Conn. 131, 138-39 (1864); Littlefield, "Municipal Home Rule--Connecticut's Mature Approach," 37 Conn.B.J. 390, 404-405 (1963); 2 McQuillin, *Municipal Corporations* (3d Ed.Rev.1979) § 10.11.

⁵ **Municipalities "...can wield only those powers...necessary to the exercise of an expressly delegated power":** See, **City Council v. Hall**, 180 Conn. 243, 248, 429 A.2d 481 (1980); **Pepin v. Danbury**, 171 Conn. 74, 83, 368 A.2d 88 (1976).

⁶ **Municipalities "...can wield only those powers expressly granted to them" by the General Assembly** See, **Perretta v. New Britain**, 185 Conn. 88, 102, 440 A.2d 823 (1981); **New Haven Water Co. v. New Haven**, 152 Conn. 563, 566, 210 A.2d 449 (1965).

⁷ See, General Statutes Title 7." See, **Simons v. Canty**, 195 Conn. 524 (1985); **Buonocore v. Branford**, 192 Conn. 399, 403, 471 A.2d 961 (1984). Which held that in challenging a charter provision, "we do not search for a statutory prohibition against such an enactment; rather, we must search for statutory authority for the enactment." **Avonside, Inc. v. Zoning & Planning Commission**, 153 Conn. 232, 236, 215 A.2d 409 (1965).

⁸ See, **State ex rel. Barlow v. Kaminsky**, 144 Conn. 612, 620, 136 A.2d 792 (1957); **State ex rel. Barnard v. Ambrogio**, 162 Conn. 491, 498, 294 A.2d 529 (1972).

⁹ See, **Gregory v. Bridgeport**, 41 Conn. 76, 86 (1874).

¹⁰ See, **Avonside, Inc. v. Zoning & Planning Commission**, 153 Conn. 232, 236, 215 A.2d 409 (1965).