



FINAL
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January 5, 2013 at 8:30am
Notice posted

Minutes

**Meeting of the Charter Review Commission
Cuyahoga County
January 5, 2013 at 8:30 A.M.
Cuyahoga County Administration Building, 4th Floor**

Required notices were provided and posted and the meeting was called to order at 8:45 AM by the Chair. The roll was called.

Present: McLaughlin; Callahan; Akers; Tarter; Albright; Headen;
Absent: Dietrich; Russell; Riley
A quorum was present.

Akers called for public comments. There were no public comments.

Copies of the minutes for the CRC meeting held on December 12, 2012 were distributed to all CRC members. **Akers** asked for any additions or corrections to the minutes. There were no additions or corrections offered. **McLaughlin** moved to adopt the minutes as written. The Motion was seconded by **Albright**. **Akers** called for a voice vote on the Motion.

For the Motion: **McLaughlin, Callahan, Akers, Tarter, Albright, Headen.**
Opposed to the Motion: **None**
The minutes were approved.

Akers thanked the County Council Staff, including **Joanne Gross**, for the assistance in organizing the presentations of the County Council members. **Akers**

provided a brief introduction of County Council President **C. Ellen Connally** and thanked her for appearing before the CRC to provide her thoughts on the County Charter.

Connally addressed the CRC. She provided background about the process that was used to draft the charter and some of the concerns that she had. She addressed some specific aspects of the Charter that should be looked at by the CRC.

Initially, **Connally** stated that the IG's office was doing a good job and appreciated the work that was being performed. She did not believe that enough time had elapsed since the IG had been implemented to memorialize the position in the County Charter. She stated that the office should be assessed at a later point in time to determine if, and how, the agency should be authorized.

Connally stated that she agreed with the opinions of **Administrative Judge Fuerst** and felt that the Charter should be amended to allow the Courts, rather than the Executive, to choose the Clerk. She felt that the work performed by the Clerk of Courts was strictly a court function and therefore, the selection of the Clerk and the staff, should fall to the Courts.

Connally addressed the position of County Sheriff and stated that she felt that the position, similar to the IG and the Internal Auditor, should be appointed for a set term and should not be subjected to unilateral dismissal by the Executive. She felt that that the Chief Law Enforcement Officer should not be subjected to the whims of a single individual, i.e. a County Executive.

Connally addressed the issues of Executive succession and stated that some sort of provision should be made to allow an alternate to act in the Executive's stead should the Executive be unavailable. She pointed to a provision in the City of Cleveland's rules that allows the City Law Director to stand in for the Mayor of Cleveland, in the event the Mayor is absent or otherwise unavailable. She also requested that a provision in the County Charter be included to provide a required time of residency for an individual to run for, or serve as, the County Executive.

Relative to Executive "interim" appointments, **Connally** felt that a Charter amendment should be included to address filling a vacancy in the Executive cabinet, which would include a time frame for service and addressing the authority upon which the interim appointment may be made. She also felt that the County Treasurer's position should remain as a charter-authorized position and should not be placed under the authority of the Fiscal Officer.

Connally noted that some issues have arisen with the charter mandated rule that all Executive appointments be voted on within thirty days of submission. She noted that the Council schedule sometimes did not correspond to the time frame for the Council to meet and assess the nominee's credentials. She also noted that the thirty-day approval requirement precluded the possibility of any nominee receiving three readings prior to a full vote of the County Council.

Finally, **Connally** addressed the Human Resource Commission. She felt County employees that were facing discipline would feel that the system was rigged against them if the Executive was in charge of hiring as well as nominating the HRC members, subject to Council Confirmation. She felt that the County Council, rather than the County Executive, should appoint the HRC members.

Connally received questions from the HRC members. **McLaughlin** sought further clarification on her position regarding the Clerk of Courts. **Connally** noted that the Municipal Courts usually appoint their Clerks and re-iterated her comments that the work performed by the Clerks was largely court related. She noted that the federal system also provided for a Clerk to be appointed by the Judiciary. Finally, she noted that any budgetary issues would still need to be assessed via the standard budget process that all county agencies undergo.

Tarter sought **Connally's** input regarding Board appointments. **Connally** noted that it was vital that the Council be provided ample time to review not just the merits of the nominee, but also to meet with the candidate to assess the candidate's commitment to the position. She noted that the County Council attempts to work with the nominee to schedule meeting times but it was important to realize that the board and commission members are usually volunteers who have other job and family commitments. **Connally** re-iterated that more time was appropriate and noted that Summit County's Charter allows 60 days for approval.

Akers asked **Connally** to address the role to be played by the County's Law Director. **Connally** stated that she did not have a strong opinion on the matter at this time and felt that the involved parties were working well together. She felt that it was important to give **Prosecutor McGinty** some time in his new position before any Charter amendments were offered. Upon questioning from **McLaughlin**, **Connally** stated that on-going discussions with the Prosecutor and the Law Director would be beneficial.

Headen noted that **Connally's** comments seem to involve a discussion of whether a strong Executive-form of government was desired. **Headen** compared the form of government that her community, Richmond Heights, had. **Connally** re-iterated that her comments were simply designed to allow the County government to have appropriate and necessary checks and balances and establishing clear guidelines.

At the conclusion of **Connally's** comments, **Akers** introduced **County Councilman David Greenspan** and provided background on **Greenspan's** previous experience in Georgia where he had served as a Councilmember for a newly formed community.

Greenspan addressed the confusion and contradictions that exist relative to the charter language referring to the Board of Revision. He noted the confusion involving the use of both the plural "Boards of Revision" and the statutory definitions involving the singular use of "Board of Revision". He noted that this issue was a fundamental one and noted that the intent seemed to be that there should be one, single Board of Revision. He noted that the lack of clear definitions has led to confusion within both the administration and the employees about authority and reporting responsibilities. **Greenspan** also pointed out the problem with the hearing officers having set terms. He hypothetically asked: "what can we do with these employees if they have been appointed to a term and there simply is not enough work for them? Are we obligated to keep them?" Relative to the inclusion of party affiliation requirements, **Greenspan** stated that such mandates should not be required at the hearing office level but should be included for the single, statutory board to allow diversity at the highest level.

Greenspan next addressed the IG's Office. He noted his support for this position even before being elected to the County Council. He described his research including reviewing Broward County, Florida's legislation. **Greenspan** was clear that the IG's office needed independence both in operations as well as in funding. He offered a model for recommending candidates to the Executive for Council confirmation that would involve using outside groups that were knowledgeable of the operations of the IG's office, including Bar Associations, Police groups and other entities. Should a vacancy exist in the position of IG, this group could make recommendations to the Executive. Relative to the funding independence, **Greenspan** noted that Broward County had a guaranteed funding source equal to ½ of 1% of the amount of their County contracts. He recommended that such a model be followed here. **Greenspan** also felt that the IG's office should be permitted to contract with other governmental agencies and language allowing this

should be included in any charter provision memorializing the IG's office and its duties.

Greenspan addressed the HRC and concurred with **Connally's** comments. He stated that allowing the County Council to appoint the members of the HRC would eliminate the perception that the employee discipline system is wholly controlled by the County Administration.

Relative to the time requirements for nominations, **Greenspan** agreed with **Connally** that more time was appropriate for Council to appropriately review the candidates and their qualifications. He noted that at least one nominee had to be withdrawn from consideration by County Council simply because that Council schedule did not allow the candidate to meet with them.

In conclusion, **Greenspan** stated that comparisons to other counties, including Summit or Allegheny, PA were not really appropriate. We are the only county that only elects two offices on a county-wide basis. We currently have a very strong form of Executive government and the proposals offered are not designed to weaken the form of government but to allow the checks and balances that council is required to provide. He noted that while the Charter specifically states that the County Council position is "part time," the formation of a new government has been very time consuming and involved. He stated that he has received several thousand emails and phone messages and has attended more than five hundred meetings since taking office.

Akers noted that in the drafting of the County Charter, there was a desire to have a strong Executive and the strength of that office would be checked by the confirmation processes required for contract, budget and appointments that was to be performed by the County Council. **Akers** asked **Greenspan** if these checks were sufficient. **Greenspan** did not feel that those checks were sufficient and noted that the Sheriff was confirmed by Council but the decision to remove him did not require Council action. He felt that the removal of the Sheriff, an officer with investigative obligations, should require Council action. He noted that this was consistent with the IG and the Internal Auditor.

Greenspan took questions from other members of the CRC. **McLaughlin** asked **Greenspan** whether he felt that the appointment process for the Sheriff should be amended. **Greenspan** felt the appointment process was appropriate and noted that the County Council can, and has, blocked Executive appointments. **McLaughlin** noted that under the federal system, the Executive appoints the law enforcement

agents, with the advice and consent of the Senate, but is not required to return to the Senate for dismissals. **Headen** noted that only a small portion of the Sheriff's duties were actually "investigative" and **Callahan** noted that the Sheriff would likely appoint a special prosecutor to conduct an investigation if there was any hint of a conflict. **McLaughlin** noted that the Sheriff's work would have a much greater involvement with the Prosecutor than the Executive. **Greenspan** agreed but still felt that the dismissal of an investigative officer such as the Sheriff should come back to County Council for approval.

Akers called **Councilman Charles Germana** to present to the CRC. **Akers** provided background on **Germana** and noted his service as the President of Council in the City of Parma, a non-charter community.

Germana addressed the CRC and emphasized his support both for the Charter form of government as well as for the current Cuyahoga County Charter. He noted that there certainly was room for some alterations but the government has been operating well. He also noted that the County Council members would not always be unanimous in their opinions concerning needed amendments.

Germana noted that the political party affiliation requirement has led to situations where higher ranked candidates were passed over in order to meet certain political affiliation quotas. He stressed that qualifications, rather than affiliation, should be the main factor in hiring for the Board of Revision and concurred with **Greenspan's** comments on this matter.

Germana addressed the Law Department. He felt that the County Prosecutor should be in charge of all the criminal matters and the Law Director should handle all the civil matters. **Germana** felt that a clear line of authority concerning legal representation was crucial. **Germana** addressed the IG's office and stated that the creation of the office was "one of the best things" we have done in this county. He felt that the creation of the IG's office allowed whistleblowers to come forward without fear of retribution. He stated that the independence of the office of the IG was essential.

Germana briefly addressed the HRC and felt that the appointments to the three-member HRC should come from the County Council rather than the County Executive. He echoed the comments of **Connally**, noting that having County Council make these appointments would eliminate any appearance of conflict.

Germana noted that he had a different opinion on some matters than some of his council colleagues, including the issue of the County Treasurer. **Germana** agreed that the office of the Treasurer should be placed under the Fiscal Office so that there would be one, complete office which would handle the county's finances. **Germana** also felt that the Clerk of Courts and its operations should remain as an Executive appointment. He noted that the tasks performed by the Clerk were largely administrative, rather than judicial. He felt that input from the Judiciary should be given but the nomination should come from the Executive, subject to confirmation by the County Council.

Finally, **Germana** agreed that some amendment should be made to the thirty day confirmation requirement for Executive appointments. He discussed an option that would tie the time frame in which approval was required to the calendar of the next three scheduled council meetings. This would allow every nomination to be afforded the opportunity, should council desire, to have three public readings before a vote.

McLaughlin asked **Germana** for some clarification regarding the status of the employees of the Clerk of Courts. **Germana** noted that the employees were county employees while those employed by other aspects of the court system were employed by the courts themselves. He noted that this led to different rules and benefits depending on whose department you were under. **Germana** felt that budget issues would increase if this department did not remain under the administration.

Akers welcomed **Councilman Julian Rogers** and provided background information about **Rogers**. **Rogers** stated that removing County Council from the hiring process of the Board of Revision hearing officers was called for. He noted that the process of hiring employees was not a task that the Council was structured to perform. He felt that the Executive should hire members of the hearing boards, subject to Council confirmation. **Rogers** did state that the HRC members should be appointed by the Council as the process should not be given the appearance of total control by one branch, the Executive. Relative to the IG's office, **Rogers** called for total independence, including the budgeting process. **Rogers** did not believe that the termination of a County Cabinet position, such as the Sheriff, should come back to the Council for dismissal. He noted that chaos could result if Council disagreed with the Executive's decision to terminate the Sheriff. He felt that perhaps direct election of the Sheriff was needed.

McLaughlin asked for **Rogers'** comments regarding the lines of representation between the Law Director and the Prosecutor. **Rogers** noted that there was much confusion and disagreement on the issue. As a non-lawyer, **Rogers** noted that he had attempted to stay away from the legal issues but felt that clear lines of authority needed to be established. **McLaughlin** asked **Rogers** for comments regarding the Clerk of Courts. **Rogers** acknowledged the position held by the various members of the Judiciary but felt that the current process outlined in the County Charter was working appropriately and should not be altered.

Akers introduced **Cuyahoga County Public Defender Robert Tobik**. **Akers** detailed the process by which the PD was selected and gave background information about **Tobik** and the office that he managed. **Akers** noted the provision in the creation of this Charter Review Commission and the mandate that this CRC review the operation of the office and the representation of indigent defendants.

Tobik provided introductory comments. He addressed the operations of his office and the various areas that his staff worked including General Felony, Juvenile Court, Municipal Court and Appellate work. He stated that 40% of all felony cases in Cuyahoga County are assigned to PD attorneys. **Tobik** noted that the PD's role has increased as the number of assigned counsel cases has decreased. **Tobik** stated that the number of death penalty cases has risen in this County and that those cases incur the greatest costs and work.

Tobik discussed some of the various Judicial Reforms that have been brought forth over the previous years. He was clear that moving cases faster does not always equate to the mandate that the judicial system be fair, appropriately funded and allow the necessary safeguards for the rights of the accused.

Akers asked **Tobik** to clarify his comments on the speed of the judicial system. **Tobik** noted that the various reforms generally request that lower level-cases be resolved faster. **Tobik** agreed with that premise but noted that the various other aspects of the system, i.e. police and prosecutor, needed to get information to the defendant and counsel quicker so that informed decisions can be made. **Tobik** noted that the current judicial system is faster in achieving resolution than it has ever been.

McLaughlin inquired about the funding for the PD's office and the aspects of determining indigency. **Tobik** noted that the federal poverty guidelines dictate the factors for assessing whether a defendant was "indigent" for legal purposes. **Tobik**

stated that his annual budget was \$8 million while \$1.8 million was received for the representation of municipal defendants. **Tobik** noted that those figures were offset by a 35% reimbursement from the State of Ohio.

Albright noted that the PD's office is unionized and sought comment from **Tobik** on the effects. **Tobik** noted that as an entity created by ORC provision, he still had hiring and termination authority but that the process was a bit different. He noted that the turnover of staff in the PD's office is low.

Tobik concluded his comments and noted that he was not seeking any amendments to the Charter. He stated that he would be more than willing to return to address the CRC if any members had additional questions for him.

Akers led a discussion about the scheduling of upcoming CRC meetings. It was decided that the meetings in January would all take place at the County Administration Building. Additional discussion occurred regarding the process to move forward with actual charter amendment recommendations and what steps would be utilized to engage the public on the process.

At 1:15 PM, **Akers** made a motion to adjourn. The motion was unanimously approved by a voice vote of the CRC members.

Draft _____

Issue _____

App. 1-23-12

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