



Charter Compliance Commission

Consideration and Decision 2019-2

The Charter Compliance Commission met on Tuesday, November 19, 2019, at 12:00 pm, in the Judge Welsh Room at Town Hall, 260 Commercial St., Provincetown, MA 02657, to consider a Request for Interpretation of the Charter. The authority of the Commission in this matter is stated at Chapter 1, Section 4.b.:

The Commission shall provide its written interpretation of the Charter on the written request of any resident or official of the Town. The Commission's interpretation is advisory only and for educational purposes and shall not be the basis for any legal action. A copy of the request and the proposed response shall be provided to the Board of Selectmen and the Town Manager for review prior to being issued.

Two written requests were received on the same topic - one from Patricia Miller and one from Steven Fossella. Both requests asked whether the appointment of David Panagore, the former Town Manager (who left office on May 10, 2019), as an Alternate to the Finance Committee was in violation of Chapter 5, Section 4.b, which states:

b. A paid Town Employee may not be a member of any Town Board that oversees matters in any way related to his or her employment, during the time of his or her employment. Potential responsibility to review actions or decisions by one's supervisor is considered to be "related to employment". In addition, a paid Town Employee with supervisory duties may not be a member of any Town Board in any way related to his or her employment for at least one year after leaving that employment.

In reviewing the matter, the Charter Compliance Commission referred to Chapter 5, Section 4.b., as well as Chapter 1, Section 3.i., for the definition of "Town Board", which states:

i. "Town Board" means any elected or appointed body of the Town, either created by the Massachusetts General Laws, a vote of the Town Meeting, the Board of Selectmen, or this Charter. Town Boards may be titled as Boards, Commissions, or Committees. "Town Board" includes the Board of Selectmen, but not, by law, the Board of Fire Engineers or the Provincetown Public Pier Corporation.

The Commission determines that the intent of Chapter 5, Section 4.b., was to provide a "cooling-off" period in order to break the undue influence of a former employee - in this case the former Town Manager.

In addition, the Commission determines that there is an on-going working relationship between the Town Manager and the Finance Committee, as reflected in the following Sections of the Charter:

Chapter 4, Section 3.c.

c. With the approval of the Board of Selectmen, the Town Manager may transfer powers and duties from one Department or Office to another. With the approval of the Finance Committee, the Town Manager may transfer the appropriations of one Department or Office to another.

Chapter 6, Section 3.b.

b. The Town Manager shall submit the Long Term Financial Plan to the Board of Selectmen and the Finance Committee on or before October 1st. The Board of Selectmen and the Finance Committee shall conduct a joint public meeting on or before October 15th, to review the Long Term Financial Plan. At the same meeting, the Board of Selectmen shall adopt financial policies for the ensuing year's budget and for the term of the Long Term Financial Plan.

Chapter 6, Section 6.b.

b. The Town Manager shall submit the Capital Improvements Program to the Board of Selectmen and the Finance Committee by the third Tuesday of January prior to the Annual Town Meeting. On or before January 31st, the Board of Selectmen shall act on it. Then they shall submit it to the Finance Committee, which shall issue its recommendations as part of its printed report on the Annual Budget.

These sections reflect that the working relationship between the Town Manager and the Finance Committee is not incidental or insignificant.

It is our Decision, based on the above, that the appointment of David Panagore, former Town Manager, as an Alternate to the Finance Committee prior to May 10, 2020, is in violation of the Charter. It is our recommendation that he should resign. He may be reappointed after May 10, 2020.

Moved and approved by the Charter Compliance Commission by a vote of 2-0-0.