

Ad-Hoc Committee
March 24, 2014
Conference Room 6:30 p.m.
Minutes of Meeting regarding Write-In Candidates

Present: Paul Koomar, President of Council
Councilman Dwight Clark
Councilman Steve Lee
Mayor Sutherland
Law Director Ebert
Councilman Henderson
Councilwoman Lieske
Councilman Vincent

Also Present: Resident Susan Fink, League of Women Voters

Audience: Conda Boyd, Marty Mace, Tara Wendell

President of Council Koomar called the meeting to order at 6:30 p.m.

Law Director Ebert circulated information received from the cities of Lakewood and Westlake reflecting their Charter restrictions on write-in candidates for election. Mr. Ebert recommended that if the Ad-Hoc Committee recommends anything for an amendment to the Bay Village Charter it should be very simple. He suggested not putting two Charter amendments on the ballot because he feels they would both be defeated, and either to use the Westlake model or leave our Charter the way it is. If you have a Charter amendment on the ballot that says no write-in candidates, the average person doesn't know the reason behind it and may interpret it as against constitutional rights. Just because there was one challenge doesn't mean there is a problem. The one challenge never materialized. He stated further that he gave a legal opinion to the Board of Elections and the County prosecutors were also asked to review the circumstances. During that process the candidate withdrew.

The Ad-Hoc Committee asked Mr. Ebert to determine the cost of the election process for the Charter amendment. In a General Election, the cost is only \$2500 for the printing cost of the ballot. Mr. Lee asked if there is any other cost involved, and if there is a requirement under the Charter to mail out information to the public. Mr. Ebert stated that if the Ad-Hoc Committee and the Council recommends putting this on the ballot, he strongly recommends a newsletter or some type of informational piece to the public.

Mayor Sutherland arrived at 6:35 p.m. and was briefed by Mr. Ebert as to the discussion that had taken place to this point. Mayor Sutherland stated that from her perspective as a former member of the Board of Elections, her experience has been with the Board of Elections is that they almost always deferred to the Law Director's opinion for any municipal issues that have to do with the Charter. The purpose of having the prosecutor involved is merely more from process within the Board making sure that they are adhering to law that governs the Board of Elections. The prosecutor does not weigh in on Charter issues, or interpretation of such issues. Almost every

instance where a Law Director came before the Board of Elections they almost always side with the Law Director in their interpretation. The Board of Elections members report to the Secretary of State. Those issues that are governed by the Secretary of State have to do with specific voting regulations and not with the interpretation of a municipal Charter. Mayor Sutherland stated that in her view, putting this on the ballot is unnecessary, and unless Council is going to undertake the expense separately, because the city can't finance a campaign, but unless Council is going to finance the campaign..... "The way the Secretary of State would require the wording would be something to effect, 'Shall the voters of the City of Bay Village allow write-in candidates, post primary?' Most people are not going to understand the nuances of that and they are going to vote no."

Mr. Lee asked Mayor Sutherland if she thinks the chances are very slim that this would be a problem down the road if we have a primary and end up with a third candidate by write-in. Mayor Sutherland stated that she thinks it is so remote and there again, it goes back to the Law Director issue. The Board of Elections would come back and require a legal opinion from the Law Director. That would give them the legal basis for the decision that would be made, and the Board will side with the Law Director.

Mr. Lee stated that the only exception would be that if that write-in candidate would file with the County Court of Common Pleas for a Writ of Mandamus that his name be put on the ballot. Mayor Sutherland stated that then there are also issues where the Secretary of State gets involved in that as well.

Mr. Ebert mentioned three private issues that came before the Board of Elections. One was the dual public employment issue when someone who worked for the county was running for Council office in Ward 1. There was a Charter provision about dual public employment before it was amended. Mr. Ebert gave a legal opinion which was contested. The Board accepted Mr. Ebert's opinion. The matter went all the way to the Cuyahoga County Court of Common Pleas, and Mr. Ebert's ruling was upheld. A second matter dealt with an issue that had a problem with the petitions after they were filed. That was challenged and thrown out. In all three cases the Board of Elections sided with the Law Director's opinion. The person with the dual public employment issue actually got elected and was subsequently ruled not eligible to take the Council seat.

Mayor Sutherland stated that the point is with the Charter is that the Charter is a framework. It is not written, nor is it meant to be the absolute end-all and to be absolutely iron-clad because situations constantly come up that we can't even anticipate. This is one of those that was not anticipated, but we had a legal opinion. It could probably happen again but anybody who is politically astute at all is going to understand also that it is almost impossible to win a write-in campaign. Mayor Sutherland stated that she just does not see this as a reason to go to the ballot.

Conda Boyd asked why the wording on the ballot would not be "Shall the Bay Village Charter be amended to read: (XYZ)? Mayor Sutherland stated that the wording has to go to the Secretary of State and it is very specific on how they would word it. Sometimes the way that

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they word it does not agree with how we would put it so that people would understand it. There are ample examples of how things are required by the Secretary of State to be worded on the ballot that don't really reflect what we are trying to get at. Mr. Ebert noted incidents when the Secretary of State changed the wording. Mr. Ebert stated further that the city does not have the final say on the wording. The wording is done through the Board of Elections and the Secretary of State, not through the City of Bay Village. The city puts a recommendation but does not have the final say-so.

Mr. Ebert stated that disallowing write-in candidates is sensitive when you talk about someone's rights to vote. Not knowing what the issue is, we have a primary if you have more than two candidates; that is not going to be said in there. Mayor Sutherland stated that you can't go into that explanation; that is the problem.

Mrs. Fink stated that if you look at the cities that have not permitted a write-in in their Charter, they don't necessarily always say write-in. It says, "Nominations for elective offices shall be made only by petition." This then takes the stigma of write-in out of it. You have to file a petition. If you don't file a petition you cannot be on the ballot.

Mayor Sutherland stated that this would fix it, but why? Is it that big of an issue?

Mrs. Fink stated that if she looks at what Westlake has during their Charter Review on December 7, under their Nominations and Elections Procedure, they stated that their section wasn't changed, it was restated for clarification. There is a precedence that people have restated things for clarification. And, this would definitely be a clarification and re-statement.

Mr. Lee asked if Mrs. Fink is thinking it is a re-clarification of what was done in permitting the primary election. Mrs. Fink responded affirmatively.

Mr. Ebert stated that most Charter amendments, probably 90% if not more, go to the Charter Review Commission every ten years when we have problem. Mayor Sutherland suggested that this current issue be used as the starting point of a list for the next Charter Review Commission.

Mr. Lee stated that hearing that perspective on it, as an alternative we could put this on the file for the future. We could also say let's roll the dice and see if anybody tries to write-in. If that happens and the voters see we tried to have a primary and still ended up with three or more people on the ballot and we didn't achieve the objective, then maybe it would be an easier message sooner than waiting for the next review by the Charter Review Commission.

Mayor Sutherland said that if a campaign will be undertaken to change the Charter, at least three or four mailings will have to be put out. Mr. Lee noted this would be an additional cost besides the cost of being on the ballot. Mayor Sutherland stated that this would not be city cost. That would be whoever is running the campaign because the city cannot. Mr. Lee stated that this would mean fund raising; somebody raising funds for different mailings.

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Ms. Boyd stated that the Bay Village League of Women Voters has committed to campaign.

Mr. Ebert stated that the League of Women Voters does not take a position.

Ms. Boyd stated that they have a position already. Mr. Ebert stated that George Ryan has said the League of Women Voters doesn't take a position either way.

Ms. Boyd stated that they do take a position and have taken a position on the issue. They won't take a position for or against a given candidate.

Mr. Ebert stated that he understands the League does not take a position on anything. They can inform the voters but do not take positions.

Ms. Boyd stated that they take positions on issues. They have committed to helping get the issue passed. One of the hopes is with the name of the League of Women Voters in saying the League recommends passage of this to insure we do have a primary election that assures our public officials are voted in by a majority rather than a plurality, etc.

Mr. Ebert asked if this was passed by the League of Women Voters, by motion. He stated that he would be surprised if the issue of write-in candidates should not be allowed would be passed by the League of Women Voters.

Ms. Boyd stated that it was.

Mr. Ebert stated that this is shocking; it goes against the League of Women Voters' by-laws.

Ms. Boyd stated that it does not, and it was approved by the Cuyahoga area.

Mr. Lee stated that there are a lot of communities that have already taken that step, whether the League was in support or not.

Ms. Boyd stated that as to the cost of the campaign, the League would certainly throw their weight and their name behind the campaign.

Mrs. Fink addressed Ms. Boyd for a clarification on one point. When the primary issue came up the last time, did the League have signs that they paid for that were throughout the city?

Ms. Boyd stated that she actually was given one sign this last fall, the first test of the primary election. Someone had saved one in their garage. The League spent some money on the campaign and the League did the research and put their name behind the idea, and probably it is a good part why it passed.

Mr. Clark commented that he has stated his position before that he is not in support of write-in candidates but the question is do we want to make that a formality or do we want to just allow

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this to be part of things accumulated for things to be tackled down the road by the Charter Review Commission. The last time we took four Charter Review Commission recommendations to the public they were thoroughly defeated and that is one of the concerns. The cost of election expenses is not insignificant due to a primary this last year. We are going to spend almost \$40,000 in 2014 for election expense. It is not just a matter of finance but the practicality of it. Is this such a material change for us to change what exists right now? That's really the question in front of us.

Mr. Lee asked if when the primary issue was approved in 2007, that was not something that came out of a Charter Review Commission, but something that was done by petition. Mayor Sutherland stated she would be happy to talk to Mr. Lee off-line about that.

Mr. Ebert stated that years ago the city had a run-off election. It was changed back because of the cost of having a run-off election. The issue came up that the Mayor should have a majority when Mayor Sutherland had 49% of the vote for five candidates. The cost was debated at that time.

Mr. Lee stated that the primary issue did not come out of a Charter Review Commission; it came up between a ten year cycle. If this write-in candidate issue were to happen in 2014, it would be similar.

Mayor Sutherland stated that the primary issue was a very material change.

Mr. Koomar stated that every twenty years the election has flipped back and forth. At some point there was a reason where people felt strongly enough that it should be a straight majority and they maybe flipped back because there was cost incurred.

Ms. Boyd noted that there are three ways to place something on the ballot. One is by the Charter Review Commission, one is by Council, and one is by petition. The primary election issue had petitions being circulated and Council picked it up.

Ms. Boyd stated that she would argue that it takes more sense to put it on the ballot now then it would to include it with the whole series of changes by the Charter Review Commission. What we saw the last time was that there were a number of issues and people looked at the number of issues and voted no on all on them. If you have a single issue before the electorate people will give it careful consideration and listen to who is for and against it, rather than lumping it in with other changes.

Mayor Sutherland noted that the time before that (2000) there were changes that were approved.

The Mayor noted that a lot of it is dependent on Council's involvement and Council's support.

Mr. Ebert noted that the city of Westlake's Charter is different than saying no write-in candidates allowed. It is a different situation.

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Mr. Lee noted that Westlake's is also limited to General Election.

Mayor Sutherland noted that the story behind the write-in candidate last year was that the individual did it as a civics lesson for his Cub Scout troop, or classroom. He had no serious intention of following through.

Mr. Lee stated that based on the feeling that the Board of Elections would ultimately side with the Law Director on this issue, it is a question of whether it would be taken to the Court of Common Pleas or roll the dice as to whether we would end up with a write-in candidate at the General Election.

Mr. Koomar asked if this matter should be brought up at a Committee of the Whole in April to update everyone that is not here tonight.

Mr. Mace stated that he would like to comment to the point of the statement that write-in candidates usually don't do too well. In today's age of social media, it is a little more possible that it could occur differently.

Mr. Clark stated that it would be nice to make a decision in April and be done with the matter.

Mrs. Fink stated that one of the questions she asked at the last meeting was what is expected to come out of this group. Mr. Koomar said he felt this group would make a recommendation because coming out of a committee, before you go to the Committee of the Whole, usually there is a recommendation. Mrs. Fink asked if there will be a recommendation, or not.

Mr. Koomar stated that there doesn't have to be a recommendation. He would like to let people think about it and possibly hold another meeting prior to a Committee of the Whole meeting. Mr. Koomar stated that he personally wants to think about it.

Mr. Clark stated that if he were to favor one of three choices submitted by the League of Women Voters he would clearly not favor the choice of submitting the "Ballot by Petition with Exceptions." As remote as it may seem, if there is a cost to Mr. Ebert defending the city's position, which he assumes there was, if that happens every two years you have to think about potential cost of litigating, as opposed to making the change which could be fairly easy with a single Charter change as long as it doesn't confuse people.

Mr. Koomar agreed.

Mr. Lee stated that he shares the same thoughts that we are better off spending \$2,500 or whatever it is now to try to address the issue. There is no guarantee it will pass. Or, do we end up spending \$20,000 in litigation down the road. Or, do we wait ten years and lump it together with other things or does that muddy the water even more because it is part of other potential updates.

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Mr. Clark stated that if the Council suggests leaving it as is it does not mean we wouldn't revisit it next year, if things do change.

Ms. Boyd stated that the League could bring forth a petition asking to put it on the ballot.

Mr. Koomar asked if the recommendation of this committee to Council would be to look at the first two columns on the list of choices submitted by the League of Women Voters. Mr. Lee and Mr. Clark agreed.

Mr. Lee asked if it would be possible for that to say no write-ins for a general election, but permit write-ins for a primary.

Mr. Ebert stated that this is also defeating the intent of the primary as well. You would be circumventing the primary for someone who is trying to save the cost of a petition.

Mr. Clark stated that the more difficult you make the change the more difficult it is to get the message out. That is the concern.

Mr. Ebert advised that years ago the Council contributed through the "Seven for Bay Committee" of their own funds to pay for the campaign to support a ballot issue.

Mr. Koomar called for further questions or comments. There being none, the meeting adjourned at 7 p.m.

Paul Koomar, President of Council

Joan Kemper, Clerk of Council