

PROVINCETOWN CHARTER ENFORCEMENT COMMISSION  
MINUTES OF APRIL 14, 2014

Members present: Julia Perry (Chair), Ann Maguire, and Lisa Westervelt. The meeting was called to order at 4:02.

1. Review of minutes of April 7, 2014 - Motion to accept, LMW; second, AM.
2. Public hearing preparation - Motion to accept letter, AM; second, LW.  
Both motions were voted on unanimously.

Adjournment was at 4:16 - Motion to adjourn, LMW; second, AM.

April 15, 2014

David Gardner  
Acting Town Manager  
Town of Provincetown  
260 Commercial Street  
Provincetown, MA 02657

Dear Mr. Gardner:

At this time, I am sure you are aware that Dieter Groll, a voter in the Town of Provincetown, has filed a written petition under Section 5-2-3 of Town of Provincetown Charter (hereinafter, the Charter) by two documents titled Memorandum of Objection, dated April 2, 2014, and Supplemental Memorandum, dated April 4, 2014, against the Acting Town Manager and/or the Board of Selectmen alleging that they had failed to “uphold and defend the Charter by taking such actions as necessary to disallow the candidacy of Finance Director Dan Hoort for a seat on the Charter Enforcement Commission in the upcoming elections, to be held on May 6, 2014.”

The Charter Enforcement Commission met on April 7, 2014, and voted 4-0-0 to decline to dismiss the filed petition, thereby necessitating a Public Hearing. The Hearing has been scheduled for Wednesday, April 30, 2014, at 5 pm, in the Judge Welsh Meeting Room, 260 Commercial Street, Provincetown. In order to allow you to prepare for the Hearing, the Charter Enforcement Commission has decided to provide you in advance with our reasons for the decision to decline to dismiss Mr. Groll’s petition.

The Charter Enforcement Commission is charged in Section 5-2-3 with reviewing written petitions from a voter or voters “alleging a violation of the Charter by reason of an act or failure to act of the Town Manager, the Acting Town Manager, the Moderator, the Board of Selectmen, the School Committee, or the Finance Committee, or members of those Committees.”

Daniel Hoort is the Finance Director for the Town of Provincetown. He reports directly to the Town Manager - or following the resignation of the Town Manager to the Acting Town Manager - and, in accordance with his Position Description:

- Works under the policy direction of the Town Manager;
- Supervises approximately four full time employees, and has indirect supervisory responsibility for an additional four full-time employees and one part-time employee;
- Reviews and recommends total revenue and expense budgets of the Town in conjunction with the Town Manager, the Board of Selectmen and the Finance Committee; and

- Answers questions from other departments, the Board of Selectmen, the Finance Committee and the general public regarding Town finances and/or accounting procedures; among other responsibilities.

Membership on Town Boards is restricted under Section 4 of Chapter 3 of the Charter. Section 3-4-2 states: "A paid town employee shall not be a member of a town board which is [in] any way related to his employment."

Given the scope and responsibilities of Mr. Hoort's position, and given the broad impact of financial issues on all actions of the Town, the Charter Enforcement Commission finds that the responsibility of the Commission under 5-2-3 is clearly related to the scope of Mr. Hoort's responsibility as a paid Town employee. This relationship is illustrated by the fact that if he were to become a member of the Charter Enforcement Commission while serving as Finance Director, he would be required to recuse himself for a potential conflict of interest in matters relating to all of the parties named in Section 5-2-3. Therefore, his ability to serve as a member of the Charter Enforcement Commission would be severely compromised, and such membership would be in violation of Section 3-4-2.

While some may allege that Mr. Hoort could overcome this conflict by resigning his position as Finance Director if he is elected to the Charter Enforcement Commission, a further reading of the Charter suggests otherwise. Section 3-4-3 states: "A paid town employee with supervisory duties shall not be a member of a town board which is in any way related to his employment during his or her term of office or for at least one year after leaving office. Given Mr. Hoort's supervisory responsibilities, he would be ineligible to serve on the Charter Enforcement Commission for one year after his resignation, should he choose to resign.

As Acting Town Manager, you have the responsibility under the Charter to act as Mr. Hoort's supervisor – as set forth in Section 7-2-1 of the Charter - including the responsibility to counsel Mr. Hoort when his proposed actions constitute a potential conflict of interest. In this instance, the Commission believes that you should have counseled Mr. Hoort, as soon as you became aware of his decision to become a candidate, that his candidacy for a vacancy on the Charter Enforcement Commission constituted a potential conflict of interest with his position as Finance Director, and that such a conflict of interest should be avoided unless a waiver at the appropriate level was obtained. It is the opinion of the Charter Enforcement Commission that avoidance of a conflict of interest is the reason Section 3-4-2 was included in the Charter. The Charter Enforcement Commission has no knowledge that such counseling took place or that such a waiver was obtained.

The Charter Enforcement Commission hereby acknowledges that should such counseling have occurred, or should it now occur, or should such a waiver be obtained from the appropriate authorities, the authority of the Charter Enforcement Commission over this matter would end, since its authority does not extend to Mr. Hoort directly. Since the legal notice for the Public Hearing has been published,

such a circumstance would require the Charter Enforcement Commission to call the Public Hearing to order and then to dismiss it based on a determination that the authority of the Commission had been superseded by intervening events.

The Charter Enforcement Commission does not recognize a failure to act by the Board of Selectmen, as alternatively argued by Mr. Groll, in the matter as presented by Mr. Groll. There is nothing in the Charter that prohibits the appearance on the ballot of a candidate who cannot serve if elected. In fact, Section 2-4-3 states that “Any registered voter of the town shall be eligible for election to any office” (with a restriction only on holding more than one elected office), when, in order to acknowledge the restriction in Section 3-4-2 that “A paid town employee shall not be a member of a town board which is [in] any way related to his employment.”, it is the belief of the Commission that Section 2-4-3 should read, “Any registered voter of the Town shall be eligible for election to any office, unless serving in that office is otherwise prohibited in the Charter.” The Charter Enforcement Commission recognizes the discomfort in allowing a useless exercise – such as election to an office the candidate cannot serve - but cannot presume the authority to rewrite the Charter in order to avoid that discomfort.

The Charter Enforcement Commission fully recognizes the difficulty in interpreting and applying the restrictions in the Charter to all situations. It offers through the Public Hearing, an opportunity for you to address the petition and the basis on which the decision to decline to dismiss the petition of Mr. Groll was made.

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Julia L. Perry, Chair

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Mark Hatch, Member

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Ann Maguire, Member

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Lisa Westervelt, Member

Copy to:

Dieter Groll, Petitioner