

**Minutes for Charter Enforcement Commission meeting.
November 26, 2002
7:00 PM**

In Attendance:

Members:

Peter Garza
Fred Pappalardo
John Braden
Amanda Fetrow

Also attending:

Richard Conley

The Charter Enforcement Commission met today to address a petition submitted to it by Provincetown voter Richard Conley. The petition was received by Town Clerk on November 20, 2002.

The meeting began at 7:01PM and after a brief introduction of the members of the Charter Enforcement Commission, as well as a brief explanation of how the meeting was to proceed; the petitioner was asked to present his case. Richard Conley then read a prepared statement:

“On May 16th, 2002, the Board of Health held a public meeting to address the issue of smoking in public places. Of the approximately seventy people who attended the meeting, only three spoke in favor of their proposed regulation to ban smoking in public places and more than a dozen spoke against it. Two of the three people that spoke in favor of the regulation were not even Provincetown residents (one was a man from the Tobacco Control Board and the other was Paula Speery, a resident of Eastham). We learned at that meeting that the Board of Health received three letters from the public in favor of the regulation and five letters against it. In addition, a petition signed by almost 550 Provincetown residents opposed to the regulation was presented to the Board of health.

“That same night, the Board of health voted to enact the regulation despite the fact that the vocal opposition outnumbered its proponents by 98%. The Board of Health blatantly ignored the will of the citizens of Provincetown and by doing so made our citizens look foolish and made a mockery of the democratic process. Board of Health decisions should be based on what is determined to be the will of the people during public hearings and not based on their own personal views.

“In a democracy, our form of government, the citizens vote for and elect officials to represent them in government. None of the citizens of Provincetown voted for the Board of health that enacted this regulation, which has had a tremendously negative impact on the quality of their lives. Regulation without representation is fascism.

“I am asking you to examine Provincetown’s Charter and the Massachusetts Statute regarding this issue to determine the extent of power granted to Boards of Health and if there is any distinction between powers granted to appointed versus elected Boards of Health. Whether you agree with the Board of Health regulation or not, you must agree that there was no democratic process involved with the enacting of this regulation”.

Fred Pappalardo (Chair) read the Board of Health’s duties according to the Provincetown

Charter (Section 8-6-2); “The Board of Health shall exercise the powers and duties prescribed by the Massachusetts General Laws, The Provincetown General By-Laws, and this Charter” and also the Massachusetts General Laws (MGL) (Chapter 111 sect 31) from which the Board of Health claimed as the authority to make the pertinent By-Law: “Boards of Health may make reasonable health regulations”.

Several members of the Charter Commission asked questions of Mr. Conley. Peter Garza asked Mr. Conley if his question was that the Board of Health was acting outside of its authority or just against the will of the people.

Mr. Conley answered that he thought that it acted against the will of the people, and that it was unclear if it acted outside of its authority because of the “appointed versus elected” status.

Dr Pappalardo mentioned that the Board, being appointed and not elected, was enacting legislation without the town population having representation. To pass a by-law effecting the town’s population to the extent that a smoking ban does, probably should have come after a referendum vote by the town’s voters. It is unclear whether MGL gives our appointed Board of Health the authority to override the will of the population. That would be “legislation without representation”. MGL statement that Boards of health may make reasonable health decisions seems very broad and should be better defined. “Do 4 non elected appointees have that authority? It could follow that they also would have the authority to ban the sale and consumption of all alcoholic beverages, the sale of all tobacco products, gambling, even riding bicycles without a helmet, if such a broad definition of “reasonable” exists.

Mr. Garza mentioned that there were cases of smoking bans being over-turned in other towns within Massachusetts.

Dr Pappalardo mentioned that in the town of Wakefield, Mass voters overturned a smoking ban instituted by their appointed Board of Health.

Ms. Fetrow suggested that it would be a good idea to ask Town Council to define the legal power of an appointed Board versus an elected one, and also to define a “reasonable” health regulation. (MGL Chapter 111, Section 31).

Mr. Garza mentioned that this could indeed be a case where the “One man/ One vote” democratic process has been ignored, and therefore this case may be worth assessing. Dr. Pappalardo and Ms Fetrow agreed.

Mr. Braden offered a motion to follow Ms. Fetrow’s suggestion and have Town Council look into the regulation and get back to the Charter Enforcement Commission with its assesment. The motioned was seconded by Mr. Garza, a vote was taken, all 4 members voted in favor (4-0)

A motion was made by Mr. Braden to adjourn the meeting and reconvene at a later date after hearing from Town Council. Ms. Fetrow seconded, a vote was taken and all members voted in favor (4-0);

The meeting was adjourned at 7:21 PM

Submitted December 3, 2002
John Braden, secretary