

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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JOSEPH A. FOSTER
ATTORNEY GENERAL



ANN M. RICE
DEPUTY ATTORNEY GENERAL

November 25, 2013

Donna Dugal, Clerk
Town of Newmarket
186 Main Street
Newmarket, NH 03857

Re: Proposed Charter Amendments

Dear Ms. Dugal:

In a letter dated October 28, 2013, you submitted proposed charter amendments on behalf of the Town of Newmarket to the Secretary of State, the Department of Revenue Administration and the Attorney General's Office for review.

Pursuant to RSA 49-B:5-a, the Secretary of State, the Department of Revenue Administration and the Attorney General's Office are required to "review the proposed charter . . . revision, or charter amendment . . . to insure that it is consistent with the general laws of this state." RSA 49-B:5-a. Our review is limited to assessing whether the proposed change if adopted would bring the charter into conflict with specific provisions in state law. We understand our role as one of providing assistance to the Town in conforming the local options it desires to implement to the restrictions set forth in state law. In this spirit we will also comment on proposed amendments when their meaning or permissibility is, in view of pertinent state law, ambiguous or uncertain.

The proposed amendment to Article 4, Section 4.6 of the charter in pertinent part states:

The Administrator shall be the chief administrative officer of the town, and shall supervise and direct the administration of all the Town departments and personnel therein. The Administrator shall be charged with the preservation of the health, safety, and welfare of persons and property, and the enforcement of the ordinances of the Town, this Charter, and the laws of the State of New Hampshire, and such other responsibilities as may be assigned by the Council by resolution.

Donna Dugal, Clerk, Town of Newmarket
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The proposed amendment seeks to designate the Administrator as the chief administrative officer of the Town and charge the Administrator, with amongst other things, the enforcement of state law. While we do not have any objection to this specific language change, we recommend that you revise this section of the charter to make it clear that with regard to elections, the town clerk is the chief elections officer. RSA 669:25 ("In towns which have adopted an official ballot system, the town election shall be conducted in the same manner as a state general election as provided in RSA 658 and 659, except that RSA 659:77, III-V, 659:78, and 659:98, II and III shall not apply, and except that all duties required to be performed by the secretary of state under those chapters shall be performed by the town clerk"); *see also* RSA 652:23 ("The secretary of state shall be the chief elections officer for the state.").

The only other concern we have is with Article 8, Section 8.6 of the charter. This section prescribes the procedure for recall of town councilors. We understand that there is no currently proposed amendment to this section; however, you should be advised that on March 7, 2005, the Rockingham County Superior Court (MCHUGH, J.), in *Knowles, et al v. Latham et al*, 2004-E-0361, struck down a similar recall provision in the Seabrook Town Charter. The court found in that case that the legislature did not provide municipalities with the authority to include recall and removal procedures in their charters. While the court's decision is not binding you should consider removing this section from the charter.

We look forward to working with you. Please do not hesitate to contact myself or David Scanlan of the Secretary of State's Office if you have any questions.

Sincerely,



Stephen G. LaBonte
Assistant Attorney General
N.H. Department of Justice
Civil Bureau

Cc: David Scanlan, Secretary of State's Office
Stephan Hamilton, New Hampshire Dept. of Revenue Administration
John J. Ratigan, Donahue, Tucker & Ciandella, PLLC.