TOWN ADMINISTRATOR WORKGROUP

PUBLIC HEARING, May 15, 2023

COUNCIL CHAMBER, NEWTOWN MUNICIPAL CENTER

3 PRIMROSE STREET, NEWTOWN, CT

These minutes are subject to approval by the Work Group

MINUTES

PRESENT: Pat Llodra, Bill Brimmer, Ned Simpson and Maureen Crick Owen

ALSO PRESENT: Seven voters and one member of the press

Chair Crick Owen opened the hearing at 6:05 p.m. She invited people to speak concerning the Work Group charge to "Review the present executive structure of Newtown's municipal government (First Selectman) and consider if alternatives would enhance the management, oversight and continuity of town government. i.e. a Town Administrator or a Town Manager."

Recording available at:
https://drive.google.com/file/d/1pnTQMVJbp5hmcbq3zCWmYKmauGkYO-Ig/view?usp=sharing

Ed Schierloh, 6 Shady Rest Blvd.

Mr Schierloh started by stating he is making personnel comments and is not speaking for the BOS. He thanked the Work Group. Newtown is no longer a small town. He will reserve judgement until there is a final report, but he believes this has to be looked at. He identified continuity as his biggest thing. He stated a belief that Town Administrator with First Selectman would bring continuity.

Mrs. Crick Own gave a brief summary of the Work Group's research and asked First Selectman, Dan Rosenthal to comment on how expected the work product of the Work Group to be processed when complete.

Dan Rosenthal, First Selectman

He started by observing that both he and Mrs. Crick Owen have announced that they are not running for reelection. So, starting next December, there will be a new First Selectman and BOS majority. It is not his intention to impose a major change such as Town Administrator or Town Manager on the new BOS. The BOS may pass a resolution recommending any action to the next BOS. I may also be taken to LC.

Jim Gaston, 18 Main Street

Mr Gaston, for his 32 years in Newtown he has seen stellar First Selectman. He doesn't see a problem or issue. But does see some type of reduction in

representative democracy. In his legal practice he has worked with Town Managers. Stratford had a Town Manager, which was not an easy thing. Mr Gaston doesn't think Stratford has retained the Town Manager form of government. And other towns have switched from a Town Manager structure.

As far as Town Administrator, it would be someone the Selectmen or Legislative Council would appoint. The people would not have a say in that selection. He pointed out that there is a legal issue in doing that. The legal concept of "Delegation Doctrine" which prohibits or limits legislative bodies from delegation, should be considered. It is necessary to be extremely comprehensive in defining what duties/responsibilities are or are not being given. Mr Gaston provided a 1994 OLR Research Report on delegating Legislative Powers (Attachment A) defining what needs to be considered. Mr Gaston is not sure if Town Administrator delegation would require a charter change or not. He posed the question of whether the town would want to risk not doing it in a proper manor?

He stated that the Town Administrator will have a vision of where the town is going. If the First Selectman changes what happens to the Town Administrator and their vision. The voters should have a say. We have had good First Selectman and will have good First Selectman. There are people interested in running.

Speaking to the Town Manager structure Mr Gaston said it should go to charter revision. That way it will get public review and referendum vote. Let the voters decide the trade off of efficiency and say in representation.

Sometimes democracy is a little inefficient. Authoritarianism is very efficient, but that is not what is wanted.

With either Town Administrator or Town Manager, it will be contractual. We could get stuck with a contract. Change would require a contract buy-out.

Written comment from Peter Schwarz, 8 Diamond Drive Attachment B

Mrs. Llodra moved to close the public hearing. Mr. Brimmer seconded. All in favor, motion passes.
The hearing was closed at 6:30 p.m.

Respectfully submitted,
Ned Simpson

Attachment A

Topic:
CONSTITUTIONAL LAW; SEPARATION OF POWERS;
Location:
CONSTITUTIONAL LAW;
Scope:
Court Cases;

OLR RESEARCH REPORT

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June 23, 1994 94-R-0596

TO:

FROM: George Coppolo, Chief Attorney

RE: Delegation of Legislative Power

SUMMARY

The Connecticut Constitution provides the separation of governmental functions into three basic departments--legislative, executive, and judicial (see Articles two through five of the Connecticut Constitution). The law making function is vested exclusively in the legislative branch, and our courts have held that the legislature cannot delegate the law-making power to any other department or agency. The leading Connecticut case appears to be *State v. Stoddard*, 126 Conn. 629 (1940) in which the court enunciated the principles by which most delegation challenges are decided.

According to the *State v. Stoddard* court:

> A Legislature, in creating a law complete in itself and designed to accomplish a particular purpose, may expressly authorize an administrative agency to fill up the details by prescribing rules and regulations for the operation and enforcement of the law. In order to render admissible such delegation of legislative power, however, it is necessary that the statute declare a legislative policy,

> establish primary standards for carrying it out, or lay down an intelligible principle to which the administrative officer or body must conform, with a proper regard for the protection of the public interests and with such degree of certainty as the nature of the case permits, and enjoin a procedure under which, by appeal or otherwise, both public interests and private rights shall have due consideration. . . If the Legislature fails to prescribe with reasonable clarity the limits of the power delegated or if those limits are too broad, its attempt to delegate is a nullity (at page 628).

This principle has been adhered to in subsequent court decisions. (See *State v. White,* 204 Conn. 410; *New Milford U.S. C.A. Services of Connecticut, Inc.,* 174 Conn. 146; *Keating v. Patterson*, 132 Conn. 210; *Len-Lew Realty Co. v. Falsey,* 141 Conn. 524; *Roan v. Connecticut Indus. Bldg. Commission,* 150 Conn. 333; *St. John's Roman Catholic Church Corp. v. Town of Darien,* 149 Conn. 712; *West v. Egan,* 18 Conn. Sup. 447; *Santoro v. Rockwell*, 14 Conn. Sup. 379.

Unfortunately, there is not a large body of Connecticut common law on this subject. Thus, our courts have not had the opportunity to deal with the numerous types of specific issues that can arise in delegation controversies. Following is a general description of the common law that has evolved in the other states and on the federal level concerning this issue. Please let us know if you would like more precise or detailed information or whether you would like us to address a more specific situation.

SEPARATION OF POWERS

The doctrine of separation of powers of government into executive, legislative, and judicial, each to be exercised by a separate department, operates in a broad manner to confine to each department its own functions, so that neither may impose upon the other functions that are not proper to it and neither may usurp the powers of the other. A further aspect of this doctrine is that the proper functions of each department must be performed by that department and its powers cannot be exercised by others. Thus, one branch may not delegate its unique function to another branch, 16 AmJur 2d, Constitutional Law, § 332.

This doctrine applies only to the powers that, because of their nature, are assigned by the constitution to one of the branches exclusively. But courts recognize that executive, legislative, and judicial powers often blend and overlap and many duties or functions cannot be exclusively placed under any one branch. The modern view of separation of powers is to a large extent pragmatic, flexible, and functional and it recognizes that there may be a certain blending or mixture of these powers of government (*Sylvester v. Tindall*, 154 Fla. 663; 16 AmJur 2d, Constitutional Law, § 299).

The executive cannot encroach on the functions of the legislature in any manner such that his activity is tantamount to a repeal, enactment, variance, enlargement or suspension of legislation (16 AmJur 2d, Constitutional Law, § 305). The legislative power generally refers to the power to make, alter, and repeal laws. The essential element of it is to determine policy and transform it into binding rules of conduct *Yakus v. United States,* 64 S.Ct 660).

DELEGATION OF LEGISLATIVE POWER

As a general rule, the legislature cannot delegate the power to make laws to any other authority or body because to do so would violate constitutional principles of separation of powers. (*State v. Stoddard,* 126 Conn. 623; *H. Duys and Co. v. Tone,* 125 Conn. 300; 16 AmJur 2d, Constitutional Law, § 335). The legislative may not in any degree abdicate its legislative power; any attempt to do so, although valid in form, is unconstitutional and void.

The constitution prohibits a legislature from delegating powers that are strictly, or inherently and exclusively legislative. It is the nature of the power that determines the validity of its delegation. Purely legislative power has been described as the authority to make a complete law. Thus, the legislature may not delegate its power to enact, suspend, or repeal laws. Nor may it delegate such essential elements of its lawmaking power as its power to declare principles and standards, or general public policy (*Lee v. Delmont*, 228 Minn. 101: *Knight and Wall Co. v. Bryant,* 178 So 2d 5, (1965); *Nahlen v. Woods*, 255 Ark. 974; 16 Am Jur 2D; Constitutional Law, § 337.

The general rule barring delegation of legislative powers is subject to several recognized limitations or exceptions. Thus, the rule does not bar legislatures from delegating powers that are not strictly legislative in nature. They may delegate nonlegislative powers that they could exercise themselves but which they cannot conveniently or expeditiously do.

Courts have approved the delegation of power where the legislature has laid down a complete and definite declaration of policy and established objective standards or guidelines (*United States v. Rock Royal Co-operative, Inc.*, 307 U.S. 533, 59 S.Ct. 993, cert. den. 60 S.Ct. 66; 16 AmJur 2d, Constitutional Law, § 339). Mere matters of details within the policy and legal principles and standards established by the legislature are essentially ministerial rather than legislative; the working out in detail of the policy indicated by the legislature may be left to the discretion of others.

There is no absolute and universal formula for determining in all cases the powers that must be exercised by the legislature and those that may be delegated. The line between those essentially legislative functions that may not be delegated and those that may be is difficult to define or discern.

The preliminary ascertainment of facts as a basis for the enactment of legislation is not itself a legislative function, but is simply ancillary to legislation (*Parker v. Riley*, 18 Cal. 2d 83). Thus, the duty of gathering information and making recommendations is the kind of subsidiary activity that the legislature may perform through its own members, or which it may delegate to others to perform (16 AmJur 2d, Constitutional Law, § 340).

GC:pa

Attachment B

Thank you for the opportunity to offer comments to the Working Group.

Before I went to law school, I was a doctoral student in Political Science at Syracuse University and taught several classes as a graduate assistant. I am also a long-time member of the American Political Science Association. Although I don't teach, I've been an interested observer of how governments are structured and operate. I'm presently in-house counsel for an engineering firm that does work for several states and many localities across New England and the northeast, and in my dealings with them I get to observe how their institutions interact to make decisions and policy.

What problem is the Working Group trying to solve?

It seems from the minutes and from my discussions with people involved in this process that there is a general feeling that the job responsibilities of the Newtown First Selectman have grown too varied and complicated to be adequately handled by one individual and that some delegation of responsibility, such as to a Town Administrator, would be an improvement.

There also seems to be a general feeling that, although Newtown has not yet suffered this fate, there remains the possibility that frequent turnover in the Office of First Selectman would lead to rapid shifts in policy and require constant training of new officeholders, each of which would adversely impact the performance of town departments and resident well-being. This latter apprehension is driven both by anecdotal evidence that many highly qualified residents of Newtown are reluctant to participate in our civic life because of an increasingly charged political atmosphere and by the personal financial impacts that can accompany a meaningful commitment of time and effort to public life. Some feel that a professional Town Manager would address, and perhaps resolve, these issues.

I believe that the work of the Working Group is terribly important, but I believe the scope is too narrow.

Because Newtown voters need to be the primary source of authority for government action, a town administrator could be merely an additional staff member for the First Selectman and would essentially serve at the First Selectman's pleasure. It would not take political accountability away from the First Selectman, but might offer some relief of workload. It's a good first step.

In order to encourage more professionalism and expertise among its elected officials, Newtown needs to consider staggered terms for its Legislative Council, and longer terms for its First Selectman. If experienced leadership is a goal, and input from voters is an imperative, staggered terms and longer terms, in the right circumstances, gets you both. Depending on the duties given to an unelected Town Manager, if that option is considered, maybe consider expanding the size of the Legislative Council to fifteen members to allow each Council member to specialize a bit more.

I believe the goal of steadier municipal government for Newtown would be best served by maintaining the present structure but allowing longer, staggered terms for our elected officials. Those changes would mitigate much partisan back and forth and allow the development of more knowledgeable officeholders. Obviously these changes would require an amendment to the Town Charter, which is still several years away. Because these would be big changes, fundamental enough that they might overwhelm a normal Charter Review window, the next Board of Selectmen should appoint a commission to continue and expand upon this Working Group's efforts. That Commission could then report it's recommendations and findings to the next Charter Review Commission.

Hiring more staff to assist the First Selectman in some tasks is probably a good idea and preserves political accountability. Changing the length of terms and staggering them allows for knowledge and

expertise to take root and takes the roughest of edges off the political back and forth of biannual elections but still has the accountability the system needs. It's an alternative that deserves through study, one that we have some time now to consider.