



CITY OF STAMFORD
OFFICE OF LEGAL AFFAIRS

888 WASHINGTON BOULEVARD
P.O. BOX 10152
STAMFORD, CT 06904-2152
(203) 977-4081
FAX (203) 977-5560

DIRECTOR OF LEGAL AFFAIRS
AND CORPORATION COUNSEL
THOMAS M. CASSONE

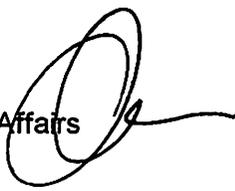
DEPUTY CORPORATION COUNSEL
SYBIL V. RICHARDS

ASSISTANT CORPORATION COUNSEL
JAMES V. MINOR
JOHN W. MULLIN, JR.
KENNETH B. POVODATOR
BURT ROSENBERG
MICHAEL S. TOMA

Memorandum

To: David Martin, President
Board of Representatives

CC: Mayor Dannel P. Malloy
Ben Barnes, Director of Administration

From: Thomas M. Cassone, Director of Legal Affairs 

Date: November 19, 2003

Re: Appointment of Director of Administration

This is in response to the concerns raised in your November 13, 2003 note regarding the Board's approval of the appointment of Ben Barnes to the office of Director of Administration. In it, you query whether or not there is a residency requirement that Director Barnes' current approval may violate.

As you know, §C5-20-20(b) of the Charter provides:

(b) Every person appointed to office, except such appointments as are made under the Civil Service provisions of this Charter, shall be and remain a resident elector of the City, and if such officer shall cease to be a resident elector the office shall be deemed vacant, except that in specific cases, the Board of Representatives may suspend this requirement by a majority vote of its entire membership.

At times in the past, when appointments of Directors were approved for non-residents in the unclassified service, such as Mr. Barnes' predecessor, Mr. Hamilton, the Board of Representatives specifically passed a resolution waiving the residency requirement. I am not sure if this was done in every case, and have

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been told at least anecdotally that it has not. Certainly, a specific resolution would still seem to be the preferred method. However, the question posed here is whether or not, given the approval of Mr. Barnes appointment without such an express waiver, by a majority of the full Board, any further proceedings are necessary in order to "perfect" the approval. I conclude that it is not necessary and would in fact constitute surplusage. Moreover, hypothetically, were the Board to have such a vote and attempt to revoke its approval based on residency, I believe such an action would be ineffective.

Waivers can be express or they can arise by conduct. Mr. Barnes home New Haven address was given to the appointments committee and the full board on his application and his resume, which was also posted on the Internet in conjunction with his proposed appointment. Accordingly when a majority of the entire Board voted for approval, I believe that the waiver was more likely than not express, but at the very least, conclusively arises by its conduct. That is, by Charter, the requirement can be suspended by a majority vote of the entire membership of the Board. The nominee was not a resident elector, and the Board knew this or certainly should have known it from the truthful information provided to it at the time it voted. A majority of the entire membership of the Board voted for approval (while a simple majority of those voting would have sufficed for mere approval without such a waiver). Therefore, a majority of the entire membership of the Board in voting for approval, suspended the residency requirement.

A "belt and suspenders" approach would permit another vote; one that I do not advise based on the above, nor think is necessary. However should that be your desire, you may keep in mind the following Charter section, which permits Mr. Barnes to carry out his critical duties in the meantime.

In §C5-10-2, the Charter provides:

The Mayor shall appoint each Director and other administrative official set forth in this Charter or authorized by ordinance in accordance with the provisions of this Charter and shall submit each nomination to the Board of Representatives at its next regular meeting following such nomination. Pending action by the Board, each nominee shall perform duties and exercise the powers of the office for which nominated.

Let me know if you need anything else on this.