



CITY OF STAMFORD, CONNECTICUT
INTER-OFFICE CORRESPONDENCE

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Date: September 21, 2020
RE: Opinion Regarding the Role of the Board of Representatives in Approving City Contracts

I. INTRODUCTION

A specific Charter provision or an ordinance previously adopted by the Board of Representatives governs each type of contract that the City is a party to. These laws define the specific roles played by the Mayor, the Board of Representatives, and, in certain situations, the Board of Finance and the Planning Board, in making the City's contracts.¹

II. SCOPE OF POWERS

A. Background Law

The City's Charter establishes the limits of municipal authority. A City Charter is the "fountainhead of municipal powers." *Alexander v. Retirement Board*, 57 Conn.App. 751, 759 (2000). "The charter serves as an enabling act, both creating power and prescribing the form in

¹ In addition, specific provisions of the Connecticut General Statutes may also govern the duties and obligations of municipal officials regarding certain municipal contracts. See e.g., Connecticut General Statute § 7-474(a) (Providing that "the chief executive officer, whether elected or appointed, or his designated representative or representatives, shall represent the municipal employer in collective bargaining with such employee organization."). This analysis is limited to the provisions of the Charter and Code of Ordinances and how those provisions define the roles of Stamford officials. A comprehensive analysis of the provisions of the General Statutes that may concern specific types of municipal contracts is beyond the scope of this memorandum, except those provisions concerning collective bargaining agreements, which are mentioned briefly, *infra*.

which it must be exercised.” *Id.* “Agents of a city have no source of authority beyond the charter. [T]heir powers are measured and limited by the express language in which authority is given or by the implication necessary to enable them to perform some duty cast upon them by express language.” (Citations omitted.)” *Id.*; See also, *Fennell v. City of Hartford*, 238 Conn. 809, 813-14 (1996), citing, *Stamford Ridgeway Associates v. Board of Representatives*, 214 Conn. 407, 423 (1990).

The provisions of the Code of Ordinances are enacted under the authority granted by the Charter. “[A] charter bears the same general relation to the ordinances of the city that the constitution of the state bears to the statutes ... An ordinance is a legislative enactment of a municipality.... It designates a local law of a municipal corporation, duly enacted by the proper authorities, prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality.” (Internal quotation marks omitted.) *Palermo v. Ulatowski*, 97 Conn.App. 521, 524, cert. denied, 280 Conn. 936, 909 A.2d 961 (2006); *Blue Sky Bar, Inc. v. Stratford*, 203 Conn. 14, 19 n. 7, 523 A.2d 467 (1987); see also 5 E. McQuillin, *Municipal Corporations* (3d Ed. Rev.2004) § 15.1.

Consequently, an exercise of authority beyond the limits established by the municipal Charter and promulgated ordinances is invalid.² “Neither the corporation nor its officers can do any act, make any contract, or incur any liability not authorized thereby, or by the legislative act applicable thereto. All acts beyond the scope of the powers granted are void.” (Internal quotation marks omitted.) *Highgate Condominium Assn. v. Watertown Fire District*, 210 Conn. 6, 16–17, 553 A.2d 1126 (1989).

In the sections of this memo that follow, the procedures established by the City Charter and the Code of Ordinances adopted pursuant thereto for the creation of an enforceable contract will be discussed. In light of the aforementioned background law, these procedures are compulsory because “where the town charter prescribes a particular procedure by which a specific act is to be done or a power is to be performed, that procedure must be followed for the act to be lawful.” *Miller v. Eighth Utilities District*, 179 Conn. 589, 594, 427 A.2d 425 (1980).

B. Municipal Powers Re: Contract Matters

The Charter establishes a clear division of responsibilities between the Board of Representatives and the Mayor in contract matters. The Board of Representatives is vested with the City’s legislative authority. *Stamford Charter*, § C2-10-1³. Legislative power is the “power

² The exercise of authority may also be limited by the Connecticut General Statutes, as municipalities are “creations of the state, have no inherent legislative authority...and can wield only those powers expressly granted to them by the legislature or necessary to the exercise of an expressly delegated power.” *Simmons v. Canty*, 195 Conn. 525, 529-30 (1985). In addition, municipal authority may also be limited by federal law, and the provisions of the Connecticut and United States Constitutions.

³ City of Stamford Charter, § C2-10-1 provides:

The legislative power of the City shall be vested in the Board of Representatives. No enumeration of powers contained in this Charter shall be deemed to limit the legislative power of the Board except as specifically provided in this Charter.

to make, alter, amend and repeal laws.” *Blacks Law Dictionary*, 6th Ed. (1990). With respect to contracts, the Charter grants the Board the power “(t)o approve contracts, including labor agreements and employment contracts, but excepting employment arrangements for Directors....” *Id.*, at § C2-10-2(9). The Board is also vested with the power “(t)o approve the purchase, sale or lease of real property.” *Id.*, at § C2-10-2(10).

The Charter’s grant of authority to the Board to “approve” contracts has significant implications. No City contract that requires approval by the Board of Representatives is valid and enforceable unless and until the Board votes to approve the contract. See e.g., *Fennell v. City of Hartford*, 238 Conn. 809 (1996).

The Board’s power to approve contracts may only be exercised by quorum. *Stamford Charter*, § C2-10-6. It is well settled that “(a) single member of a board lacks authority to bind the whole; rather, the board must act as a corporate body. *Keeney v. Old Saybrook*, 237 Conn. 135, 149-50, 676 A.2d 795 (1996) (“It is a well-settled rule that ... municipal councils or boards of any kind ... can only act at authorized meetings duly held ... The members cannot make a valid determination binding upon the [municipality] by their assent separately and individually expressed”); *Wadsworth v. Middletown*, 94 Conn. 435, 442-43, 109 A. 246 (1920) (“No more can the individual member of the board bind the board ... for acts which lie outside the province of their public duty”); see also *Driscoll v. New Haven*, 75 Conn. 92, 97, 52 A. 618 (1902) (“Unauthorized agents or representatives can of themselves alone no more bind equitably than they can legally”); McQuillin *The Law of Municipal Corporations*, § 29:20. Who May Act In Behalf Of Municipality. (“It is well-settled that the members of a common council, board, or committee cannot separately and individually enter into a contract which will bind the municipality, but they must act as a body at a regular or special meeting of which such notice shall have been given as required by law.”).

As with all decisions made by public officers, the Board’s power to “approve” contracts requires that the Board determine that that the contract is proper, “as the guardian of the interests of a community, having in view its welfare, and not” for “personal wish or advantage,” See, *N. York & N. Eng. R.R. Co. v. City of Waterbury*, 55 Conn. 19, 23-24, 10A. 162, 10 A. 162 (1887).

The Mayor is vested with the City’s executive and administrative powers. *Id.*, at § C3-10-1⁴. Executive powers include the power to “execute the laws” enacted by the Board of Representatives, “that is to carry them into effect.” *Blacks Law Dictionary*, Sixth Ed. (1990). Administrative acts are “(t)hose acts which are necessary to be done to carry out legislative policies and purposes already declared by the legislative body...” *Id.*

With respect to contracts, the Charter authorizes the Mayor to “execute all deeds and contracts made by the City...” *Id.*, at § C3-10-12. Like the Board’s power to approve, this power also has significant implications. “If the statutes, charter provisions, or ordinances require the contract to be signed by a particular officer or officers, it is invalid unless so signed.” McQuillin, *The Law of Municipal Corporations* (3d Ed. 2018 Rev) § 29:28.

Moreover, with respect to the lease and sale of real property, the Charter requires approval by the Mayor, the Planning Board, the Board of Finance and the Board of Representatives. Charter Section C1-50-3, provides that “(n)o purchase or lease of real estate by

⁴ City of Stamford Charter, § C3-10-1 provides:

The executive and administrative powers of the City are vested in the Mayor, except as otherwise provided in this Charter or by law.

the City and no sale or lease of any real estate belonging to the City shall be valid unless approved by the Mayor, the Planning Board, the Board of Finance and the Board of Representatives.”

This same Charter section grants the Board of Representatives the authority to enact ordinances governing the leasing of real estate. The Board has done so with the enactments of Stamford Code of Ordinances § 9-7, which governs leases from the city; and § 9.7.2, which governs leases of real property by the city.

The leasing ordinances make clear that the Mayor also has the authority to negotiate and execute these agreements. Specifically,

- For leases of “unused”⁵ city-owned real property, after the Planning Board, the Board of Finance, and the Board of Representatives have all recommended that the property be leased, the “Mayor is authorized to negotiate and execute a lease for said property, subject to approval by the Board of Finance and the Board of Representatives.” *Stamford Code of Ordinances*, § 9.7(A)(1)⁶;
- For leases of city-owned or city-leased real property where a preexisting lease exists that contains a renewal option, the Mayor “is authorized to execute renewal” and Board approval is not required (as the Boards have already approved the lease with the renewal option). See *Id.*, at § 9.7(A)(2);
- For leases of city-owned or city-leased real property where a preexisting lease exists that does not contain a renewal option, “the Mayor is authorized to negotiate and execute a renewal of said lease...,” and such renewal “shall require approval by the Board of Finance and the Board of Representatives.” *Id.*, at § 9.7(B)(1)⁷;

⁵ The word “unused” is defined as “(t)hose owned or leased properties not then being used for a specific city purpose.” *Stamford Code of Ordinances*, § 9-4(A)(2).

⁶ Section 9-7(A) provides, in its entirety:

- A. Leases recommended by city Boards.
 - (1) If all the Boards have recommended that a particular city-owned or city-leased unused property be leased, pursuant to § 9-4, then the Mayor is authorized to negotiate and execute a lease for said property, subject to approval by the Board of Finance and the Board of Representatives. Such lease shall not exceed a term of five (5) years, with a renewal option of not more than five (5) years.
 - (2) The Mayor is authorized to execute renewals, as provided in the lease, for all leases executed after the effective date of this section.

⁷ Section 9-7(B) provides, in its entirety:

- B. Preexisting leases.
 - (1) If a current lease does not contain a renewal option, the Mayor is authorized to negotiate and execute a renewal of said lease, but only under the same terms and conditions of the current lease. The renewal shall not exceed one (1) year and

The Code of Ordinances provides for another type of lease of City property, which the Code calls “special leases.” *Id.*, at § 9.7(C)(1)⁸. These leases of city-owned or city-leased real property are not initiated by the “recommendation” process mentioned above but are initiated by the Mayor. For such leases, the Mayor is authorized to “negotiate and execute the lease of any city-owned or city-leased property, subject to such terms and conditions as the Mayor may deem in the best interests of the city.” The “special lease” requires the approval of the Planning Board, the Board of Finance, and the Board of Representatives. *Id.*

Any of the Boards can make changes to the “special lease.” *Id.*, at § 9-7(C)(3)(Incorporating the provisions of § 9-6(A)(2)). However, if a Board makes a “material change in the terms and conditions thereof,” then the other Boards have the opportunity to reevaluate their prior approval. Specifically, the Board that makes the change must “promptly give written notice of the modifications to the other Boards, each of which then have thirty (30) days to “give written notice that it is reconsidering its approval...” *Id.*

Furthermore, since Charter Section C1-50-3 requires leases to be approved by the Mayor, the Mayor must also approve of the change.

Finally, and perhaps most importantly, the lessee must agree to the change. It is black letter contract law that such a material change in the terms of the agreement creates a counteroffer rather than an acceptance. “A reply to an offer which purports to accept it but is conditional on the offeror's assent to terms additional to or different from those offered is not an acceptance but is a counter-offer.” Restatement Second, Contracts § 59 (1981). That is, “(a)ny qualification of or departure from the terms in which the offer was made by the offeror, however, invalidates the offer unless the offeror agrees to the qualification or departure. *Cavallo v. Lewis*, 1 Conn.App. 519, 520-21 (1984); *Ocean Insurance Co. v. Carrington*, 3 Conn. 357, 362–63

shall require approval by the Board of Finance and the Board of Representatives.
Only one (1) such renewal shall be executed.

- (2) If a current lease does contain a renewal option, the Mayor is authorized to execute the renewal as provided.

⁸ Section 9-7(C) provides, in its entirety:

- C. Special leases.
 - (1) Notwithstanding the process of establishing property recommendations and leasing such properties as established in Subsections A through B above, the Mayor may negotiate and execute the lease of any city-owned or city-leased property, subject to such terms and conditions as the Mayor may deem to be in the best interests of the city, provided that such lease shall be approved by the Planning Board, the Board of Finance and the Board of Representatives, in that sequence. Approval by the Board of Representatives must be by resolution.
 - (2) Where a property contains multiple rental units, the Mayor may request approval of a prototype lease and may, after approval by all three (3) Boards, negotiate specific rents and terms with the prospective tenants and execute leases for individual units. Any lease so executed shall be forwarded to the Board of Finance for its information within thirty (30) days after such execution.
 - (3) The procedure for approval and authorization to execute such special leases shall be the same as that provided for special sales in § 9-6A through B above.

(1820); cf. *Randolph Construction Co. v. Kings East Corporation*, 165 Conn. 269, 276, 334 A.2d 464 (1973).

The division of responsibilities found in the leasing ordinances is present throughout the Charter and Code of Ordinances with respect to other types of contracts. That is, the Mayor (or a member of the Mayor's administration) negotiates the contract and the Boards approve the contract. For example, like "special leases," the Boards have the authority to approve "special sales" of city-owned real property "subject to the terms and conditions as the Mayor may deem to be in the best interests of the city." *Code of Ordinances*, § 9-6(A-B). With respect to a contract awarded under the Purchasing Ordinance through the Request for Qualifications ("RFQ") process, the department head negotiates with the highest ranked qualified firm. *Id.*, at § 23-18.1(B)(2)(f). If the RFQ contract exceeds one hundred thousand dollars, it must be approved by the Board of Finance and Board of Representatives. *Id.*, at § 23-18.4.

With respect to collective bargaining agreements, under the provisions of the Municipal Employee Relations Act (**MERA**), General Statutes § 7-460 et seq., "the chief executive officer, whether elected or appointed, or his designated representative or representatives, shall represent the municipal employer in collective bargaining with" the employee organization. Connecticut General Statute § 7-474(a). Section C5-20-7 of the Charter provides that "the Director of Legal Affairs or his or her designee shall be responsible for the supervision of . . . all labor negotiations and . . . collective bargaining . . . Under MERA, General Statutes § 7-474(b), a negotiated collective bargaining agreement is submitted to the Board of Representatives for approval consistent with *Stamford Charter*, §C2-10-2(9). However, if the Board does not act, the agreement is deemed to be approved. If the Board rejects the agreement, the matter is returned to the parties for further bargaining. General Statutes § 7-474(b).

Finally, the Board's approval power includes the implied authority to be informed about and evaluate the decisions of the Mayor or the Mayor's administration. As an incident to its lawmaking power, a legislative body has the power to gather information in aid of prospective legislation. *Appeal of Norwalk St. Ry. Co.*, 69 Conn. 576, 582 (1897) ("the power to make laws may require the accurate ascertainment of facts"); See also, *Sacher v. U.S.*, 356 U.S. 576, 577 (1958), 78 S.Ct. 842, 2 L.Ed.2d 987. In addition to its expressly enumerated powers, the Board also has those powers that "by implication," are "necessary to enable (the Board) to perform some duty cast upon them by express language." The "information gathering" authority is no doubt necessarily implied by the Board's approval power.

In Stamford, the gathering of information by the Board occurs in committee meetings as a proposed ordinance, contract, or appointment is considered. However, individual representatives may gather information outside of the formal setting of a committee or full board meeting. Such information gathering by individual representatives, while not improper, is not action by the Board.

III. CONCLUSION

The procedure for the making a valid and enforceable contract is established by the Stamford Charter and Code of Ordinances and those procedures are compulsory. This is because, as mentioned, "where the town charter prescribes a particular procedure by which a specific act is to be done or a power is to be performed, that procedure must be followed for the act to be lawful." *Miller v. Eighth Utilities District*, 179 Conn. 589, 594, 427 A.2d 425 (1980). These

procedures empower the Mayor or a member of the Mayor's administration with the authority to negotiate leases, and other agreements.

Under our current statutory scheme, neither the Board nor its members may negotiate the terms of leases, or other contracts. This is because "(p)ublic officers ... can only act within the scope of the powers and duties which the law prescribes for them." *Rogers v. County Commissioners*, 141 Conn. 426, 429 (1954). With respect to leases and other agreements, the Board is authorized to collectively approve or reject the agreements once negotiated.