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To: Jeff Curtis
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From: Attorney Douglas C. Dalena, Director of Legal Affairs and Corporation Counsel *DCD*
Attorney Amy J. LiVolsi, Assistant Corporation Counsel *AJL*

Date: February 02, 2022

Re: Opinion concerning discussion of candidates for appointment to the Charter
Revision Commission in executive session

You have asked whether the Board of Representatives' Charter Revision Committee may meet in executive session to discuss candidates for appointment to the Commission. We conclude that although not required to do so, the Charter Revision Committee may meet in executive session for this purpose.

The City of Stamford Charter requires review at ten (10) year intervals. Charter, Sec. C1-40-5. The Board of Representatives is the appointing authority that selects and appoints members to the Charter Revision Commission (the "Commission"). The work of the Commission culminates in a report that recommends changes to the Charter to the Board of Representatives. The Commission does not have the power to adopt changes. However, the Board of Representatives may only consider those changes that are included in the Commission's final report.

As explained to this office, the Board of Representatives creates a committee of its members to identify and interview candidates for appointment to the Commission. The candidates recommended by the committee are presented to the full Board of Representatives for a vote. Currently, the committee has identified and interviewed candidates, and now wishes to discuss the merits of each, potentially during executive session.

The Freedom of Information Act allows discussion in executive session “concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee¹, provided that such individual may require that discussion be held at an open meeting.” Connecticut General Statutes Sec. 1-200(6). Therefore, the question is whether discussion of a potential candidate for nomination to the Commission is a discussion regarding the appointment of a public officer within the meaning of the statute.

A “public officer” is one who holds a “public office.” Kelley v. Bridgeport, 111 Conn. 667 (1930). The Connecticut Supreme Court identified three characteristics that determine whether a function constitutes a public office.

“The essential characteristics of a ‘public office’ are (1) an authority conferred by law, (2) a fixed tenure of office, and (3) the power to exercise some portion of the sovereign functions of government.”

Spring v. Constantino, 168 Conn. 563, 568–69, 362 A.2d 871 (1975), superseded by statute on other grounds. *See also* Kelly v. Bridgeport, *supra*. If all three characteristics are present, the individual is a public officer. This determination is fact-specific, and candidates should be assessed individually.

In previous guidance, this office has stated “[i]t is clear that both elected officials and appointed members of city board and commissions meet all the criteria established in the Springs (sic.) decision and therefore hold public office.” *See* Cassone Opinion 5.2A (01/03/2003).

Specifically, members of the Charter Revision Commission are public officers because they meet all three (3) criteria in Spring. First, the Commission’s authority is conferred by law as the Connecticut General Statutes create the Commission and define its scope of authority and power. Second, members of the Commission have a fixed tenure of office because the Commission automatically terminates once their final report is accepted or rejected by the Board of Representatives. Third, the Commission exercises sovereign functions of government in that it has the power to determine which issues are included and excluded in its final report and thereby has control over whether a proposed change may be considered and approved.

Candidates that meet all three prongs of the Spring test are public officers. Consequently, provided all other requirements are met to properly enter into executive session, the Board of Representatives’ Charter Revision Committee may meet in executive session to discuss candidates for the Charter Revision Commission. This conclusion is consistent with Freedom of Information Commission, Advisory Opinion #49.

Of note, the decision whether or not to enter into executive session first lies with the Committee. Holding the discussion in executive session is not required and cannot be compelled other than by the Committee’s proper vote.

¹ Current employees of the City of Stamford are easily identified and therefore are not addressed in this analysis.