



MEMORANDUM

TOWN COUNCIL

James Brown
Chairperson

Dean Markham
Vice Chairman

Tim Feegel

Derek Johnson

Barbara Moore

Mark Philhower

Kevin Reich

TO: Town Council

FROM: David E. Cox, Town Manager 

DATE: September 13, 2021

SUBJECT: Board of Finance Term Limits

The Town Code currently provides term limits for members of the Board of Finance. Prior to the 1989 elections, the Town Code was revised to indicate that “[n]o member [of the Board of Finance] shall serve more than two consecutive terms.” (EH Town Code at Sec. 130-7). In full, the section reads as follows:

§ 130-7 Implementation of four-year terms; term limits.
Commencing with the Town election in November 1989, one member shall be elected to a four-year term. All other members elected and serving as of November 1989, shall continue in office until their terms expire so that three members shall be elected to four-year terms in November 1991, and four members shall be elected to four-year terms in November 1993. **No member shall serve more than two consecutive terms.** (Emphasis added)

Recently, the Town Clerk was advised that an individual who currently serves on the Board of Finance was planning to run for another term. The Town Clerk identified that this person had been appointed to serve a portion of a vacant term, which portion constituted more than half of the term left vacant. They were then elected to a term of their own. Due to the Code provision regarding term limits and the limitation on serving more than two consecutive terms, she questioned whether the person could seek another term. Town Attorney Carella was asked to provide an interpretation and that interpretation is attached. As Council will note, in the end, the Attorney opinion is that the person is not permitted to be a candidate in this election.

The Attorney further concurs with the Clerk’s and my assertion that the language is ambiguous and should be clarified. Further, it is difficult to come to any other conclusion than the one made by the Town Attorney when different language was inserted into the Town Code at the same time pertaining to the Board of Education. At section 130-3, the Town Code reads that “[n]o member [of the Board of Education] shall be ELECTED to more than two consecutive terms.” (emphasis added)



It may be appropriate for the Council to consider an ordinance that would clarify the current intent of the Council as it relates to the section regarding Board of Finance term limits. I have also attached two ordinance versions amending this section of the Code. The first (A) confirms the Attorney's reading of the current ordinance by adding a sentence that says "[f]or purposes of interpretation of this section, service of more than half of a term shall be considered a term." This sentence would indicate that a person who is appointed and serves more than half of a vacant term is considered to have served a term and would be able to run one time for election. Half of a term and anything less than that would NOT be considered as a term.

The second option (B) changes the last sentence from "shall not serve" to "shall not be elected to" more than two consecutive terms. This allows a person who is appointed to a vacancy, regardless of how much of the vacancy they filled, to be elected twice on their own. The language in the second option is the same as the current language for the Board of Education term limit. For consistency, I recommend this modification.

If the Council desires to amend the Code, the required public hearing could be set to occur with your next regular meeting on September 28. If an ordinance is adopted that evening, it would become effective on or about October 21, 2021; in advance of the November election.

DC

cc: Kelly Bilodeau, Town Clerk.

MEMORANDUM

To: Kelly Bilodeau, Town Clerk
David Cox, Town Manager

From: Richard D. Carella, Town Attorney

Re: Legal Opinion re Application of Town Ordinance §130-7 and
Eligibility of Candidate for Board of Finance Position

Date: September 9, 2021

QUESTION PRESENTED

You have asked whether a person who was appointed by the Town Council, with an effective date of November 16, 2015, to fill a vacancy and remaining term on the Board of Finance until November 21, 2017 (the vacancy occurring after the election of another member who had originally filled the same initial vacancy in the same term which began November 19, 2013), and then was elected at the next municipal election in November 21, 2017 to a full 4-year term to the Board of Finance, is now eligible for election to the Board of Finance in November 2021, given the term limit provisions of Town Ordinance §130-7 which limits members from serving on the Board of Finance for more than two consecutive terms.

There are seven Members of the Board of Finance who are elected for overlapping 4-year terms that end in November after each municipal election cycle. Three members have been elected to four-year terms quadrennially since November 1991, and four members elected to four-year terms quadrennially since November 1993. Thus, for the election in November 2021 there will be four members elected, each to a four-year term of office.

ANSWER

As set forth below, I conclude that an individual appointed to the Board of Finance effective November 16, 2015 and through November 21, 2017 results in that person having served more than half of the unexpired portion of the 2013 term of office, and thus constitutes the first of two consecutive terms as a member on the Board of Finance; the second term being the 2017-2021 term for which the member was elected.

As a result, the individual is not eligible for election in November 2021 and could not serve another full 4-year term as a member of the Board of Finance pursuant to the term limit contained in Town Ordinance §130-7.

LAWS

Conn. Gen. Stat. §7-343, states, “In case of a vacancy in the membership of the board of finance, unless otherwise provided by charter or special act, the remaining members of the board shall, at a special meeting called by the chairman for that purpose, by a majority vote, appoint a successor, who shall serve until the next town election and until his successor is elected and has qualified. At the next town election following the occurrence of such vacancy, the electors shall elect a successor to fill the vacancy for the unexpired portion of the term and the office to be filled shall be designated on the official ballot by the words “To fill vacancy for _____”, followed by the duration of the unexpired term.”

East Hampton Charter §5.1 states, “There shall be a Board of Finance consisting of seven members who shall be elected to four year overlapping terms as provided by ordinance. No more than five members shall be of the same political party. The Board of Finance shall have all the powers and duties conferred on boards of finance by the General Statutes or as they may be amended, except as otherwise specifically provided by this charter.”

East Hampton Charter §6.3 states, “Whenever a vacancy in an elective office occurs, the council or other appointing authority so designated by law, shall fill the vacancy by appointment for the unexpired portion of the term.”

East Hampton Code of Ordinances § 130-6 states “Pursuant to Section 5.1 of the East Hampton Town Charter as amended, there shall be a Board of Finance consisting of seven members who shall be elected to four-year overlapping terms. Not more than five members shall be of the same political party.”

East Hampton Code of Ordinances § 130-7 states, “Commencing with the Town election in November 1989, one member shall be elected to a four-year term. All other members elected and serving as of November 1989, shall continue in office until their terms expire so that three members shall be elected to four-year terms in November 1991, and four members shall be elected to four-year terms in November 1993. No member shall serve more than two consecutive terms.”



DISCUSSION

Canons of statutory construction requires that we read the statutes as a whole and so as to reconcile all parts as far as possible. In arriving at the intention of the framers of the Charter the whole and every part of the instrument must be taken and compared together. In other words, effect should be given, if possible, to every section, paragraph, sentence, clause and word in the instrument and related laws.” Cook-Littman v. Bd. of Selectmen of Town of Fairfield, 328 Conn. 758, 768, 184 A.3d 253, 259 (2018). In so doing, it is not permissible to read into statutes provisions which are not clearly stated. See, Glastonbury Co. v. Gillies, 209 Conn. 175, 179, 550 A.2d 8 (1988); Luce v. United Techs. Corp./Pratt & Whitney Aircraft Div., 247 Conn. 126, 133, 717 A.2d 747, 752 (1998)

Taking the Connecticut General Statute, Town Charter and Town Ordinance provisions set forth above as a whole, it remains ambiguous if under the facts as outlined above someone who has served since November 16, 2015 could be eligible for election to another four-year Board of Finance position. If this person is re-elected and serves another four-year term, it would result in that same person having served for ten years, which appears to be contrary to the intention of the term limit maximum of two consecutive terms (i.e. eight years total).

However, the laws cited above do not specify if someone appointed to fill a vacancy for the unexpired portion of a four-year term would automatically result in his/her ineligibility. Nor does the term limit provision of Ordinance § 130-7 indicate if it is intended to cover two consecutive “full” terms, nor does it include language that would cover “or any portion thereof.” Nor does there exist any language in the Town Charter or other Town Ordinances limiting service on the Board of Finance to a set number of years (i.e. not greater than eight years). Lacking a specific limitation on the number of years, or any other unambiguous language in the contents of these laws, we must look to secondary sources to assist in interpreting this language. Unfortunately, as well, I have been unable to find any Connecticut case law which addresses this particular question on point.

However, Roberts Rules of Order, 11th Ed., §56, states as follows when discussing filling vacancies and terms in office: “Since a reasonable rotation in office is desirable in almost all organizations, a section of this article may well provide that “No person shall be eligible to serve . . . consecutive terms [specifying the number]in the



same office.” For purposes of determining eligibility to continue in office under such a provision, an officer who has served in office more than half a term is considered to have served a full term in that office.”

Following this interpretation of determining eligibility for someone having served more than half of the prior unexpired term, and seeking to arrive at the intention of the framers of the Charter and Town Ordinances as a whole, I conclude that an individual’s appointment to the Board of Finance effective on November 16, 2015 resulted in service of more than half of the unexpired portion of that 2013 term of office, and thus constitutes the first of two consecutive terms as a member of the Board of Finance. As a result, Town Ordinance §130-7 precludes this individual from being eligible for election as a member of the Board of Finance in the November 2021 election. To conclude otherwise and allow this individual, if elected, to serve an additional four years to the six already served would result in this individual serving ten years as a member of the Board of finance. Such an outcome clearly runs contrary to the intention of Town Ordinance §130-7 which limits members to two consecutive four-year terms, or eight years, in total.

CONCLUSION

It is my legal opinion that Town Ordinance §130-7 precludes someone, having served more than half of a first four-year term on the Board of Finance (in this case on account of having served since being appointed to the Board of Finance effective November 16, 2015 to November 21, 2017) and having subsequently been elected to a second four-year term in November 2017, from being eligible as a candidate in the November 2021 election and, if elected, from serving as a member of the Board of Finance, because such an outcome would be contrary to the language contained in Town Ordinance §130-7 which limits Board of Finance members to serving not more than two consecutive terms.





Town of East Hampton
Middlesex County, Connecticut

DRAFT – September 13, 2021

Ordinance No. 2021.02

An Ordinance Amending Article III of Chapter 130 of the Code of the Town of East Hampton Regarding Board of Finance Term Limits

WHEREAS, the Code of the Town of East Hampton provides for term limits for certain bodies of the Town including the Board of Finance, which is limited to service of two consecutive terms, and;

WHEREAS, the term limit for the Board of Finance is ambiguous as it relates to whether a person who was appointed to serve a portion of a vacant term and was then elected to a term is allowed under the Code to consecutively be elected to an additional term, and;

WHEREAS, the Town Council desires to remove ambiguity by amending the Code to provide as follows.

NOW, THEREFORE, pursuant to Section 2.4 of the Town of East Hampton Charter, the Town Council of the Town of East Hampton does hereby ordain as follows:

Section 1: Section 130-7 of the Code of the Town of East Hampton regarding Implementation of four-year terms and term limits is hereby deleted in its entirety and replaced with the following:

§ 130-7 Implementation of four-year terms; term limits.

Commencing with the Town election in November 1989, one member shall be elected to a four-year term. All other members elected and serving as of November 1989, shall continue in office until their terms expire so that three members shall be elected to four-year terms in November 1991, and four members shall be elected to four-year terms in November 1993. No member shall serve more than two consecutive terms. For purposes of interpretation of this section, service of more than half of a term shall be considered a term.

Section 2: This ordinance is effective immediately upon its adoption and publication in accordance with Connecticut Statutes.

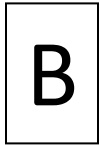
Approved this ____ day of _____, 2021.

TOWN COUNCIL

ATTEST

James Brown, Chairperson

Kelly Bilodeau, Town Clerk



Town of East Hampton
Middlesex County, Connecticut

DRAFT – September 13, 2021

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Section 2: This ordinance is effective immediately upon its adoption and publication in accordance with Connecticut Statutes.

Approved this ____ day of _____, 2021.

TOWN COUNCIL

ATTEST

James Brown, Chairperson

Kelly Bilodeau, Town Clerk