



**CITY OF CHARLEVOIX**  
210 STATE ST. CHARLEVOIX, MICH. 49720

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**AGENDA**  
**CITY OF CHARLEVOIX CITY COUNCIL SPECIAL MEETING**

**Thursday, January 2, 2014 -- 5:00 p.m.**  
210 State Street, City Hall, City Council Chambers, Charlevoix, MI

- I. Invocation (Pledge of Allegiance)**
- II. Roll Call of Members Present**
- III. Inquiry Regarding Possible Conflicts of Interest**
- IV. Requests, Petitions and Communications and Actions Thereon**
  - A. Consideration to Pass a Resolution Regarding the City Clerk Position**
- V. Audience - Non-agenda Input (written requests take precedent)**
- VI. Adjourn**

The City of Charlevoix will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting upon one weeks notice to the City of Charlevoix. Individuals with disabilities requiring auxiliary aids or services should contact the City of Charlevoix Clerk's Office in writing or calling the following: City Clerk, 210 State Street, Charlevoix, MI 49720 (231) 547-3250.

**CHARLEVOIX CITY COUNCIL**

**SPECIAL MEETING JANUARY 2, 2014 5:00 PM**

**AGENDA ITEM**

**AGENDA ITEM TITLE:** Consideration to Pass a Resolution Regarding Incompatibility of Offices for City Clerk Position

**DATE:** January 2, 2014 5:00pm

**PRESENTED BY:** Bryan Graham

**ATTACHMENTS:** 1. December 20, 2013 memo from Jim Young  
2. Resolution

**BACKGROUND INFORMATION:** City Council needs to consider approving the attached resolution regarding an Incompatibility of Offices issue between the City Clerk and Charlevoix County Commissioner.

**RECOMMENDATION:** Motion to Approve Resolution # \_\_\_\_\_.

**YOUNG, GRAHAM, ELSENHEIMER & WENDLING, P.C.**

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**M E M O R A N D U M**

**TO:** Charlevoix City Council **VIA EMAIL**

**FROM:** James G. Young  
Bryan E. Graham

**DATE:** December 20, 2013

**SUBJECT:** City charter interpretation

At the last meeting the city council authorized us to research the legal consequences for enforcing a violation of the incompatible public offices act and authorized us to research and provide an opinion concerning the interpretation of Section 2.16.a of the city charter. Because the incompatible public offices act apply equally to the city and to the county, we issued a joint letter to Cheryl Potter Browe, the County Clerk, and Rob Straebel, the City Manager concerning the incompatible public offices act. Because the interpretation of the city charter, however, only applies to the city, we are issuing this memo only to you and not to the county.

Section 2.16.a of the city charter provides:

**Section 2.16 COUNCIL - POWERS AND LIMITATIONS**

a. Except where authorized by this Charter, no elected official shall hold any other office or City employment during the term for which elected.

There are two separate questions that must be addressed when interpreting this provision of the city charter. These questions are:

1. Is the reference to "elected official" limited to city council members, or does it apply to all elected officials subject to the regulations of the city charter – city council members, mayor, and the city clerk?
2. If the answer to the first question is that "elected official" applies to all city elected officials, including the city clerk, then does the reference to "other office" apply to any public office, or does it apply to only a city office?

## Law governing the interpretation of the city charter

Under Michigan law the interpretation of a charter provision is governed by the rules of statutory construction. *Livonia Hotel, LLC v City of Livonia*, 259 Mich App 116, 131 (2003). This means that the law applicable to the interpretation of a statute applies equally to the interpretation of a charter provision.

The courts have expressed the rules applicable to the interpretation of a statute in a number of cases. In *Driver v Naini*, 490 Mich 239, 245 (2011), the Michigan Supreme Court stated:

When interpreting the meaning of a statute, our primary goal is to discern the intent of the Legislature by first examining the plain language of the statute. Statutory provisions must be read in the context of the entire act, giving every word its plain and ordinary meaning. When the language is clear and unambiguous, we will apply the statute as written and judicial construction is not permitted. (Citations omitted.)

In *Petipren v Jaskowski* 494 Mich 190, 207 (2013), the Michigan Supreme Court noted that “statutory words are to be ‘given meaning by [their] context or setting.’” Quoting *Tyler v Livonia Public Schools*, 459 Mich 382, 390-391 (1999).

The Michigan Supreme Court in *Macomb County Prosecuting Attorney v Murphy*, 464 Mich 149, 158 (2001), explained the legal requirements in the following terms:

In considering a question of statutory construction, this Court begins by examining the language of the statute. *Sun Valley Foods Co v Ward*, 460 Mich. 230, 236; 596 N.W.2d 119 (1999). We read the statutory language in context to determine whether ambiguity exists. *Id.* at 237; see *Consumers Power Co v Public Service Comm*, 460 Mich 148, 163, n 10; 596 N.W.2d 126 (1999). If the language is unambiguous, judicial construction is precluded. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 N.W.2d 611 (1998). We enforce an unambiguous statute as written. *Sun Valley Foods, supra* at 236. Where ambiguity exists, however, this Court seeks to effectuate the Legislature’s intent through a reasonable construction, considering the purpose of the statute and the object sought to be accomplished. *Frankenmuth Mut Ins, supra* at 515.

In *Michigan Properties, LLC v Meridian Township*, 491 Mich 518, 528 (2012), the Supreme Court stated:

When interpreting statutes, this Court must “ascertain and give effect to the intent of the Legislature.” *People v Koonce*, 466 Mich 515, 518; 648

NW2d 153 (2002). In interpreting a statute, this Court avoids a construction that would render any part of the statute surplusage or nugatory. *People v McGraw*, 484 Mich 120, 126; 771 NW2d 655 (2009), citing *Baker v Gen Motors Corp*, 409 Mich 639, 665; 297 NW2d 387 (1980). When considering the correct interpretation, the statute must be read as a whole. *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999). Individual words and phrases, while important, should be read in the context of the entire legislative scheme. *Herman v Berrien Co*, 481 Mich 352, 366; 750 NW2d 570 (2008).

Finally, in *People v Watkins*, 491 Mich 450, 467-468 (2012), the Supreme Court stated:

When construing a statute, whether to determine the existence of a conflict or otherwise, our primary objective remains the same: to ascertain and give effect to the Legislature's intent. We begin our analysis with the text. If the statutory language is plain and unambiguous, courts must "enforce the statute as written and follow its plain meaning, giving effect to the words used by the Legislature." We are also mindful of the need to read statutory provisions as a whole, focusing on not only the individual words and phrases but also the placement of those words and phrases in the context of the broader legislative scheme. (Citations omitted.)

Michigan statutes also provide rules of statutory construction. MCL 8.4b provides:

The catch line heading of any section of the statutes that follows the act section number shall in no way be deemed to be a part of the section or the statute, or be used to construe the section more broadly or narrowly than the text of the section would indicate, but shall be deemed to be inserted for purposes of convenience to persons using publications of the statutes.

This statutory rule of construction has been applied by the Michigan courts in *People v Nick*, 374 Mich 664, 665 (1965); *People v Al-Saiegh*, 244 Mich App 391, 395-396 (2001); and *Housour v Prudential Life Insurance Co.*, 1 Mich App 455, 459-460 (1965).

Application of the law to the interpretation questions

Charter provision:

**Section 2.16 COUNCIL - POWERS AND LIMITATIONS**

a. Except where authorized by this Charter, no elected official shall hold any other office or City employment during the term for which elected.

Question 1: Is the reference to “elected official” limited to city council members, or does it apply to all elected officials subject to the regulations of the city charter – city council members, mayor, and the city clerk?

The catch line heading of this charter provision is: **COUNCIL - POWERS AND LIMITATIONS.** However, under MCL 8.4b this catch line heading cannot be used to construe the section more broadly or narrowly than the text of the section would indicate. The text of the section states that “no elected official shall . . .” Because the catch line heading’s reference to the council cannot be used to construe the text of the provision, the reference to “elected official” is not limited to the elected city council members. Since there is no limitation associated with “elected official,” the plain language of the text must be construed to mean that the reference to “elected official” would apply to all elected officials that are subject to the regulations of the city charter. The elected officials in the City of Charlevoix are the Mayor and City Clerk and the City Council Members. See Sections 4.7 and 4.8 of the city charter.

Based on the above, it is our opinion that the reference to “elected official” in Section 2.16.a of the city charter applies to all elected officials of the city, including the city clerk. As a result, it is necessary to address the second question specified above.

Question 2: If the answer to the first question is that “elected official” applies to all city elected officials, including the city clerk, then does the reference to “other office” apply to any public office, or does it apply to only a city office?

As indicated above, the primary purpose when interpreting a statute, or in this case the charter provision, is to ascertain and give effect to the intent of the charter commission who drafted the charter. Under the rules of statutory construction this intent is determined by first examining the text of the provision itself. If the language is clear and unambiguous, then the plain language must be applied and no further interpretation is permitted. On the other hand, if the language is ambiguous, then the intent should be determined through a reasonable construction, considering the purpose of the charter provision and the object sought to be accomplished. When considering the correct interpretation, the charter must be read as a whole. Individual words and phrases, while important, should be read in the context of the entire scheme of the charter.

The pertinent language of Section 2.16.a is that “no elected official shall hold any other office” during his or her term of office. This language is clear and unambiguous. As a result, under the rules of statutory construction no interpretation of this language is permitted and it must be applied as written to prohibit an elected city official from holding another office, such as the office of county commissioner, during his or her term of office.

However, even if the language of Section 2.16.a is considered ambiguous, an analysis of this language under the rules of statutory constructions results in the same

conclusion. The operative provision of this charter section is that no elected official shall hold “any other office or City employment” during his or her term of office.

The overall objective of this charter provision is to eliminate the potential for conflicts associated with the city’s elected officials (council members, mayor, and city clerk). At the time the charter was written, which continues to be true today, the city’s elected officials were part-time positions. It was never intended that these officials would earn their entire living from being city elected officials. Because it was recognized that the city elected officials would be part-time, these individuals would be required to hold other types of employment to support themselves and their families. Because the primary objective of the charter provision was to eliminate potential conflicts with the city’s elected officials, the language of Section 2.16.a prohibited these city elected officials from holding any “City employment” during their terms of office. It is fair to conclude that the charter commission perceived a conflict between being a city elected official and being the city employee and thus prohibited a city elected official from holding “City employment” during his or her term of office.

Section 2.16.a of the city charter also prohibits a city elected official from holding “any other office” during his or her term of office. Unlike the prohibition against holding any “City employment” by a city elected official during his or her term, Section 2.16.a does not expressly limit the “other office” to a city office. The question that must therefore be addressed is whether the failure to limit the “other office” to a city office was intentional.

Under the rules of statutory construction, the charter must be read as a whole, and individual words and phrases must be read in the context of the entire scheme of the charter. Focusing on Section 2.16 of the charter itself, this section addresses individuals holding an office by using the term “official.” The references to these officials in the other subsections within Section 2.16 make clear that these officials are city officials. Subsections b and e use the phrase “City official.” Subsections c and d use the phrase “officials and employees subject to the direction and supervision of the City Manager.”

Other provisions of the city charter make reference to “official” in contexts that make clear that those references are to city officials. Section 2.13 uses the phrase “The Council members and other elected or appointed officials.” Sections 2.18, 3.9, 5.7.b, 6.1.a, and 7.17 all use the phrase “City officials.” Section 10.5 uses the phrase “official of the City.”

Unlike these various charter provisions, which clearly indicate a reference to a city official, the reference in Section 2.16.a to “any other office” does not limit the office to a city office. As the Michigan Supreme Court stated in *United States Fid. Ins. & Guar. Co. v Mich. Catastrophic Claims Association*, 484 Mich 1, 14 (2009):

When the Legislature uses different words, the words are generally intended to connote different meanings. Simply put, “the use of different

terms within similar statutes generally implies that different meanings were intended." 2A Singer & Singer, Sutherland Statutory Construction, (7th ed), § 46:6, p 252. If the Legislature had intended the same meaning in both statutory provisions, it would have used the same word.

Therefore, because Section 2.16.a of the city charter did not limit "office" to a city office like other provisions of the city charter that clearly referenced "city official," under the rules of statutory construction, it is reasonable to conclude that the failure to expressly limit "office" to a city office was intentional. In other words, if the charter commission had intended "office" in Section 2.16.a to be limited to a city office, it could have expressly used the phrase "city office" as it used the phrase "city official" in other provisions of the charter. However, it did not do so.

The interpretation that the reference to "office" in Section 2.16.a is not limited to a city office is consistent with the overall objectives of Section 2.16.a. As stated earlier, the overall objective of this charter provision is to eliminate the potential for conflicts associated with the city's elected officials (council members, mayor, and city clerk). While there clearly can be a conflict between being a city elected official and holding another city office, conflicts often arise between public offices outside a single municipality. This conflict between offices of different municipalities can clearly be seen by the multitude of cases and Attorney General opinions addressing these conflicts under the incompatibility of public offices act.

Because the objective of Section 2.16.a of the city charter is to eliminate the potential for conflicts associated with the city's elected officials, and because conflicts can arise between public offices of different municipalities, it is reasonable to conclude that the charter commission intended to eliminate this potential conflict by prohibiting an elected city official from holding "any other office" and not just another city office.

The final issue that must be addressed concerns the legal consequences of Mr. Sullivan's stated intention to take office as the city clerk (while holding the office of county commissioner) in violation of Section 2.16.a of the city charter. Section 3.1 of the city charter provides:

### **Section 3.1 ADMINISTRATION OFFICIALS**

The administration officials of the City shall be the City Manager, **City Clerk**, City Attorney, City Assessor, City Treasurer, Police Chief, and Fire Chief. The Council may create, combine, separate, or abolish administrative offices in any manner not inconsistent with law or this Charter, and shall prescribe the duties thereof, in order to insure the proper operation of the City government. No action of the City Council, however, shall abolish the office of the City Manager nor diminish any of the powers of that office as set forth in this Charter. Except as otherwise

herein provided, **the qualifications, duties and compensation of City officers shall be determined by the City Council.** (Emphasis added.)

This provision of the charter clearly provides that the city clerk is one of the administration officials of the city. This provision further provides that the qualifications of the officers shall be determined by the city council. Therefore, under this section of the city charter the city council has the authority to determine whether Mr. Sullivan is qualified to assume the office of city clerk. Whether Mr. Sullivan is in violation of Section 2.16.a of the city charter by holding another office will be the question the council will be called upon to decide. It must be clearly stated, however, that Mr. Sullivan has the ability to eliminate any violation of Section 2.16.a and thus to qualify for the office of city clerk by resigning his office as a county commissioner prior to taking office as the city clerk.

The Michigan Court of Appeals has addressed cases dealing with city charter provisions that grant to the city council the authority to judge the qualifications of city officials to take office. In *Houston v McKinley*, 4 Mich App 94 (1966), the city charter of Sylvan Lake states that "the council shall be the judge of the eligibility and qualification of its own members." City of Sylvan Lake, Charter, § 6.5 (1947). In this case a private individual sought to test the legality of Mr. McKinley holding office as a city council member. The Court ruled that because the city charter granted the council the authority to judge the qualifications, the private individual could not challenge Mr. McKinley's right to hold office in court. The Court stated:

It is settled law in Michigan that where constitutional or statutory provisions give a legislative body the authority to make this decision, its determination is **conclusive**. *McLeod v State Board of Canvassers* (1942) 304 Mich 120. (Emphasis added.)

In *McKinley v Crossman*, 9 Mich App 4 (1967), the Sylvan City Council judged the qualifications of Mr. McKinley, voted 3-0 (with 2 members – including Mr. McKinley – abstaining) that Mr. McKinley was not qualified to hold office, and declared the office vacant. Mr. McKinley then filed a lawsuit seeking a court order to allow him to continue serving on the city council. The Court of Appeals, relying on its earlier decision, ruled that Mr. McKinley was not entitled to the order he sought and affirmed summary disposition in favor of the defendant council members who voted that he was disqualified.

In the present situation, Section 3.1 of the city charter grants authority to the city council to judge the qualifications of the city officers, including the city clerk. Under the Court of Appeals decision in *Houston, supra*, the council's determination is conclusive.

It is therefore our recommendation that unless Mr. Sullivan resigns his office as a county commissioner, the council exercise its authority under Section 3.1 of the city

charter and determine whether Mr. Sullivan is qualified to assume the office of city clerk.

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**CITY OF CHARLEVOIX  
Resolution No. 2014-01-XX**

At a special meeting of the city Council held in the Charlevoix City Hall located at 210 State Street, Charlevoix, Michigan, on \_\_\_\_\_, 2014.

PRESENT: \_\_\_\_\_

ABSENT: \_\_\_\_\_

The following resolution was made by \_\_\_\_\_ and seconded by \_\_\_\_\_, to-wit:

**Recitals**

- A. WHEREAS, Larry Sullivan is a currently serving member of the Charlevoix County Board of Commissioner;
- B. WHEREAS, Mr. Sullivan received the most votes for the elected position of City Clerk in the last election and, pursuant to section 4.7 of the City Charter, is to assume office at the first City Council meeting in 2014, which will be on January 6, 2014;
- C. WHEREAS, the City Attorney has provided a formal legal opinion that section 2.16 (a) of the Charter prohibits an elected City official from holding any other elected office;
- D. WHEREAS, Mr. Sullivan's status as a currently serving County Commissioner and his stated position that he also intends to assume the office of City Clerk requires a determination regarding whether Mr. Sullivan is qualified to assume the office of City Clerk;
- E. WHEREAS, section 3.1 of the City Charter mandates that the City Council shall determine the qualifications of City Officers, which includes the City Clerk;
- F. WHEREAS, Mr. Sullivan has the right to either resign his position as a County Commissioner or elect not to assume the office of City Clerk and the Council desires to give Mr. Sullivan the opportunity to decide which elected office he wishes to hold; and
- G. WHEREAS, the Council has an obligation to uphold the intent of the City Charter and, thereby, promote public confidence in government and avoid even an appearance of impropriety.

**Resolution**

NOW, THEREFORE, BE IT RESOLVED by the City Council for the City of Charlevoix that:

1. The Council finds that section 2.16 (a) of the Charter prohibits a City official from holding another office during the term for which the City official is elected and that this prohibition includes the position of a County Commissioner.
2. The Council finds that Mr. Sullivan's serving as City Clerk, while simultaneously serving as a County Commissioner, would violate section 2.16 (a) the City Charter.
3. Based on the findings stated above and pursuant to section 3.1 of the Charter, the City Council determines that Mr. Sullivan is not qualified to assume or hold the office of City Clerk and shall neither be given the oath of office nor assume the office of City Clerk for the City of Charlevoix.
4. This resolution relates only to the obligation of the City Council to determine the qualifications of its City officers under the City Charter and this resolution does not pertain to whether there would be a violation of the Incompatibility of Public Offices Act (MCL 15.181 et seq.), if Mr. Sullivan simultaneously would hold the position of City Clerk and County Commissioner.
5. This resolution shall become effective on January 6, 2014 unless Mr. Sullivan resigns as a Charlevoix County Commissioner prior to that date.

YES: \_\_\_\_\_

NO: \_\_\_\_\_

**RESOLUTION DECLARED ADOPTED**

CITY OF CHARLEVOIX

By: \_\_\_\_\_  
Norman L. Carlson, Jr., Mayor

I, the undersigned, the Clerk of the City of Charlevoix, Charlevoix County, Michigan, do hereby certify that the foregoing is a true and complete copy of certain proceedings taken by said municipality of Charlevoix County at its special meeting held on January 2, 2014, relative to adoption of the resolution therein set forth; that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Stephanie Brown, Deputy Clerk