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March 27, 2008

Jon August, Esq.
Town of Stratford Charter Revision Committee
2725 Main Street
Stratford, CT 06497

Re: Recall/Referendum/Initiative (Section 8)

Dear Attorney August:

At the Stratford Town Charter Revision Committee Meeting held on March 6, 2008, you requested that we review whether, in light of recent Charter revisions, the Town has the right to provide for recall, referendum and initiative in its Charter. We have reviewed the applicable cases and statutes, and our conclusion is that the right of recall was lost and cannot be provided for in the Town Charter, while the rights of referendum and initiative may be included, using an abundance of caution.

Municipalities in Connecticut may, pursuant to the Home Rule Act, adopt charters or home rule ordinances, which constitute the organic law of the town, or their powers may be granted by a Special Act of the Legislature. General Statutes § 7-188 et seq. In the absence of one of the aforesaid sources of authority, the Town's powers are set forth in the General Statutes. City Council v. Hall, 180 Conn. 243, 248, 429 A.2d 481 (1980).

The Town of Stratford was initially chartered pursuant to a Special Act of the legislature. As such, a special act of the legislature provided the Town with the powers of recall, referendum and initiative. State ex rel. Lewis v. Turney; 97 Conn. 496, 117 A.

499 (1922); Mazzev v. Stratford Town Council, CV 03404203S (Judicial District of Fairfield at Bridgeport); 19 Spec. Acts 1048, No. 479, §§21-28 (1921). Through the adoption of an entirely new Charter during the last charter revision process, however, the Town has now become subject to the Home Rule Act. The inquiry for the purposes of your question, therefore, becomes whether the Home Rule Act or General Statutes empower the Town to provide for recall, referendum or initiative. Based upon the holding of Simons v. Canty, 195 Conn 524 (1985), it is clear that a municipality subject to the Home Rule Act is not empowered to provide for recall in a town charter.

In Simons, the Connecticut Supreme Court addressed the issue of whether a non-special act municipality is authorized to insert a recall provision in the town charter. Id. at 527. The Court held that, because the General Assembly has not enacted legislation explicitly conferring the power to recall elected officials, and the authority is not implied in other powers, towns cannot enact recall provisions by charter or ordinance. Id. at 532.

In reaching its decision, the Court first focused on the sources of municipal authority. The Court recognized the well-known rule that municipalities, as creations of the state, have no inherent legislative authority. Id. at 529. The Court also noted that municipalities can only wield those powers either expressly granted to them by the legislature or necessary to the exercise of an expressly delegated power. Id. at 530. The Court summarized that the sole source of municipal authority is legislative delegation in the form of a general statute or a special act. Id.

After reviewing the sources of municipal authority, the Court proceeded to discuss the rules that determine whether a power has been delegated to a municipality. The Court began by pointing out that the legislature has been very specific in enumerating those powers it grants to municipalities. Id. The delegation of authority to municipalities is, therefore, narrowly construed. Id. The Court then went on to note that "an enumeration of powers in a statute is uniformly held to forbid the things not enumerated." Id. As such, in determining whether a municipality has the authority to adopt a challenged charter provision, "we do not search for a statutory prohibition against such an enactment; rather, we must search for statutory authority for the enactment." Id.

Applying these rules, the Court analyzed the Plaintiff's argument that "four independent entitlements" allowed them to insert the power of recall in their town charter: Article Tenth, § 1, of the Connecticut Constitution; General Statutes § 7-193(a); General Statutes § 7-148(c)(7)(H)(xiii); and municipalities' inherent power over matters of local concern. The Court did not find any express power of recall in any of these so-called "entitlements." It similarly, did not find the power of recall to be necessary for the exercise of an expressly delegated power. It also found no statutory authority for the subject charter enactment.

The Court found it noteworthy that while General Assembly has enacted express legislation when delegating to local governments much less significant powers such as the prohibition of nighttime loitering by minors and the regulation of auctions and garage and tag sales, it had not provided for the power of recall. Id. In fact, the Court noted:

In 1974 and again in 1978, the General Assembly was advised by its Office of Legislative Research that the Home Rule Act did not authorize municipal recall elections... The 1978 report was drawn up to identify areas where revision of the act might be desirable... A bill was then drafted that initially included a section conferring on municipalities the power "to provide, within the charter, for a method to recall or remove, by popular vote, municipal elected officials." ... This section was, however, deleted before the bill reached the floor of the House... the question of empowering municipalities to recall local officials has thus been recently considered by the legislature. The legislature's policy decision to reject local recall is a decision that we are bound to respect. Id. at 532-33.

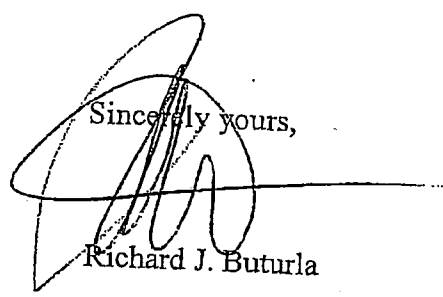
The Court's decision clearly states that the adoption of a recall provision is invalid absent express authority from the legislature or a power implied by necessity to effectuate an expressly granted power.

While Simons deals directly with the issue of recall, we have been unable to locate any precedent or statutory authority dealing specifically with the issues of referendum or initiative. We have also been unable to locate any statutory authority granting such powers to municipalities in accordance with the Home Rule Act. Based upon this lack of authority it is our belief that the inclusion of these powers in the Town Charter appears would be permissible at this time. The inclusion of these powers, however, should be done using an abundance of caution, as the thrust of the Court's opinion in Simons appears to dictate that such powers would likely be invalid if challenged.

As neither provision has been expressly enumerated to municipalities, the Town would, like the plaintiffs in Simons, be forced to rely upon the same general authorities in order to support their claim that such provisions are valid. In this vein, it should be recalled that "an enumeration of power in a statute is uniformly held to forbid things not enumerated." Id. It should further be noted that the General Assembly has enacted express legislation when delegating to local governments various powers far less significant than that of referendum or initiative. Id. Accordingly, we believe a challenge to the inclusion of those rights in the Town Charter would in all probability be successful. However, in the absence of a well developed clear line of cases or authority, the referendum initiative provision should remain untouched and the issue of validity postponed to another time.

On the other hand, Section 8.1.1 et. seq., of the Charter is clearly unlawful and should be stricken in its entirety from the Charter.

If you should have any questions or comments, please do not hesitate to contact me.

Sincerely yours,

Richard J. Buturla

Cc: Honorable James Miron, Mayor

Honorable Members of the Charter Revision Commission