

Proposed Charter Select Board Reorganization: Conflict with State Law

The proposed charter calls for the “reorganization” of the Select Board in 2024 by adding 2 new members. However, the way this is proposed to happen arguably violates State law. Therefore, even if the charter changes are passed, it is possible either that the State will not approve the document or that it will be subject to legal challenge.

Under the proposed changes, the Select Board would go from 5 members elected town-wide to 4 town-wide members and 3 district specific members. The way the proposed charter requires this to be done is that in 2024:

1. **ALL** Select Board Members that want to keep their seats must run for election.
2. They then have to decide whether they are running for a town-wide or district seat.

That means that duly elected Select Board members will automatically lose their seats before their term is up and have to run again. **This arguably violates State law.**

Massachusetts has a specific statute that addresses how the size of elected boards are changed, M.G.L. c. 41 §2. That statute states, in relevant part:

If a town votes to increase the number of members of any board, such increase shall be made by adding one or more to each class, to hold office according to the tenure of the class to which they are severally chosen, as will within three years effect it, and such vote to increase shall remain in force until the increase under it is accomplished.

What this legalese means is that if a Town intends to change the number of people on an elected board they may add people at any time, **but they can’t replace someone who is elected before their term expires.** This was confirmed by the State’s highest court in the case of *Del Duca v. Town Administrator of Methuen*, 368 Mass. 1, 329 N.E.2d 748 (1975).

In that case, the Town of Methuen adopted a new charter after which the new Methuen Town Council voted to change their planning board from an elected to appointed body. They disbanded the existing 5 member elected planning board and through the Town Administrator appointed a new 7 member board. However, they decided not to appoint 2 members of the old board whose terms had not yet expired.

The members not appointed sued, arguing that under State law the Town could not remove them, or any other elected official, before the expiration of their term without eliminating their position altogether or conducting a recall vote. The Town argued that they were allowed to change the board completely because they had adopted a new charter and changed to an appointed board.

A Superior Court judge heard the issue and decided in favor of the 2 board members. He then issued an order reinstating all of the members of the preexisting board to their positions for the remainder of the terms to which they had been elected. The town appealed, and the case was referred directly to the state's highest court, the Supreme Judicial Court (SJC).

The SJC upheld the Superior Court's decision on two grounds:

First, that "a municipality cannot ordinarily remove members of a board or agency established pursuant to a general law, even where there exists cause for removal, unless the general law itself explicitly or implicitly authorizes such removal." Since there was a statutory method for removing a planning board member, "it may be argued that removal is prohibited in other circumstances...The fact that the attempted removal occurred in the course of an attempt to create a "new" board does not affect this conclusion."

Second, the adoption of a new charter does not alter the requirement that officials elected under the prior charter be allowed to complete their terms where their position still exists, even if the manner in which their successors are selected is different. In response to the Town's argument that "a vote of the representatives of a town which has adopted a home rule charter can somehow negate the force of a mandatory general law whenever this vote concerns 'local' issues," the court stated "We reject this contention..."

Applied to the Plymouth Select Board, a court ruling could be the same. That is because:

- This a specific statute mandating a minimum 3 year term for a Select Board member (**M.G.L. c. 41 §1**); and
- There is also a specific statute which states that if additional members are to be added to elected boards it must be adding new members until the increased amount is reached (**M.G.L. c. 41 §2**).

Therefore, the State and the courts may hold that the elimination of the existing Select Board is unlawful, as Plymouth is not permitted to "replace" an elected official until the expiration of their term, even by adopting a new charter.