

MEMORANDUM

To: Detroit Charter Revision Commission
Greg Hicks, Executive Director

From: Lamont D. Satchel, Esq.
General Counsel

Date: February 22, 2011

RE: Legality of One (1) Year Residency Requirements

Question: Is a one year residency requirement for elected officials legally permissible? Can a charter require that a candidate for city council reside for six (6) months within the district they seek to represent?

Short Answer: A one year residency requirement for local elected office in Michigan has been held constitutional. A City Charter provision requiring a one year city residency requirement for city council members and one year residency within the ward has been held constitutional by the 6th Circuit Court of Appeals (in whose jurisdiction Michigan resides).

Introduction

On January 11, 2011 the Charter Revision Commission (“Commission”) adopted a motion to set a durational residency requirement for elected officials and an additional durational requirement for city council members elected from districts. Certain Commissioners discussed adopting a general one year residency requirement for local elected office and requiring that candidates for City Council district seats reside in their districts for a period somewhere between six (6) months and one (1) year.

Discussion

The latest case coming out of the Michigan courts that considered the issue of the constitutionality of durational residency requirements was Grano v Ortisi, 86 Mich App 482 (1978). This case held that the city of Grosse Pointe Park's two year residency requirement for elected office, as applied to judges in that case, violated the equal protection clauses of the Michigan and United States constitutions. Grano was decided based on federal constitutional law rather than state law on the subject, which is not uncommon when both federal and state constitutions have equivalent language (here "equal protection").

However, since Grano was decided, the U.S. District Court for the Eastern District of Michigan has had occasion to decide the constitutionality of a one (1) year residency requirement in a Michigan city's charter. The City of Birmingham's charter required candidates for city commissioner to have been residents for one (1) year prior to the general election. Joseph v City of Birmingham, 510 F. Supp. 1319 (March 11, 1981). The U.S. District Court for the Eastern District of Michigan upheld the one (1) year residency requirement as constitutional.

Also, just five months later the U.S. 6th Circuit Court of Appeals, which has federal judicial jurisdiction over Michigan, ruled that a one (1) year residency requirement for city council candidates and a requirement that city council candidates running for ward seats reside within the ward for one (1) year was constitutional. The City of Akron's charter contained these residency requirements which were challenged as unconstitutional. City of Akron v. Bell, 660 F.2d 166 (August 27, 1981).

Also, the Attorney General has taken the position that a one (1) year residency requirement is not objectionable in reliance on Joseph.

Conclusion

A one (1) year residency requirement for elected officials and City Council candidates seeking office from district is constitutionally permissible. Although the Grano case rejected a two year residency requirement, subsequent controlling federal cases have expressly found one (1) year residency requirements in Michigan to be legal under the federal constitution, which has

been affirmed specifically for city council district seats by the U.S. 6th Circuit Court of Appeals, in whose jurisdiction Michigan sits.

The Detroit City Charter can impose up to a one (1) year residency requirement as proposed.