Minneapolis
City of Lakes

Office of the City Attorney
Jay M. Heffern
City Attorney

333 South 7th Street - Suite 300
Minneapolis MN 55402-2453

Office 612 673-2010
Civil Division Fax 612 673-3362
Criminal Division Fax 612 673-2189
MCDA Fax 612 673-5112
TTY 612 673-2157

To: Minneapolis Charter Commission
From: Mr. Peter W. Ginder, Acting Deputy City Attorney
Re: Charter Amendment Questions Raised by C.O.H.R.
Date: July 27, 2004

INTRODUCTION

The Minneapolis Charter Commission has asked the Minneapolis City Attorney's Office to address the four charter amendment questions that have been raised by Citizens Organized for Harm Reduction (C.O.H.R.) in their letter addressed to the Minneapolis Charter Commission dated July 7, 2004 (attached).

ANALYSIS

The first question raised by C.O.H.R is as follows:

1. *Minnesota Statute § 410.12 subd. 1 states "proposed charter amendments must be submitted at least 12 weeks before the general election." We seek a declaration from this Commission that timely submission is made if the committee of electors (the petitioners) provides the Charter Commission or its designated body with all then collected petitions by August 10, 2004, and this date excludes the additional 25 possible days for certification and additional signature collection (meaning that the last possible date for additional signature collection is August 30, 2004).*

MINN. STAT. § 410.12 subd. 1 (2004), in pertinent part, states as follows:

> The charter commission may propose amendments to such charter and shall do so upon the petition of voters equal in number to five percent of the total votes cast at the last previous state general election in the city. Proposed charter amendments must be submitted at least 12 weeks before the general election.

MINN. STAT. § 410.12 subd. 3 (2004), in pertinent part, states as follows:

> All petition papers for a proposed amendment shall be assembled and filed with the charter commission as one instrument. Within ten days after such petition is transmitted to the city council, the city clerk shall determine whether each paper of the petition is properly attested and whether the petition is signed by a sufficient number of voters. The city clerk shall declare any petition paper entirely invalid which is not attested by the circulator thereof as required in this section.

> Upon completing an examination of the petition, the city clerk shall certify the result of the examination to the council. If the city clerk shall certify that the petition is insufficient the city clerk shall set forth in a certificate the particulars in which it is defective and shall at once notify the committee of the petitioners of the findings. A petition may be amended at any time within ten days after the making of a certificate of insufficiency by the city clerk, by filing a supplementary petition upon additional papers signed and filed as provided in case of an original petition. The city clerk shall within five days after such amendment is filed, make examination of the amended petition, and if the certificate shall show the petition still to be insufficient, the city clerk shall file it in the city clerk's office and notify the committee of the petitioners of the findings and no further action shall be had on such insufficient petition. The finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

Reading the two foregoing subdivisions of MINN. STAT. § 410.12 (2004) together, it is possible to address C.O.H.R.'s first question. MINN. STAT. § 410.12 subd. 1 (2004) states that a proposed charter amendment must be submitted at least 12 weeks before the general election. In 2004, the general election for Minneapolis is scheduled to occur on November 2, 2004. The date 12 weeks before November 2, 2004 is August 10, 2004. As such, it appears that a proposed charter amendment that is submitted on or before August 10, 2004 would satisfy the required deadline imposed by MINN. STAT. § 410.12 subd. 1 (2004).

MINN. STAT. § 410.12 subd. 3 (2004) establishes the procedure by which the City Clerk shall determine whether each paper of the petition is properly attested and whether the petition is signed by a sufficient number of voters. MINN. STAT. § 410.12 subd. 3 (2004) states that within ten (10) days after the petition is transmitted to the City Council, the City Clerk shall certify the result of the examination to the City Council. If the City Clerk determines that the petition is defective through the issuance of a certificate of insufficiency, the City Clerk shall at once notify the committee of the petitioners (referred to by C.O.H.R as the "committee of electors"), and shall provide the committee of the petitioners with a certificate of particulars stating the deficiency(s). At anytime within ten (10) days of the issuance of the certificate of insufficiency, the committee of the petitioners may amend the original petition by filing a supplementary petition upon additional papers signed and filed as provided in case of an original petition. If the committee of the petitioners files a supplementary petition within the ten (10) days of being notified by the City Clerk, the City Clerk then has up to five (5) days to examine the amended petition for sufficiency. If the City Clerk determines that the petition is still insufficient, the City Clerk shall file it in the City Clerk's Office, notify the committee of the petitioners of the findings, and no further action shall be had on the insufficient petition.

C.O.H.R. suggests by their question that they are entitled to collect signatures up to August 30, 2004 in an effort to satisfy the petition sufficiency requirements of MINN. STAT. § 410.12 (2004). C.O.H.R.'s suggestion is not congruent with the language of MINN. STAT. § 410.12 subd. 3 (2004). MINN. STAT. § 410.12 subd. 3 (2004) states that the City Clerk has <u>within</u> ten (10) days to determine the sufficiency of the submitted petitions. Based on the particular circumstances of a given petition, it is possible that the City Clerk may need as short a time period as one day to

determine that a particular petition is insufficient and issue a certificate of insufficiency. The City Clerk would then be required to certify the result of the examination with the City Council, and at once notify the committee of the petitioners. At that time, which may be substantially shorter than the maximum ten (10) days allowed for examination, the committee of the petitioners would then have ten (10) days to file a supplementary petition upon additional papers signed.

In sum, the deadline for submitting a proposed charter amendment to appear on the November 2, 2004 Minneapolis general election ballot appears to be August 10, 2004. The process for amending a deficient petition is controlled by the procedure set forth in MINN. STAT. § 410.12 subd. 3 (2004), and its timelines are subject to the actions of the City Clerk and the committee of the petitioners.

The second question raised by C.O.H.R is as follows:

2. *If the committee of electors timely submits all petitions collected as of August 10, 2004 on August 10, 2004, may the committee of electors continue to collect signatures during the 10 day period the initial submissions are certified?*

As noted in the foregoing analysis, the procedural timelines set forth in MINN. STAT. § 410.12 subd. 3 (2004) are subject to the actions of the City Clerk and the committee of the petitioners. Neither MINN. STAT. § 410.12 subd. 1 (2004) nor MINN. STAT. § 410.12 subd. 3 (2004) appear to expressly limit the rights or abilities of the committee of the petitioners to collect signatures during the time in which the City Clerk examines the submitted original petition. As mentioned in the foregoing analysis, the City Clerk may complete the examination of the submitted petition and issue a certificate of insufficiency far in advance of the maximum ten (10) days provided by MINN. STAT. § 410.12 subd. 3 (2004).

C.O.H.R. suggests by their question that they are entitled to collect signatures for a ten (10) day period while the City Clerk examines the original submitted petition for sufficiency. The suggestion that a minimum ten (10) day period exists wherein the City Clerk examines the original submitted petition is not congruent with the language of MINN. STAT. § 410.12 subd. 3 (2004). MINN. STAT. § 410.12 subd. 3 (2004) states that the City Clerk has <u>within</u> ten (10) days to determine the sufficiency of the submitted petitions. As such, the period of time (if any) that the committee of the petitioners would have to collect additional signatures while the City Clerk examines the original submitted petition for sufficiency is subject to the actual time that the City Clerk uses to examine the original submitted petition for sufficiency. This amount of time may be less than ten (10) days.

The third question raised by C.O.H.R is as follows:

3. *If the committee of electors timely submits the petitions but fails to collect the required number of 7,774 valid signatures, is the additional 10 days to collect signatures given to the committee of electors 10 calendar days or 10 business days?*

MINN. STAT. § 410.12 subd. 1 (2004) states that the charter commission shall propose a charter amendment upon the petition of voters equal in number to five (5) percent of the total votes cast at the last previous state general election in the city. C.O.H.R. suggests by their question that five (5) percent of the total votes cast at the last previous state general election in the city is equal to 7,774. C.O.H.R. has not asked for an opinion as to whether they are correct in their belief that five (5) percent of the total votes cast at the last previous state general election in the city is equal to 7,774, and this memorandum does not address that issue. Mathematically speaking, five (5) percent of 155,480 is equal to 7,774.

MINN. STAT. § 410.12 subd. 3 (2004) states that at anytime within ten (10) days of the issuance of the certificate of insufficiency from the City Clerk, the committee of the petitioners may amend the original petition by filing a supplementary petition upon additional papers signed and filed as provided in case of an original petition. MINN. STAT. § 645.45 (2004) gives guidance as to the interpretation of certain words and phrases that appear in laws including statutes. MINN. STAT. § 645.45 subd. 16 (2004) states that the term "day" comprises the time from midnight to the next midnight. In *Boelter v. City of Coon Rapids*, 67 F.Supp.2d 1040 (D. Minn. 1999), the United States District Court in the District of Minnesota stated that, under Minnesota law, the term "day", when used in a statute, is generally defined to include a 24-hour period. In *Nelson v. Sandkamp*, 34 N.W.2d 640 (Minn. 1948), the Minnesota Supreme Court stated that a "day", unless expressly qualified, comprises a 24-hour period extending from one midnight to the next midnight. Based on the foregoing legal authorities, the unqualified term "day" within MINN. STAT. § 410.12 subd. 3 (2004) appears to refer to a 24-hour period extending from one midnight until the next midnight. Despite the use by of the terms "calendar days" and "business days" by C.O.H.R. in their question, there is no reference to either of those words in either MINN. STAT. § 410.12 subd. 3 (2004) or in MINN. STAT. § 645.45 (2004).

The fourth question raised by C.O.H.R is as follows:

4. *Minnesota Statute § 410.12 subd. 3 states that all petitions should be submitted as a single instrument to the Charter Commission. Is the Charter Commission the body to which the committee of electors is to serve the petitions or do we serve the petitions to the Department of Elections?*

MINN. STAT. § 410.12 subd. 1 (2004), in pertinent part, states as follows:

> The charter commission may propose amendments to such charter and shall do so upon the petition of voters equal in number to five percent of the total votes cast at the last previous state general election in the city. Proposed charter amendments must be submitted at least 12 weeks before the general election.

MINN. STAT. § 410.12 subd. 3 (2004), in pertinent part, states as follows:

> All petition papers for a proposed amendment shall be assembled and filed with the charter commission as one instrument. Within ten days after such petition is transmitted to the city council, the city clerk shall determine whether each paper of the petition is properly attested and whether the petition is signed by a sufficient number of voters.

Reading the two foregoing subdivisions of MINN. STAT. § 410.12 (2004) together, it is possible to address C.O.H.R.'s fourth question. MINN. STAT. § 410.12 subd. 3 (2004) states that the petitions must be filed with the charter commission. MINN. STAT. § 410.12 subd. 1 (2004) suggests that the charter commission is under an implicit ministerial duty to then propose the charter amendment. *See generally Black's Law Dictionary* (8th Ed. 2004) stating that a ministerial duty is a duty which requires neither the exercise of official discretion nor judgment. MINN. STAT. § 410.12 subd. 3 (2004) states (albeit with less than complete clarity) that the Charter Commission must propose the petition-generated charter amendment to the City Council. MINN. STAT. § 410.12 subd. 3 (2004) also states that within ten (10) days of when the Charter Commission transmits the proposed charter amendment to the City Council, the City Clerk must determine whether each paper of the petition is properly attested and whether the petition is signed by a sufficient number of voters.

In sum, although MINN. STAT. § 410.12 subd. 1 (2004) AND MINN. STAT. § 410.12 subd. 3 (2004) fail to provide complete clarity to this fourth question from C.O.H.R., the language of the statutes suggests that the petitions are to be filed as one instrument with Charter Commission, and that the Charter Commission is under a ministerial duty to submit the proposed amendment to the City Council, which then transmits it to the City Clerk for examination. As noted above, MINN. STAT. § 410.12 subd. 1 (2004) states that proposed charter amendments must be submitted at least 12 weeks before the general election.

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In the interests of time, and in light of some of the issues raised by members of the Minneapolis Charter Commission as indicated in the minutes of their July 7, 2004 meeting (attached) relative to the subject matter of the charter amendment being circulated for signature by C.O.H.R., it is important to make note of certain authorities that may give guidance to issues that may arise in the future. In *State v. Beach*, 191 N.W. 1012 (Minn. 1923), the Minnesota Supreme Court stated that a charter amendment that is inharmonious with the Constitution and the laws of Minnesota need not be submitted to the voters. Citing *Beach* with approval and as authority, the Minnesota Supreme Court in *Hous. and Redevelopment Auth. of Minneapolis v. City of Minneapolis*, 198 N.W.2d 531 (Minn. 1972) affirmed the principle that proposed charter amendments that appear to be inharmonious with the Constitution or the laws of Minnesota need not be submitted to the voters. Moreover, the Court noted that it is proper for a Court to enjoin the election of a proposed charter amendment "'to save the trouble and expense' of voting on a measure which, if adopted, the courts would be compelled to set aside." *Hous. and Redevelopment Auth. of Minneapolis v. City of Minneapolis*, 198 N.W.2d 531, 536 (Minn. 1972). Both cases state that the decision not to submit a charter amendment that appears inharmonious with the Constitution and the laws of Minnesota to the voters is a decision that is to be made by the City Council, not the Charter Commission. The Charter Commission's ministerial duty to propose a petition-generated charter amendment to the City Council does not allow for official discretion or judgment on the part of the Charter Commission.