

Menshek, Peggy Y

From: Clegg, Barry F. [Barry.Clegg@gpmlaw.com]
Sent: Friday, November 19, 2010 1:56 PM
To: Menshek, Peggy Y
Subject: Attachment for Possibility of Redistricting in 2011

Council Members Lilligren and Glidden: I am the Chair of the Charter Commission and am contacting you (as the Chairs of the Committee of the Whole and Elections) concerning the timing of redistricting in Minneapolis. As you know, Chapter 1, Section 3 (B) of the Charter provides that redistricting will occur "in each year ending in the number 2". This language has been the same for many years and was left unchanged by the recent Charter amendment.

Thus we would expect that redistricting in Minneapolis should occur in 2012. Despite this clear language in the Charter itself, there is a possibility that we would be required under State law to redistrict in 2011. Up until 1991, Minnesota Statute 204B.135 read "A city that elects its council members by ward may NOT redistrict those wards in a year ending in 1 or before the legislature has been redistricted in a year ending in 2" (emphasis mine). Under that old language, our "year ending in 2" scheme was completely consistent with the State statute, which prohibited redistricting in years ending in 1.

In 1991, the present language of the statute was adopted, which reads "A city that elects its council members by wards may not redistrict those wards before the legislature has been redistricted in a year ending in 1 OR 2. The wards must be redistricted within 60 days after the legislature has been redistricted or at least 19 weeks before the state primary election in the year ending in 2, WHICHEVER IS FIRST" (emphasis mine).

As you know, State statute trumps the Charter. Accordingly, under the new statutory language, we could conceivably be required to redistrict in 2011 if the legislature finishes its work and there is no court fight or the court fight is resolved in 2011. The legislature generally finishes its redistricting work in the session in the years ending in 1, only court fights have prolonged the completion of redistricting to the years ending in 2. Minneapolis probably should have changed its Charter to conform to the State law in 1991, to read something like - "In each year ending in 1 or 2, as determined by applicable state law...". But no change was made in 1991 and it didn't matter because both the 1992 and 2002 state redistricting went to court and the court challenges were not resolved till 1992 and 2002 respectively, so our old language worked.

While it is unlikely that the legislature would adopt a plan in 2011 without a veto and subsequent court fight stretching into 2012, it is certainly possible that the legislature could agree on a bipartisan process like the one they have been considering for the last couple of sessions. It's also possible that, given the recount, Gov. Pawlenty will still be in office and the Republicans will adopt and sign a plan before the new Governor is seated although that would probably be litigated as well).

I bring this to your attention for 2 reasons. First, you may want to consider amending the Charter to conform to State statute. This is the kind of amendment I would view as a technical one to conform to State law and therefore a good candidate for a 13-0 amendment by the Council. Regardless of whether the Charter is amended, State law will control. Second, I want to be ready as a City for redistricting in 2011 should the legislature complete their process without litigation. If the legislature does finish its work in 2011 without court challenge, that would likely happen in May of 2011 which would mean redistricting would have to be COMPLETED by July, 2011. While I realize the likelihood is that there will be another court process that will stretch things out, I want us to be prepared in 2011, if necessary. The Charter Commission will be preparing accordingly.

Barry Clegg
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