

MINUTES
DEKALB COUNTY CHARTER REVIEW MEETING
ZOOM MEETING
OCTOBER 6, 2022

I. **CALL TO ORDER:** 6:03 p.m.

II. **ROLL CALL**

Steve Henson, Chair
Mary Hinkel, Secretary
Claudette Leak
Lance Hammonds
Robert Wittenstein
Susan Neugent
Bobbie Sanford
Dr. Gerald Austin, Sr.
Clara DeLay
Jim Grubiak
Representative Karla Drenner
Vickie Turner
Dwight Thomas

ABSENT:

Virginia Harris, Vice Chair
Karen Bennett
John Turner
Ex Officio Sen. Emanuel Jones

STAFF:

Zachary Williams, Chief Operating Officer
Barbara Sanders-Norwood, County Clerk

III. **MINUTES FROM THE SEPTEMBER 1, 2022 MEETING**

MOTION to approve made by Dr. Gerald Austin, seconded by Commissioner Turner and unanimously passed.

IV. **INTRODUCTION OF INVITED GUEST** – Attorney Matthew Welch

The Chairman stated that Mr. Welch came today to continue educating us on the Charter. Understanding what we are doing, we've got to understand the Charter as it presently exists. Attorney Ernstes is on a well-deserved vacation celebrating her 25th wedding anniversary.

Attorney Welch stated that he will start on Section 13 (d) – This section talks about the CEO’s powers to appoint – he has the exclusive authority to appoint, remove and fix the compensation of all employees and officials of the county, EXCEPT employees of the commission, and subject to budgetary limitations and County Merit System regulations.

The second exception is for the compensation of folks working for other elected county officials. So, our Sheriff, our DA and folks of that nature. These officials do bring forward budgets that are approved by the governing authority.

Sections 13 e and f should be read together. They are provisions that allow the CEO to exert a certain amount of impact on the BOC meetings deemed necessary. It does require that the members be given three days’ notice in advance of any special meeting. (f) along with that power gives the CEO the power to compel the attendance of members at meetings of the commission by subpoena subject to the policy of the commission. However, the Org. Act allows the Commission to set its own rules.

QUESTION:

Chairman Henson – Would it be possible if the commission wanted to push back on the CEO’s power the subpoena, I would assume they would be able to pass some hoops for the CEO to go through?

Attorney Welch – Well, potentially, because we do have this caveat right at the end of (f). The CEO’ right to compel is subject to the policy of the commission as established by its rules. The Board does have the power to establish its own procedural rules.

Commissioner Wittenstein – What if the CEO and the Commission wanted to have a meeting with less than three days’ notice? Could they call a meeting with the agreement somehow of somebody that took place in less than three days?

Attorney Welch – I believe so. I believe that under the Open Meetings Act, there’s a 24-hour notice required.

Chairman Henson – The one thing that you just read is the CEO would not be able to call special meetings without three days’ notice, but the Presiding Officer probably could as long as he conformed to the Open Record Act?

Attorney Welch – Absolutely. The CEO is limited, as I understand it, by this provision. It is actually the Presiding Officer who could call the meeting.

Section – 13g

The Chief Executive shall have the power to investigate the affairs, records, and expenditures of the various authorities, boards, councils, commissions, committees, and similar bodies or agencies whether created by ordinance of the commission or by acts of the General Assembly, relating to the affairs of the county and to report thereto to the commission. This is an important authority; it’s a check on the power of the General Assembly and commissions – are they following their charge, their bylaws?

Section –13h

The Chief Executive shall represent the county in intergovernmental matters and seek to promote and improve the government of the county and encourage the growth of the County, promote and develop the prosperity and well-being of the citizens of the County. What it allows the CEO to do is to be the main face of the County in any intergovernmental discussions. It is this power that allowed him to establish the Charter Review Commission. The CEO represents every citizen of the county when he's involved in governmental matters outside the County. In Inter-governmental agreements with our cities, the CEO represents the unincorporated areas of the county.

Section – 13i

This section essentially requires that each year the CEO or his administration provide to the commission a complete annual report on the financial affairs and activities of the county and cause a summary of the annual report to be published in the official organ of the County (The Champion). The CEO is also to provide a copy of the full report to each branch of the county library.

Further, the CEO is to make financial reports during the year as may be required by the Board of Commissioners. This gives the Board the power to request financial/ budgetary updates. Typically, the Financial Officer, Ms. McNabb, provides these updates quarterly to the full Commission and on demand to the Committees of the Commission requesting budgetary updates for the departments that are within those committees' jurisdictions. So, it is this last sentence that provides the commission the power to ask for financial information on an intermediate basis.

QUESTION:

Commissioner Hinkel –This seems very “old school” to me. Is there any reason to prohibit this being more transparently placed on the county website? Or maybe it is, and I don't know that.

Attorney Welch – I cannot answer your question as to whether it is on the website. What I can tell you is that, as I read this provision, it does not prevent a wider distribution of the information. It sets a floor, not a ceiling.

Section –13j

The CEO can bring forward any proposal or recommendation that he thinks is going to improve the administration of the affairs of the County.

QUESTION:

Chairman Henson – The CEO would not be able to merge two departments without the approval of the Commission?

Attorney Welch – The Chief Executive shall have the power to change, consolidate, or abolish any departments, agencies or offices over which he exercises supervision and control, subject to the approval of the Commission.

Chairman Henson – Rather than abolishing a department, since he has power to hire, fire, set salaries, and give administrative direction to, he could say to department A, you have to report to the head of department B even though he doesn't abolish the department?

Attorney Welch – I think plain reading would be that that could be allowed under (b) alone. But, again, there are other factors that I know the CEO and the board would consider in those circumstances.

Commissioner Hinkel – Is the Commission’s approval done through a formal resolution?

Attorney Welch – Yes, it would be a formal proposal put on the agenda, voted on by the commissioners in public.

Commissioner Bobbie Sanford – I guess one thing that concerns me a little bit is the fact that it says “recommend.” Should it be something a little stronger than just a recommendation, like a proposal?

Attorney Welch – Formal consideration means placing it on an agenda, public debate, and discussion.

Chairman Henson – The Board of Commission itself would probably be expecting reasons and logic behind it.

Commissioner Turner – Is there any opposition to changing the language from recommended to propose. Is there any objection to that? I understand the context that you’ve provided, but I just wondered.

Attorney Welch – Well that is for the commission to decide. The path exists to get the information.

Commissioner Leak – Since the CEO has the primary authority for all the departments, I just want to be clear on these two sections. If there was going to be a reorganization where there is no abolishment of a department, but a realignment of reporting structure, based on these two sections, would the CEO then still be required to get approval from the Board of Commissioners to do a reorganization?

Attorney Welch – If it didn’t abolish?

Commissioner Leak – If they are realigning the department. For example: Code compliance to Beautification. When it came along there was an area called code compliance – code administration, but it was put under the umbrella of the beautification department with a separate director.

So, my question, that’s more of a realignment of the departments versus trying to abolish. You still have both departments intact.

Attorney Welch – I think something like that is going to be on a case-by-case analysis to see exactly what is going to be changed.

Section 13(k) Limitation of Powers of the CEO

Chief Executive shall devote full time to the duties of the office and shall have no other source of employment. This does not say that the CEO cannot have any other source of income.

Commissioner Wittenstein -Suppose the CEO wanted to get a thousand dollar speaking fee for talking to some special interest group?

Attorney Welch – I think it would not be prohibited under this Charter section, but it would be a matter that is prohibited under the Code of Ethics.

Commissioner Grubiak – Is full time defined anywhere in the Org. Act or maybe in an ordinance or somewhere else or is it just in the eyes of the beholder?

Attorney Welch – This is not a defined term. It would be his sole source of employment.

Section 13A – Appointment to Public Office – it was not In the Org. Act when it was originally adopted in 1981. Controversy arose in the early 80's between Mr. Maloof and the Board of Commissioners on how appointments required by state law would be handled. Because our CEO is called by a different name and has a few additional powers, it became unclear how we would satisfy that appointment requirement when the appointment is granted to a governing authority or governing body. It was the opinion of the Board of Commissioners that the CEO could simply be counted as an eighth commissioner. Mr. Maloof did not agree with that interpretation. He sued and he won. As a result, 13A was put in place.

The CEO nominates a person by sending written notice to the Board of Commissioners. Often, that's in the form of an agenda item. A notice and resume are sent around ahead of time. That notice must specify the post or vacancy to be filled, the date it needs to be filled and the qualifications that must be possessed. So again, in some of those state-created committees, there is a requirement that someone have a certain level of expertise or that you include a member of a particular subset of your constituency. And so, if that is a requirement, this written recommendation should show that the person meets the requirement. Once the recommendation is received by the board, the item is placed on the agenda and the Commissioners confirm or reject the nominee of the chief executive. This section does put a 20-day time limit on the board's consideration of that nomination.

If that nominee is rejected, the Chief Executive gets a second shot. He makes a second nomination in writing to the commission within 10 days of the rejection. We repeat the process. The Board votes again in public at a regular or special called meeting. This should happen within 15 days of the second nomination. They either confirm or reject. If after the second round, the board cannot agree on the CEO' recommendation, the Board of Commissioners has the authority to elect a qualified person to fill the post or vacancy without the necessity of a nomination by the CEO.

Removal – Anyone put in a seat by the governing authority can be removed by the Board of Commissioners. It doesn't take the CEO to remove someone from the board once they're appointed. Four members of the commission can vote to remove a member through this provision.

QUESTION:

Commissioner Neugent – If you rely on the CEO to take the initiative and the failure of the CEO appointees to be approved then triggers the commission to act independently, what If the CEO does not make any initial appointments? And then are there any penalties if the CEO fails to nominate someone? Is there any solution in the charter when either the commission fails to act, or the CEO fails to act initially?

Attorney Welch – There really is not a remedy built into the Org. Act itself. It is expected that the process will be followed.

Chairman Henson – Could the commissioners go to a state court or could the CEO if the other party didn't fulfill their obligation, could he go to a judge?

Attorney Welch – Sure.

Rep. Drenner- Is there a composite list of all appointments?

Attorney Welch – It is my understanding the Administration is endeavoring to do that now. Each board is responsible for its own record keeping so it's hard to keep any centralized information resource current. The Administration has hired an outside vendor to review the boards, to contact them and to get current information and their status so that accurate information can be gathered. The web page for boards will be updated based on this review.

Commissioner Hinkel – Just a point for Matthew. You may want to look at the City of Atlanta's charter and information on board organizations. I know every government has trouble keeping up with citizen boards and the appointment process, but they've got a very good system outlined in their charter for keeping track of boards.

Section 14 – Executive Assistant

This section read differently in 1981 – there was no “and commission” in this paragraph. That was added in 1983 so this position serves as the “bridge” between the Administration and the Commission. Information flows through the Executive Assistant. And the Executive Assistant cannot take office until the CEO nominates and the Board of Commissioners confirm.

Zach Williams currently holds the position of Executive Assistant which is a dual role. He is appointed by the CEO and confirmed by the Board of Commissioners. He serves as the Chief administrative aide to the CEO and the Commission and shall be responsible to the CEO and the commission for the proper administrative of the affairs of the County. When the board makes a request for information from the administration, that flows back to them through the executive assistant.

So, when directed to do so by the CEO, the Executive Assistant may exercise any of the administrative duties and powers vested in the chief executive by law or ordinance, rules, regulations adopted by the commission. We see that when the Executive Assistant signs something at the direction of the CEO, he puts DIR next to his signature, meaning he's been delegated the power. So, all that really means is that almost all the power that the CEO has as to the administration of the government can, at his discretion, be delegated to the executive assistant.

This position is to be strictly apolitical so there are restrictions to who can hold this office that go primarily to the person's political activity. No person shall hold the office of executive assistant if, within the last two years immediately preceding appointment, that person has him or herself been a candidate for elected public office, been a holder of elected public office, or held a management position in the political campaign of any candidate for office of the CEO or any member of the Board of Commissioners in DeKalb.

Section 15 – Veto Power of the Chief Executive

Every ordinance or resolution adopted by the commission shall be signed by the presiding officer of the commission or, in his absence, the deputy presiding officer. In case you do not know, the presiding officer and deputy presiding officer in their election is governed by the standing procedural rules that the board adopts itself. The board elects its own presiding officer and deputy presiding officer in January of each year. So, the Presiding Officer or the deputy must sign every ordinance or resolution adopted by the Board. That ordinance or resolution is then certified by the Clerk, Ms. Sanders, and presented by said Clerk to the office of the CEO. That presentation to the CEO should take place within three business days.

The CEO shall approve or veto the ordinance or resolution within eight business days after its adoption by the commission. The veto or approval is tied to the date of board action. So, except as herein provided no ordinance or resolution becomes effective without the approval of the CEO. If the CEO vetoes an ordinance or resolution, he is to return it to the commission within two business days after that veto along with a written statement of the reasons for the veto. At the meeting of the commission next held after receiving a vetoed ordinance or resolution, the resolution shall become effective without his approval if the Commission passes the ordinance by two-thirds of their total membership This is a veto override in common parlance.

QUESTION:

Commissioner Hinkel – Why is that sentence about the eight business days if he doesn't approve or veto, why isn't that in paragraph (a) instead of (b)?

Attorney Welch – It could be. We're used to seeing it here, so we know where to look for it.

Chairman Henson – Mr. Williams, do you have any comments at this time?

Mr. Williams – No, if you need me, feel free to call me.

V. UNFINISHED BUSINESS: None

VI. NEW BUSINESS:

Commissioner Leak – I noticed since our last meeting we have now on the website an address for the public to send comments to us. Do we have or are we working on a plan to manage this information as it comes in, categorize the topics that we're getting or anything like that?

Chairman Henson – We have Lori Brill online and the other representative from the Carl Vinson Institute. They are helping us put together and categorize anything that comes in and make sure that it's presented to all the commission members. We will do that as it comes in.

Commissioner Hinkel – Claudette, I'm checking those comments and printing them out. The IT staff person and I are trying to see what kind of responses we get so we can determine the best way of organizing them. I know we've talked about getting a spreadsheet with the information and the comments. I'll be working with Ms. Brill and the IT department to create a report for the Commission. So far, we have gotten three comments.

Commissioner Leak – So we've got some work to do in making people aware of that.

Chairman Henson – Mary is going to work with Commissioner Turner to set up our next meeting at the DeKalb County Board of Education office on Mountain Industrial Road, 6:00 p.m. to 8:00 p.m. This will be a public hearing.

Mr. Williams, it would be nice to have another department head there – if the public doesn't demand all our time - that will help us get educated on the functions and running of their department.

Mr. Williams – Absolutely.

VII. PUBLIC COMMENTS

Chairman Henson – We have a county website now that have a place for written comments. If anybody has written comments that they want to communicate to us, they can do it that way or get it directly to me or Ms. Harris or Ms. Hinkel. We will make sure that they are included with our report when this is concluded.

Mr. Steven Binney, 1083 Seville Drive, Clarkston, Georgia 30021. I would like to point out or suggest that you take a very close look at the appointment process as this committee itself was affected by it. I believe you were out of service for nearly a year or maybe a little over a year because the CEO was not making his appointments. And, in fact, the only reason that the appointments were made was because, I believe, Commissioner Terry introduced an ordinance that if the CEO didn't make an appointment after 90 days, that the commission would be allowed to make it. So, I believe that needs to be looked at.

Now over the last 40 years, the DeKalb County Charter has told us how county government is to be organized and what it is to do. And now you have an opportunity to make changes to the Charter and I hope that you do it. Do we want to remain the only county in Georgia with a very powerful CEO or do we want to have a more equitable distribution of power in DeKalb? We are the only county in the state that has an elected Chief Executive Officer who manages daily operations, leaving the county commission to approve CEO decisions. Such limited authority of the commission undermines any political balance between the CEO and the commission in this type of government structure. Why elect and pay commissioners at all if in the end they have very little or no power over the actual decisions made that affect their constituents?

This unequal power balance shows itself each year in the budget process also. I propose that the CEO form of government should be changed to allow for a great distribution of power throughout DeKalb County.

VIII. Adjournment:

Motion was made by Commissioner Grubiak to adjourn, seconded by Commissioner Turner, and passed by unanimous consent.

Chairman Steve Henson

Barbara Sanders-Norwood, County Clerk