

ANTHONY DESISTO LAW ASSOCIATES, LLC

450 Veterans Memorial Parkway, Suite 103
East Providence, RI 02914

Anthony DeSisto
tony@adlawllc.net
Peter Skwirz*
pfs@adlawllc.net

Telephone 401.421.0170
Facsimile 401.270.4878
*also admitted in Massachusetts

MEMO

To: Board of Canvassers
From: Solicitor's Office
Re: Resolutions to the Financial Town Referendum
Date: April 26, 2018

The purpose of this memorandum is to address the proposed elector resolutions introduced to the 2018 Financial Town Referendum (FTR). Specifically, the purpose of this memorandum is to address why certain proposed elector resolutions are illegal and why the Board of Canvassers should not put said resolutions on the FTR ballot.

The FTR ballot contained elector resolutions numbered 1 through 8. Reference will be made to the elector resolutions as they are number on the draft ballot. Elector resolutions 5, 6, and 7 present no issues and should be included on the ballot. Resolutions 1, 2, 3, 4, and 8, however, are illegal and should not be placed on the ballot.

Elector resolutions 3 and 4 are resolutions that purport to require certain Casino revenues to be used for a tax rebate, either to residential taxpayers solely, or to residential and commercial taxpayers jointly. These resolutions violate the Rhode Island constitution, as the resolutions attempt to provide a tax rebate without specific enabling authority from the General Assembly authorizing the rebate. The Rhode Island Supreme Court has held that "[d]espite the addition of the home rule article to Rhode Island's Constitution in 1951, cities and towns remain powerless to levy, assess and collect taxes or to borrow money, except as authorized by the general assembly. . . . If a city or a town

cannot levy, assess, and collect taxes without General Assembly authorization, then it certainly cannot abate, exempt, or allocate payments it would otherwise be entitled to receive as taxes (or to negotiate for their receipt as payments in lieu of taxes) without such authorization." See Warwick Mall Trust v. State, 684 A.2d 252, 253-54 (R.I. 1996). Since these FTR resolutions would provide a tax rebate without General Assembly authorization, they are unconstitutional and void.

Elector resolutions 1 and 2 are illegal as well. Resolution 1 would obligate Town officials, including the Council, to submit all proposals drafted by the Charter Commission to the electors for vote. Resolution 2 ostensibly wants to clarify what Sec. 1214 of the Charter means and how it should be applied. The flaw in both of these resolutions is that they are not budget resolutions. Section 301(f)(1) of the Charter states that "[t]he Financial Town Referendum may order any tax which lawfully may be ordered, make appropriations, and transact any other business pertaining to the affairs of the Town which may legally come before such referendum via Budget Proposals and Resolutions." (Emphases added).

The FTR is intended to vote on the finances of the Town and make budget proposals and budget resolutions to that end. The FTR is not authorized to exercise the general powers of the Town through resolutions that do not touch on the budget. Sec. 407 of the Charter provides that "[a]ll powers of the Town shall be vested in the Town Council except as otherwise provided by the Charter or by the Constitution and laws of the State." Accordingly, all powers of the Town must be exercised by the Council, unless there is a specific delegation of authority to another Town body. Since the FTR is only delegated authority over the budget, it may not exercise the general powers of the Town.

There is a case regarding this issue concerning the Bristol Financial Town Meeting. In Capone v. Nunes, 132 A.2d 80 (R.I. 1957), the Bristol FTM attempted to

create a harbor commission and appoint members to the same, for the purpose of supervising the construction of docks in the town. In ruling that the FTM's action was *ultra vires* and not properly within the scope of the FTM, the Court explained that "[t]he electors qualified to vote in financial town meeting do not constitute the town." Likewise, the electors in the Tiverton FTR are not the Town and do not exercise the general authority of the Town. That authority is assigned to the Town Council through Sec. 407 of the Charter.

Finally, Resolution 8 would require that any line item depleted to \$1 or less during the course of the fiscal year could not be subject to a transfer. This violates Sec. 407(14) of the Charter, which specifically empowers the Town Council to "[o]rder such budget reductions or transfers of funds within the Municipal budget as may become necessary to meet unanticipated requirements or shortfalls during the fiscal year, as recommended by the Administrator." Since this resolution would violate a provision of the Charter, it is not valid.

"[T]he action of a board of canvassers is judicial in its nature." See Williams v. Champlin, 26 R.I. 416 (1904). Accordingly, it is appropriate for the Board of Canvassers to prevent an item from being placed on the FTR ballot when the item is illegal. There is recent precedent for this with regard to the Tiverton Board of Canvassers. In Larkin, et al., v. Tiverton, et al., NC-2017-0192, decided last year, certain electors sought to submit a budget proposal for submission to the FTR. However, the timing of the submission violated the Tiverton Charter. Accordingly, the Board of Canvassers voted to not include the proposal on the FTR ballot. The electors challenged the Board's action in Superior Court and the Court upheld the Board's action. Like the electors in Larkin, the electors in this case are seeking to have illegal budget resolutions placed on the ballot.

The Board of Canvassers has the authority, and the duty, to recognize the illegality and refuse to place the illegal items on the ballot.