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To: Board of County Commissioners
Board of Freeholders

From: Randall K. Gaylord

RE: Prosecutor's Analysis Regarding Residency Qualification for
Commissioners under Proposed Basic Charter

Summary

A private attorney has written that the residency requirement of the Basic Charter is unclear and that if adopted, the Basic Charter could be interpreted in a way that allows a person who resides in one commissioner district to submit a declaration of candidacy for a different commissioner district. This interpretation is contrary to the express language of the state law, county code, the proposed charter, attorney general opinions and decisions of the supreme court.

The "Basic Charter" proposed by the Freeholders establishes three "whole island" commissioner districts, as is allowed for counties composed of islands. State law provides that one of the qualifications for a person who seeks the position of commissioner is that the "candidate reside within a commissioner district."

The county code confirms the residency qualification. To conduct an election, state law requires the County Auditor to establish position numbers for each commissioner district, and to deal with each position as a separate office. State law also requires the county auditor to confirm that the candidate is registered in the jurisdiction of the office or position at the time the person files a declaration of candidacy.

The Basic Charter confirms the residency requirement for commissioners where it states "Legislative Body members must be residents of the County and registered voters of the district from which they are nominated." Moreover, redistricting will not impair a commissioner's position, but moving out of a district from which nominated is ground for declaring a vacancy of office.

An Attorney General Opinion has stated that freeholders can add to, but cannot remove a qualification for office that is established by state law. Another Attorney General Opinion has interpreted the separate district residency requirement as an essential component to the system in San Juan County that allows elections by the county at large where there is a residency requirement by district. Finally, even if there was ambiguity, the state supreme court has announced several times that state law prevails over charter provisions when there is a conflict.

We conclude that if the Basic Charter is adopted, a candidate for a commissioner position must reside in the district for which he or she files for office. Any other interpretation would be contrary to law.

Authorities

State Law

RCW 36.32.040

(2) Where the commissioners of a county composed entirely of islands with a population of less than thirty-five thousand have chosen to divide the county into unequal-sized commissioner districts pursuant to the exception provided in [RCW 36.32.020](#), the qualified electors of the entire county shall nominate from among their own number who reside within a commissioner district, candidates for the office of county commissioner of such commissioner district to be voted for at the following general election. Such candidates shall be nominated in the same manner as candidates for other county offices are nominated in all other respects.

29A.24.010

[W]here more than one position with the same name, district number, or title will be voted on at the succeeding election, the filing officer shall designate the position to be filled by number.

The positions so designated shall be dealt with as separate offices for all election purposes. ...

29A.24.031

[The declaration of candidacy shall include on the standard form]:


- (1) A place for the candidate to declare that he or she is a registered voter within the jurisdiction of the office for which he or she is filing, and the address at which he or she is registered.
- (2)

Cases

Dumas v. Gagner, 137 Wn.2d 268 (1999)

Statutory provisions regarding qualifications of candidates, such as a residence requirement, directly and substantively affect an election because they place restrictions upon who can be a candidate, and, consequently, are not mere technicalities. However, this Court has stated the "general rule" that "election statutes are considered remedial and should be liberally construed."

....

 [111] In construing statutes in one context, this Court has stated that the "spirit and intent of the statute should prevail over the literal letter of the law and ... there should be made that interpretation which best advances the perceived legislative purpose." [FN58] In its memorandum decision in this case, the trial court found that the residence requirement for port commissioners existed to *287 achieve "geographic balance" on the port commission. [FN59] Although the court did not expand on that concept, achieving "geographic balance" assumes, as does districting in the first place, that "geographic units reflect a common or group identity...." [FN60] In holding that a one-year residence requirement for the office of city council member was constitutional, this Court stated that the requirement allowed the candidate "to be exposed to the needs and problems of the people" of the particular city. [FN61]

FN58. *Wichert*, 117 Wash.2d at 151, 812 P.2d 858 (citing *In re R.*, 97 Wash.2d 182, 187, 641 P.2d 704 (1982); *Bennett v. Hardy*, 113 Wash.2d 912, 928, 784 P.2d 1258 (1990)).

FN59. Clerk's Papers at 59.

FN60. Lani Guinier, *Groups, Representation, and Race-Conscious Districting: A Case of the Emperor's Clothes*, 71 Tex. L.Rev. 1589, 1603 (1993). The idea that geography approximates political interests has feudal origins. *Id.*

FN61. *Lawrence v. City of Issaquah*, 84 Wash.2d 146, 150, 524 P.2d 1347 (1974). See also *Fischnaller v. Thurston County*, 21 Wash.App. 280, 584 P.2d 483 (1978), review denied, 91 Wash.2d 1013 (1979).

Whatcom v. Brisbane, 125 Wn.2d 345 (1994)

This court has stated that when there is a conflict between the language of a state statute and the language of a home rule charter, the language of the state statute prevails.

Attorney General Opinions

Canavor AGO Wash. AGO 1990 NO. 6, 1990 WL 505772 (Wash.A.G.)

The material you supplied in connection with your opinion request, along with other material supplied by one of the county commissioners, makes it clear that San Juan County continues to exercise the option afforded by [RCW 36.32.020](#) and .040 of having each commissioner district comprised of "whole islands" with the three districts unequal in population. By virtue of the 1982 amendments, residency in the commissioner district continues to be a requirement for election as county commissioner, but the election is conducted among the county voters at large both in the primary and the general election. [\[FN1\]](#)

The teaching of *Dusch v. Davis* and *Dallas County v. Reese* appears to be that election of multiple commissioners at large is constitutional, even if individual commissioners are required to live in commissioner districts which are not substantially equal in population, unless the system can be shown to result in discrimination against a racial or other political minority. We find nothing in *Morris* to change this teaching

Wash. AGO 1991 NO. 22, 1991 WL 521713 (Wash.A.G.)

The only attack made by the relator upon the charter is that it purports to superadd certain qualifications necessary for elective officers to those imposed by the legislature.... Had the framers of the charter sought to lessen the requirements demanded by the statute, a different question would be presented, for then the charter would be in direct conflict with the statute. But that is not the case here

In [State ex rel. Carroll v. King Cy., 78 Wn.2d 452, 474 P.2d 877 \(1970\)](#), the court considered a provision of the King County charter that provided for the election of certain county officials in odd-numbered years and adjusted the terms of certain officials to match the new election dates. In sustaining this charter provision the court stated: We think that ... the framers of amendment 21 meant to confer upon counties adopting home rule charters those powers which had theretofore been conferred upon the legislature under [Const. art. 11, § 5](#), including the power to fix the terms of office of county officers, with certain exceptions expressly set forth. It will be observed that the power to frame its own organic law is conferred in broad terms upon the county adopting a charter. While it is not permitted to "affect the election" of the prosecuting attorney, the superintendent of schools, the judges of the superior court and the justices of the peace (all offices in which the state has an interest), there are no restrictions placed upon its right to provide for the election of, prescribe the duties of, and fix the compensation of those officers which it deems necessary to handle its purely local concerns. [78 Wn.2d at 456](#). The court followed *State ex rel. Carroll* in a subsequent decision, [Henry v. Thorne, 92 Wn.2d 878, 602 P.2d 354 \(1979\)](#). *Henry* concerned a charter provision that provided a greater restriction on the timing of elections to fill vacancies than those set forth in the State Constitution or statutes enacted by the Legislature. The court approved this charter provision stating:

[Amendment 21] providing for county home rule expressed the intent of the people of this state to have "the right to conduct their purely local affairs without supervision by the State, so long as they abided by the provisions of the constitution and did not run counter to considerations of public policy of broad concern, expressed in general laws.

[*6 92 Wn.2d at 881.](#)

Since charter cities and charter counties have broad legislative powers in matters of local

concern, we conclude that they have the authority to impose term limitations on locally elected officials.

The County Code

SJCC 2.04.020 Nomination of Candidates for County Commissioner

The qualified electors of the entire County shall nominate from among their own number who reside within a commissioner district, candidates for the office of County Commissioner to be voted for the following general election. Such candidates shall be nominated in the same manner as candidates for other County offices in all respects, and the commissioner district boundaries shall remain unchanged. In the general election, commissioners shall be elected by county-wide vote.

The Pertinent Provisions of the Basic Charter

Section 2.10 - Composition

The Legislative Body shall consist of three(3) members nominated and elected at large countywide.

Section 4.10 - Election Procedures

Except as provided in this Article, nominating primaries and elections of the Sheriff, Treasurer, County Clerk, Auditor and Assessor shall be conducted in accordance with general law governing the election of non-partisan County offices. Except as provided in this Article, nominating primaries and elections of the Legislative Body shall be conducted in accordance with general law governing the election of non-partisan County officers.

Section 4.20 – Qualifications

Each county officer holding an elective office shall be, at the time of appointment or election, and at all times while holding office, a citizen of the United States and a resident and registered voter of San Juan County. In addition, Legislative Body members must be residents of the County and registered voters of the district from which they are nominated. No Legislative district boundary change shall disqualify the Legislative Body member from holding office for the remainder of the term of office.

Section 4.32 - Legislative Body - Nominations

Qualified voters of the County shall nominate candidates for the Legislative Body. Such candidates shall be nominated in the same manner as candidates for other County offices in all other respects. (RCW 36.32.040)

Section 4.33 - Legislative Body - Elections

Legislative Body members shall be elected by the qualified voters of the County. The person receiving the highest number of votes for the position shall be declared duly elected.

Section 4.60 - Vacancies in office

- (1) An elective office shall become vacant when one of the following occurs:
 - (a) Death;
 - (b) Total permanent incapacity as determined by a panel of three physicians;
 - (c) Resignation;
 - (d) Recall of the officer;
 - (e) A Legislative Body member absent from three (3) consecutive regular meetings of the Legislative Body without reasonable cause.
 - (f) Absence from the County for thirty (30) days without being excused by the Legislative Body; or
 - (g) Failure to maintain residence within the district from which elected.