



Iowa General Assembly

2007 Legal Updates

Legislative Services Agency – Legal Services Division

<http://www.legis.state.ia.us>

Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

MUNICIPAL/CITY CHARTER AMENDMENTS

Filed by the Iowa Supreme Court

August 31, 2007

Berent v. City of Iowa City

No. 46/06-1382

http://www.judicial.state.ia.us/Supreme_Court/Recent_Opinions/20070831/06-1382.pdf

Background Facts and Procedure. One method for amending a municipal charter is a citizen petition proposing an amendment to be submitted to voters for approval (Code section 372.11). In order to invoke the electoral process, the petition must include the signatures of the petitioners, a statement of their place of residence, and the date they signed the petition (Code section 362.4). A petition is "valid" if it is signed by eligible electors of the city equal in number to ten percent of the persons who voted at the last preceding regular city election (Code section 362.4). Once the city clerk has accepted a petition for filing, the petition is deemed "valid" unless written objections are filed with the city clerk within five working days after the petition is received. The receipt of a timely objection triggers review by a city objections committee. The city council must present a "valid" petition to amend a city charter to the voters in a special election (Code section 372.11(3)).

The three proposals at issue in this case involving the City of Iowa City (City) called for retention elections for the city manager and the police chief, establishment of a permanent police citizens review board with certain investigative and other powers, and a limitation on police practices with respect to nonviolent misdemeanors. After timely objections were filed, the City's objections committee held a public hearing. The city attorney advised the objections committee that it could not reject a petition on policy grounds, but could dismiss them for "legal insufficiency." The objections committee determined that each of the proposed amendments were legally flawed and, as a result, the City did not present the amendments to the voters.

The petitioning citizens challenged the City's refusal in district court. The district court held that the objections committee exceeded its legal authority in refusing to present the three proposed charter amendments to public vote. The district court also ruled that the City's preelection challenge of the amendments' legality was not ripe for judicial review.

Issue on Appeal. Whether the City is required to place three proposed amendments to the charter of the City before the voters.

Analysis. The Iowa Supreme Court (Court) disagreed with the City's argument that because two of the proposals did not deal with "form of government," they acted lawfully in rejecting the proposals as legally insufficient. Whether a proposal is "valid" is based only on whether the requisite number of signatures are present and if they are accompanied by residence and date information. According to the Court, city officials cannot engage in substantive review beyond that expressly authorized by applicable statutes.

The City argued that without such a substantive review, the clerk and the objections committee are essentially performing the same function. The Court, however, found the two levels of review by the city clerk and the objections committee to be divergent. The city clerk looks for "validity" in the four corners of the submitted petition, while the objections committee can consider extrinsic evidence produced at a public hearing tending to show, for instance, the validity of the actual signatures. Therefore, the Court held that the objections committee exceeded its statutory authority when it sustained objections to the charter proposals based on grounds other than "validity" under Code section 362.4.

The City also asserted that even if the objections committee exceeded its authority, the City may still launch a broadly

framed attack in district court challenging the legality of the proposed charter amendments. Two questions emerged from this argument. The first question was whether the City has standing to challenge the potential validity of the proposed charter amendments. The second question was whether the City or any other party may bring a preelection challenge to the legal validity of proposed charter amendments that have not been formally approved or rejected by the voters (ripeness).

The Court ruled that the City had standing due to the potential expenditure of funds in connection with a voter petition and the fact that it was a special injury different and apart from general harm to the public. To answer the second question of ripeness, the Court looked to practices in other states.

Nearly all state courts allow preelection challenges based on procedural compliance with statutory criteria governing the petition process. Additionally, most state courts allow preelection challenges based upon subject matter or content restrictions established by constitution or statute. Nevertheless, many states also decline to extend the gatekeeping function to include resolution of what are often termed "substantive challenges" to the lawfulness of proposals prior to the election. In this case, the Court ultimately adopted the consensus view that preelection challenges with respect to threshold process and content requirements for proposed municipal charter amendments should generally be considered ripe for adjudication. In this context, the issues do not relate to substantive validity of the proposal, but only to whether a particular proposal qualifies under applicable law for presentation to the voters.

As a result, the Court held that the issue of whether the three proposals contain charter material, or are related to "form of government," is ripe for review. The Court further concluded that "preelection review of the substantive facial challenge to the retention amendment, namely, that the retention proposal is inconsistent with various provisions of the city code, is ripe for review."

The Court determined that the retention proposal was not directly affected by any Iowa constitutional provision. Therefore, the Court turned to the Code of Iowa to determine whether it was inconsistent with state law on its face. While the Iowa General Assembly has allowed cities a degree of discretion in determining who appoints city officials, the retention proposal in this case was ultimately found to be invalid because of its conflict with Iowa law regarding the appointment and removal process of city officials.

The City attacked the police citizens review board proposal and the community policing proposal on the sole ground that the proposals do not contain proper charter material as outlined in Code section 372.9 ("[a] city to be governed by the home rule charter form shall adopt a home rule charter in which its form of government shall be set forth."). In looking at the legislative history, the Court determined that amendments to city charters must, as a matter of law, relate to "form of government." The Court went on to state that the more a proposal "establishes substantive policy instead of structure, the greater likelihood that the proposal does not relate to form of government and does not qualify for inclusion in a city charter." The police citizens review board proposal was held to relate to the form of government under Code section 372.9 and is a permissible charter amendment under Code section 372.10. Alternatively, the Court held that the community policing proposal does not relate to the form of government and is therefore impermissible.

Conclusion. Ultimately, the Court held that the objections committee exceeded its statutory authority by rejecting the proposals as legally insufficient. Despite this conclusion, the Court held that the City was entitled to a declaratory judgment that the retention and community policing proposals are inconsistent with Iowa law and, as a result, the City is under no obligation to place these matters before the voters. With respect to the police citizens review board proposal, however, the Court held that the City is not entitled to a declaratory judgment of invalidity and that the voice of the voters should be heard on this issue.

LSA Monitor: Michael Duster, Legal Services, (515) 281-4800