

Village of Mamaroneck



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<p>PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION</p>

TO: Mayor Murphy and the Board of Trustees

FROM: Robert A. Spolzino, Esq.

RE: Terms for Mayor and Trustees

DATE: March 9, 2023

CC: Jerry Barberio, Village Manager
Daniel Sarnoff, Deputy Village Manager
Agostino A. Fusco, Village Clerk-Treasurer
Sally Roberts, Deputy Village Clerk
Mary Desmond, Deputy Village Attorney

You have asked us to review whether the Board of Trustees can (i) change the terms of the mayor and trustees to four years and (ii) provide for biennial village elections rather than annual village elections. For the reasons that follow, it is our conclusion that the Village Law permits the Board of Trustees, subject to permissive referendum, to change the terms of the mayor and trustees to four years and to adopt biennial elections, but only if it first changes the terms of trustees to four-year terms. The Municipal Home Rule Law, however, authorizes the Board of Trustees to change the terms of the Mayor and Trustees, subject to mandatory referendum, in such manner as the Board of Trustees may determine, without regard to the limitations in the Village Law.

The Village Law provides no authority by which the Board of Trustees can change the terms of some, but not all, of the terms of trustees so that the mayor and trustees are all elected in the same year. The Municipal Home Rule Law, however, permits the Board of Trustees to supersede the Village Law, and adopt a local law inconsistent with the Village Law, “to the extent to which

it is authorized to adopt local laws by this section, notwithstanding that such provision is a general law, unless the legislature expressly shall have prohibited the adoption of such a local law.”¹

Municipal Home Rule Law § 10(1)(a)(1) permits a village to adopt a local law with respect to “[t]he powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees.” It appears, therefore, that the Municipal Home Rule Law would permit the Board of Trustees to revise the terms of office for the Mayor and Trustees as it sees fit, even without regard to the limitations in the Village Law. While there is no judicial precedent, we have been able to identify validating that authority, the Attorney General has opined that the Municipal Home Rule Law authorizes a village to change the term of office of a trustee to three years.² That effectively confirms that the Board of Trustees of a Village may change the terms of elected officials in a manner not permitted by the Village Law.

Village Law

Under the Village Law, the term of office for the mayor and each trustee is two years, unless the Board of Trustees changes that in the manner permitted by the Village Law. Village Law § 3-302(3).³ Village Law § 3-302(5)(a) allows the Board of Trustees, subject to permissive referendum, and as long as it does so at least 30 days before the general village election, to adopt four-year terms for the mayor, the trustees or for the mayor and the trustees.⁴

If the Board of Trustees changes the terms to four years, each term thus extended is filled for four years the next time there is a general election for that position. Village Law § 3-302(5).⁵ So, if the Board of Trustees were to adopt such a change before the general election this year, the terms of office of the Mayor and Trustee elected this year would be filled for a term commencing in December 2023 and ending in December 2027 and the terms of the Trustees to be elected in 2024 would begin in December 2024 and end in December 2028. If the change were not adopted until the general village election in November 2023, the terms of office of the Mayor and Trustee elected in 2023 would be for two years, from December 2023 to December 2025, the terms of the Trustees elected in 2024 would be for four years, from December 2024 to December 2028, and the terms of the Mayor and Trustees elected in 2025 would be for four years, from December 2025 to December 2029. Each official would thereafter be elected for a term of four years. Absent a special act of the Legislature, there is no provision of the Village Law which allows the terms of the Mayor and Trustees to be extended so that they all expire in the same year.

Village Law § 3-302(7)(a) provides that if, and only if, the Board of Trustees adopts four year terms for the Trustees or for the Mayor and Trustees, it may, also subject to permissive referendum, and as long as it does so at least 30 days before the general village election, provide by separate

¹ Municipal Home Rule Law § 10(1)(e)(3).

² 1988 Ops. Atty. Gen. (Inf.) 137, 1988 WL 410606 (1988).

³“Except as is otherwise provided herein or in this chapter, the term of office of mayor, each trustee, treasurer and clerk shall be two official years and the term of office of village justice shall be four official years.”

⁴ “The board of trustees, by resolution or local law subject to permissive referendum, may extend to four years the term of office of mayor, the terms of office for all trustees, or the terms of office of mayor and all trustees.”

⁵ “If such resolution or local law shall become effective, the offices, the term or terms of which have been extended, shall thereafter, except as is otherwise provided in subdivision seven of this section, be filled for terms of four years commencing at the beginning of the official year following the next general village election at which such offices are to be filled.”

resolution or local law that village elections will be held every two years in either the odd-numbered years or the even-numbered years.⁶

If a law is adopted subject to a permissive referendum, a referendum is held if a petition requesting a referendum signed and acknowledged by 20 percent of the Village's electors is filed within 30 days after the adoption of the law.⁷ If the petition is filed after November 1 but before September 1, the referendum must be held at a special election held between 10 and 60 days after the filing of the petition.⁸ If the petition is filed after September 1 and before November 1, the referendum must be held at the general village election.⁹ Village Law § 9-908 provides that the Board of Trustees can provide for a referendum on the same terms.¹⁰ Election Law § 4-108(1)(b) requires that the Village Clerk "transmit to each board of elections a certified copy of the text of such... referendum and a statement of the form in which it is to be submitted" three months before the general election at which a referendum is to be submitted. The 2023 general election will be held on November 7, 2023. This presents the conundrum which has been previously discussed, however, because it is impossible both to file a petition for a referendum between August 6, 2023 and November 1, 2023 and also to submit the proposition to the Board of Elections August 6, 2023.

Municipal Home Rule Law

Municipal Home Rule Law § 10(1)(e)(3) permits the Board of Trustees to supersede the Village Law and adopt a local law inconsistent with the Village Law, "to the extent to which it is authorized to adopt local laws by this section, notwithstanding that such provision is a general law, unless the legislature expressly shall have prohibited the adoption of such a local law." Municipal Home Rule Law § 10(1)(a)(1) permits a village to adopt a local law with respect to "[t]he powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees." It appears, therefore, that the Municipal Home Rule Law would permit the Board of Trustees to revise the terms of office for the Mayor and Trustees as it sees fit, even without regard to the limitations in the Village Law. While there is no judicial precedent we have been able to identify validating that authority, the Attorney General has opined that the Municipal Home Rule Law authorizes a village to change the term of office of a trustee to three years.¹¹ Because the Village Law does not permit that, the Attorney General's opinion supports the conclusion that the Municipal Home Rule Law gives the Board of Trustees authority to structure the terms of the Mayor and Trustees as it sees fit.

⁶ "The board of trustees of any village which has provided that the terms of office of all trustees, or the terms of office of mayor and all trustees shall be four years, may, subject to permissive referendum, adopt a separate resolution or local law providing that general village elections shall be held biennially in the odd numbered years or in the even numbered years, as they shall determine, or may include in any resolution or local law providing that the terms of office of all trustees, or the terms of office of mayor and all trustees shall be four years, a provision that general village elections shall be held biennially in the odd numbered years or in the even numbered years."

⁷ Village Law § 9-902(1).

⁸ Village Law § 9-902(5).

⁹ Village Law § 9-902(6).

¹⁰ "The board of trustees may, upon its own motion, cause to be submitted for the approval of the qualified electors of such village, an act or resolution of such board in connection with which a petition could be filed as provided in this article and the proceedings thereunder shall be the same as if such petition had been filed in accordance with the provisions of this article."

¹¹ 1988 Ops. Atty. Gen. (Inf.) 137, 1988 WL 410606 (1988).

A local law which changes the term of an elected official is subject to a mandatory referendum.¹² The referendum must be held at a general election held not less than 60 days after the adoption of the law unless a petition is submitted within 30 days for its submission at a special election.¹³ Election Law Election Law § 4-108(1)(b), requires that the Village Clerk “transmit to each board of elections a certified copy of the text of such... referendum and a statement of the form in which it is to be submitted” three months before the general election at which a referendum is to be submitted. The 2023 general election will be held on November 7, 2023. Thus, in order for the referendum to be held at the general election it must be adopted and transmitted to the Board of Elections no later than after August 6, 2023.

¹² Municipal Home Rule Law § 23(2)(e).

¹³ Municipal Home Rule Law § 23(1). “A local law subject to mandatory referendum as provided in this section or in any other state statute, shall be submitted for the approval of the electors at a general election of state or local government officers in such local government held not less than sixty days after the adoption thereof unless such local law provides for its submission for approval of the electors at a special election or unless, within thirty days after the adoption of such local law, a petition signed, authenticated and subject to certification by the clerk as provided for other petitions in section twenty-four of this chapter is filed with such clerk requesting its submission at a special election. If the local law so provides or if a valid petition is so filed requesting the submission of the local law at a special election, it shall be submitted at such a special election held in such local government not less than sixty days after the adoption of the local law, the date for which special election shall be fixed by the legislative body. In either case such local law shall become operative as prescribed therein only if approved at such election by the affirmative vote of a majority of the qualified electors of such local government voting upon the proposition.” Municipal Home Rule Law § 23(1).