BERCHEM MOSES

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PLEASE REPLY TO
MILFORD OFFICE
WWW.BERCHEMMOSES.COM

December 4, 2018

Kevin Barber
General Manager
Third Taxing District
2 Second Street
East Norwalk, CT 06855

Re: Filling vacancy in elective office

Dear Kevin,

You have told me that Commissioner Brown will be resigning shortly due to a move out of state, and you have asked me to review the process for filling the vacancy.

The Charter of the Third Taxing District ("TTD") is silent on the question of filling a vacancy in elective office; however, Section 1-174 of the Norwalk City Charter is applicable.

By way of background, the issue of filing vacancies in elective office in Norwalk was the subject of a 1981 lawsuit begun by the first, second and third taxing districts against the City of Norwalk. In that decision, copy attached, the superior court reviewed the history of the City's formation pursuant to a 1913 Special Act, No. 352. In 1915, Special Act No. 367 amended Section 55 of Special Act No. 352 by inserting a provision to clarify that a vacancy in elective office in a taxing district is to be filled by the remaining commissioners of the applicable taxing district. When, in 1978, the City unilaterally proposed to alter the Charter provisions for filling vacancies in the taxing districts, the first, second and third taxing districts filed a lawsuit and successfully contested the City's right to do so. The court concluded that the City had no authority to modify the legislative acts which specifically conferred certain powers and authority upon the individual taxing districts.

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It appears that the first and second taxing districts have subsequently amended their charters, including how to address vacancies in those districts; however, it appears that the TTD has not. Accordingly, the provisions of the 1913 and 1915 Special Acts, as set out in Section 1-174 of the Norwalk Charter, govern how vacancies in elective office are to be filled in the TTD. The vacancy left by the resignation of Commissioner Brown is to be filled by the remaining commissioners of the TTD; however, per Section 1-174 of the Charter, the person they select shall be of the same political party as Commissioner Brown and shall serve for the balance of his unexpired term.

Section 1-174 of the Norwalk Charter refers to section 9-221 of the Connecticut General Statues. That section is not relevant in this matter given that Commissioner Brown's term does not expire until November 2021. Also, Section 1-174 provides that none of its provisions shall supersede section 9-167a of the Connecticut General Statues. In fact, the replacement of Commission Brown with a member of the same political party, as required by the Charter, does not conflict with section 9-167a regarding minority representation.

I trust this letter addresses your question. Please contact me should you wish to discuss any particulars.

Sincerely yours,

Stephen W. Studer

SWS/gr.

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