



201 Rue Beauregard
Lafayette, Louisiana 70508
P.O. Box 80338
Lafayette, Louisiana 70598
Phone: 337.237.6075 Fax: 337.235.1748

Paul D. Escott
Assistant City-Parish Attorney

E-mail: pescott@lafayettela.gov

INTERNAL SUPPLEMENTAL M E M O R A N D U M
PRIVILEGED AND CONFIDENTIAL

TO: Josh Carlson, Parish Councilman
FROM: Paul D. Escott, Assistant City-Parish Attorney
DATE: July 6, 2021
RE: Charter Commission – Required Vote of Councils

FACTUAL BACKGROUND

In response to your previous request that I address the above referenced matter, I issued an opinion on March 16, 2021 that concluded, pursuant to Section 7-03 of the LCG Charter (“Charter”), that a two-thirds vote of both the City Council and the Parish Council would be required to convene a Charter Commission for the purposes of amending or repealing the Charter. That opinion, which I stand by, is attached.

On June 29, 2021, Stuart R. Breaux and Protect the City Committee Chair Jan Swift sent an e-mail to the members of the Lafayette City Council and Lafayette Parish Council arguing that the required vote to convene a Charter Commission is a simple majority of the Councils, not the two-thirds majority vote of the Councils under Section 7-03(A) of the Charter. In my March 16, 2021 opinion, I recognized the fact that on at least one previous occasion, a Charter Commission had been established by simple majority vote of the then Lafayette City-Parish Council. The drafters of the June 29, 2021 e-mail point to this fact as being conclusive of the legal issue, mentioning no less than six (6) times this “prior” action and interpretation of our Charter. Previous unlawful action, however, cannot support future unlawful action. More simply, “[t]wo wrongs do not make a right.” *Hogan v. Hogan*, 15-2018 (La. 1/8/16), 182 So. 3d 953.

Further, prior to addressing the merits of the ill-advised June 29, 2021 e-mail, I must reject the allegations therein that requiring a two-thirds majority vote of the Councils to convene a Charter Commission under Section 7-03(A) of the Charter somehow constitutes “disinformation” (i.e., the intentional dissemination of false information in an effort to deceive). It remains the

position of the LCG Legal Department that our Charter requires a two-thirds majority vote of each Council to convene a Charter Commission. This interpretation of our Charter is grounded firmly in logic and sound legal reasoning.

I now offer this memorandum as a supplement to the March 16, 2021 opinion in order to directly respond to the arguments advanced in the June 29, 2021 e-mail, as well as to provide additional support as to why a two-third's majority vote of both Councils is required to convene a Charter Commission.

DISCUSSION

I. When The Language In Charter Section 7-03 Was First Adopted, The Only Procedural Method Available To Amend The Charter Was By Charter Commission

The June 29, 2021 e-mail argues that the Charter is silent as to the required vote to convene a Charter Commission. What this position fails to realize is that, at the time that Section 7-03 of the Charter was written, which contained the two-thirds vote requirement, the only procedural mechanism available to the then City-Parish Council to propose amendments to the Charter under state law was via Charter Commission. As such, there can be no doubt that the two-thirds majority vote requirement of Section 7-03 of the Charter, entitled "Amending and Repealing the Charter", applies to a Charter Commission.

The authority of a local government to establish a Charter Commission has always been grounded in the Louisiana Constitution. Article VI § 5 of the Louisiana Constitution provides that "[t]he governing authority of a local governmental subdivision may appoint a commission to prepare and propose a charter or an alternate charter, or it may call an election to elect such a commission." La. Const. Ann. art. VI, § 5.

Building upon that Constitutional authority are various state statutes. La. R.S. 33:1395(A) states that "[a]ny parish or municipality may draft, adopt, or amend a home rule charter. The method to be used is the charter commission, which can either be appointed by the governing body or elected by the people." Prior to 2006, La. R.S. 33:1395.4 provided that "[t]he method and frequency of amending the charter shall be provided in said charter."

However, the Louisiana Legislature amended and reenacted La. R.S. 33:1395.4 in 2006 to include, among other things, the following underlined language:

The method and frequency of amending the charter may be provided in said charter and the charter may provide a procedure by which the local governing authority or resident of the municipality or parish may propose changes in the charter. Notwithstanding the provisions of R.S. 33:1395(A), in addition, any parish or municipality may amend an existing home rule charter either by amendments proposed by the charter commission or by amendments proposed by the governing body.

La. Atty. Gen. Op. No. 17-0104 (July 27, 2017) (citing La. R.S. 33:1395.4(A)). According to the Louisiana Attorney General, the underlined language above expressly authorized, for the first time, an amendment of a Charter to be proposed directly by the local governing body. *Id.* Prior to this 2006 amendment, state law required that “[t]he method to be used is the charter commission.” La. R.S. 33:1395(A).

Importantly, prior to the amendment to La. R.S. 33:1395.4 in 2006, Section 7-03 of our Charter provided, just as it does today, that “[p]roposals to amend or repeal this charter may be made by a two-thirds vote of the authorized membership of the Council or by petition [of registered voters].” Given the fact that prior to 2006 state law did not even authorize a local government to propose amendments to a Charter without the use of a Charter Commission, there can be no doubt that Section 7-03 (and the two-thirds majority vote required therein) applies to the convening of a Charter Commission.

II. Applying Two Different Standards for Council-Initiated Action To Amend or Repeal the Charter is Erroneous

“The method and frequency of amending the charter may be provided in said charter...” La. R.S. 33:1395.4. Our Charter provides that method in a Section entitled “Amending or Repealing the Charter.” Charter Sec. 7-03. Under Section 7-03 of our Charter, there are two Council-initiated methods to amend or repeal the Charter, both of which are “made by a two-thirds vote of the authorized membership of [each Council].” The first method is by direct proposal of the Councils. The second Council-initiated method is to convene a Charter Commission.

The authors of the June 29, 2021 e-mail and those ascribing to its conclusions attempt to distinguish the Council-initiated establishment of a Charter Commission from the Council-initiated direct amendment in an effort to skirt the two-thirds majority vote requirement under Section 7-03. Unquestionably, both methods require initial action on the part of the Councils, and both methods lead to the same result – a proposal to amend or repeal the Charter. Applying two different standards to amend or repeal the Charter, one of which requires you to ignore the section of our Charter entitled “Amending and Repealing the Charter”, is simply illogical.

Even more illogical, however, is the possibility that the Councils establish a Charter Commission via simple majority vote, and then appoint themselves to that commission.¹ Once established, the Charter Commission (consisting of Council members) would develop a proposal to amend or repeal the Charter, which would then be voted on by the electorate. Alternatively, those same Councils could forgo the establishment of a Charter Commission and offer the same exact proposal to amend or repeal the Charter directly via ordinance. In both cases, the Council members develop and propose amendments to the Charter. Yet, according to some, if the Council members call themselves a Charter Commission, the two-thirds majority vote requirement to amend or repeal the Charter does not apply. Our Charter cannot be interpreted in a way that dismisses its provisions.

¹ La. Atty. Gen. Op. No. 92-222.

Regardless of which method the Councils choose to utilize to propose amendments to the Charter, the same standard must apply. The only provision of our Charter that governs amendments to our Charter mandates that “proposals to amend or repeal the Charter” requires two-thirds majority vote of both Councils. LCG Charter Sec. 7-03.

III. The Case of *Cossich v. Plaquemine Parish Government* is Inapplicable

The authors of the June 29, 2021 e-mail claim that the Fourth Circuit’s opinion in *Cossich v. Plaquemines Par. Gov’t*² “interpreted a provision similar to Section 7-03 of the Charter,” and that the Court held that use of the word “may” authorized the Plaquemine Parish Council “to convene a charter commission by majority vote under LSA-Const. art. VI, § 5.”

Plaquemine’s Charter provision at issue in *Cossich* differs greatly from Section 7-03 of our Charter – the Plaquemine Charter provision simply requires that “amendment to the Charter may be proposed by an Ordinance” and is completely devoid of a two-thirds vote requirement. Further, nowhere in *Cossich* does the Fourth Circuit discuss, much less conclude, that as general rule, a simple majority vote is required to convene a Charter Commission. Instead, *Cossich* involved a situation where the Plaquemine Parish Council convened a Charter Commission via Resolution, only to later try to prevent that Commission’s proposal from being sent to the voters.

Finding that a Charter Commission had been validly created, the Court easily concluded that state law, specifically La. R.S. 33:1395.2, provides that “[t]he calling of an election on a proposed charter once it has been completed by the charter commission is mandatory.” *Id.* (citing La. R.S. 33:1395.2). In fact, once a Charter Commission returns proposed amendments to a Charter, “the law requires the Council to submit it [to the voters] in unaltered form.” *Id.* at 874. In *Cossich*, “the fact that the creation of [the charter] commission had legal consequences that [certain Plaquemine Parish Council members did not foresee] in no way changes the legal consequences.” *Id.* at 876.

If anything, *Cossich* only supports the conclusion that Section 7-03 of our Charter requires a two-thirds majority vote to establish a Charter Commission. Notably, in evaluating whether the Plaquemine Charter Commission was properly established, the Court looked at the provision in the Plaquemine Charter on how to amend the Charter.

Cossich is the only jurisprudential authority cited in the June 29, 2021 e-mail opinion.

IV. Section 7-03 of the Charter Supplements State Law regarding Amending or Repealing our Charter

The drafters of the June 29, 2021 e-mail aptly note that “the convening of a charter commission is governed by Article VI, § 5 of the Louisiana Constitution of 1974, which states that ‘[s]ubject to and not inconsistent with this constitution, any local governmental subdivision may draft, adopt or amend a home rule charter in accordance with this Section. The governing authority

² 50 So. 3d 869 (La. App. 4th Cir. 2010).

of a local governmental subdivision may appoint a commission to prepare and propose a charter or alternate charter, or it may call an election to elect such a commission.” La. Const. art. VI § 5.

State statutes build upon this Constitutional provision, allowing “[t]he method and frequency of amending the charter [to] be provided in said charter and the charter may provide a procedure by which the local governing authority or resident of the municipality or parish may propose changes in the charter.” La. R.S. 33:1395.4(A). Neither the Louisiana Constitution nor state statutes dictate the required vote necessary to convene a Charter Commission. Instead, state law defers to the local subdivision to establish the methods and procedure associated with amending and repealing a Charter.

Section 7-03 of our Charter, entitled “Amending or Repealing the Charter”, provides precisely what state law allows – the methods and procedure by which our local governing authority may propose amendments to our Charter. The first method is for the Councils to create a proposal to amend or repeal our Charter on their own. The second method is for the Councils to create a proposal to amend or repeal our Charter through the use of a Charter Commission. Regardless of which method is chosen by the Councils, both require a two-thirds majority vote of each Council under Section 7-03.

V. Requiring Two-Thirds Majority Vote to Amend or Repeal the Charter Mirrors the Process to Amend the Louisiana Constitution and U.S. Constitution

Our Home Rule Charter is our Constitution. It sets out our local plan of government and establishes the duties and powers, as well as the limitations of those duties and powers, assigned to each branch of our government. Because our Charter is the epicenter of our local government, legislatively initiated proposals to amend it requires a heightened two-thirds majority vote threshold.

This heightened threshold is found in the Louisiana Constitution and the United States Constitution as well. Under the Louisiana Constitution, amendments thereto can be proposed directly by joint resolution of the legislature, or by constitutional convention. In both cases, two-thirds approval of the elected members of each house is required. La. Const. art. 13 §§ 1, 2. Under the U.S. Constitution, proposed amendments can be offered with a two-thirds majority vote of both the House of Representatives and the Senate. U.S. Const. art. V.

VI. Principles of Statutory Interpretation Applied

The authors of the June 29, 2021 e-mail seek to determine the legislative intent of the drafters of our Charter by opining that “[i]f the drafters of [Section 7-03] had intended to require a two-thirds vote of the governing authority to convene a charter commission, they would have expressly required a two-thirds vote.” Determining legislative intent is not necessary, considering that at the time that Section 7-03 of the Charter was written, which contained the two-thirds vote requirement, the only procedural mechanism available under state law to the then City-Parish Council to propose amendments to the Charter was via Charter Commission.

“Courts should avoid a construction of the statute which would lead to absurd results; the statute must be interpreted in such a manner as to render its meaning rational, sensible, and logical.” *Broussard v. F.A. Richard & Assocs., Inc.*, 98-1167 (La. App. 3 Cir. 3/17/99), 732 So. 2d 578, 584, *writ denied*, 99-1048 (La. 6/4/99), 744 So. 2d 625. “[E]ffect should be given to the purpose indicated by a fair interpretation of the language employed, and the construction which effectuates, rather than that which destroys a plain intent or purpose of the constitutional provision.” See *Kishbaugh v. City of Lafayette Gov't*, 19-417 (La. App. 3 Cir. 6/21/19), 275 So. 3d 471, 479 (citing *Bd. Of Comm'rs of Orleans Levee Dist. v. Dep't of Nat. Res.*, 496 So. 2d 281, 298 (La. 1986) (on rehearing) (citations omitted)). Furthermore, “the rules of statutory construction require that the general intent and purpose of the Legislature in enacting the law must, if possible, be given effect [and] Courts should give effect to all parts of a statute and should not give a statute an interpretation that makes any part superfluous or meaningless, if that result can be avoided.” *Montgomery v. St. Tammany Par. Gov't by & through St. Tammany Par. Council*, 17-1811 (La. 6/27/18), --- So. 3d. ---, 2018 WL 3151290 (internal citations omitted).

Failing to apply the two-thirds majority vote requirement of Section 7-03 of our Charter entitled “Amending or Repealing the Charter” to a proposal to amend or repeal our Charter is inconsistent with the foregoing principles of statutory interpretation.

VII. Any Ordinance Purporting to Establish Charter Commission Without Required Two-Thirds Majority Vote is Void and, Out of An Abundance of Caution, Should be Vetoed

It is the position of the LCG Legal Department that a two-third's majority vote of each Council is required to convene a Charter Commission under Section 7-03 of our Charter. Any ordinance purporting to establish a Charter Commission with less than the required two-thirds vote would violate Section 7-03 of the Charter and, accordingly, would be void *ab initio*. La. Atty. Gen. Op. No. 09-0306.

Further, to the extent an Ordinance purporting to establish a Charter Commission is adopted without the required two-thirds majority vote of each Council, the LCG Legal Department strongly recommends that the Lafayette Mayor-President veto same to prevent LCG from proceeding in a manner that, in the opinion of the LCG Legal Department, would violate Section 7-03 of our Charter. Should the Councils wish to override this veto, they may do so by a favorable vote of at least two-thirds majority of each Council. LCG Charter Sec. 2-13(C).

CONCLUSION

Section 7-03(A) of the Charter requires a two-thirds vote of the authorized membership of each of the City Council and the Parish Council to initiate proposals to amend or repeal the Charter. This two-thirds voting requirement exists for proposals to amend or repeal the Charter offered directly by the Councils via joint ordinance, or through the Councils' establishment of a Charter Commission.

When Section 7-03 was written, under state law the only procedural mechanism available to the then City-Parish Council to propose amendments to the Charter was via Charter

Commission. As such, Section 7-03, and the two-thirds majority vote requirement contained therein, applies to convening a Charter Commission.

Section 7-03 of our Charter is the only provision of our Charter that governs amendments thereto. This Section, entitled "Amending or Repealing the Charter", provides precisely what state law allows – the methods and procedure by which our local governing authority may propose amendments to our Charter.

To the extent an Ordinance purporting to establish a Charter Commission is adopted without the required two-thirds majority vote of each Council, the LCG Legal Department strongly recommends that the Lafayette Mayor-President veto same to prevent LCG from proceeding in a manner that, in the opinion of the LCG Legal Department, would violate Section 7-03 of our Charter.

Respectfully submitted,



Paul D. Escott
Assistant City-Parish Attorney
Lafayette City-Parish Consolidated Government



201 Rue Beauregard
Lafayette, Louisiana 70508
P.O. Box 80338
Lafayette, Louisiana 70598
Phone: 337.237.6075 Fax: 337.235.1748

Paul D. Escott
Assistant City-Parish Attorney

E-mail: pescott@lafayettela.gov

INTERNAL M E M O R A N D U M
PRIVILEGED AND CONFIDENTIAL

TO: Josh Carlson, Parish Councilman
FROM: Paul D. Escott, Assistant City-Parish Attorney
DATE: March 16, 2021
RE: Charter Commission – Required Vote of Councils

ISSUE:

Is a two-thirds majority vote of each Council under LCG Charter Section 7-03(A) applicable to the calling of a Charter Commission?

SHORT ANSWER

Yes. Pursuant to LCG Charter Section 7-03(A), it is my opinion that the affirmative two-thirds vote of the authorized membership of both the City Council and the Parish Council is required to establish a Charter Commission.

DISCUSSION

As a brief background, LCG is a local governmental subdivision which operates under a Home Rule Charter ("Charter"). The legislative branch of LCG currently consists of an elected City Council and an elected Parish Council.¹ Each Council has five (5) members elected from single-member districts.² "Proposed amendments to [our] Charter" require an Ordinance adopted by both Councils.³

¹ Charter, Sec. 1-02.

² Charter, Sec. 2-01(A).

³ Charter, Sec. 2-11 (A)(18); see also Charter, Sec. 2-11 (E)(4).

Section 7-03 of our Charter, titled “Amending or Repealing the Charter”, provides for two distinct options by which proposals to amend or repeal the Charter may be initiated and, thereafter, presented to the voters:

- (i) by proposal of the Councils with two-thirds vote of the authorized membership of each of the City Council and the Parish Council⁴; and/or
- (ii) by petition of the voters signed by not less than fifteen (15) percent of the total number of registered voters of the City of Lafayette and not less than fifteen (15) percent of the total number of registered voters of the Parish of Lafayette for amending the charter and not less than twenty (20) percent of the registered voters of the City of Lafayette and not less than twenty (20) percent of the registered voters of the Parish of Lafayette to repeal the charter⁵.

Your request for a legal opinion on the issue presented hereinabove focuses on the interpretation of Section 7-03(A), specifically that portion set forth in (i) directly above. If the Councils, acting jointly and under the authority granted to them in Charter Section 7-03(A), choose to submit a proposal to amend or repeal our Charter to the qualified electors of the City-Parish Government for ratification, there are two “procedural” methods available to accomplish that goal. One way would be for the Councils to create a proposal to amend or repeal our Charter on their own, via joint ordinance adopted with the approval of at least “*two-thirds vote* of the authorized membership of each [Council]”. The second procedural method available to the Councils to create a proposal to amend or repeal our Charter is through the use of a Charter Commission.

Considering the above, the underlying question is: “With regard to a proposal to amend or repeal our Charter, is the required two-thirds majority vote of each Council under Section 7-03(A) avoidable simply by using the procedural vehicle of a Charter Commission?” In my opinion, pursuant to Section 7-03(A), both procedural methods available to the Councils to initiate the amendment or repeal of our Charter require a two-thirds affirmative vote of each Council.

Our Charter, specifically Section 7-03, imposes a heightened level of importance to actions related to a proposal to amend or repeal the Charter. Based on the provisions of Section 7-03, such an important act by the legislative branch of LCG cannot be accomplished without the joint approval, by a two-thirds majority vote, of each the Parish Council and the City Council. Unlike most general ordinances, a joint ordinance adopted by two-thirds vote of the Councils involving proposals to amend our Charter is not subject to the veto power of the Mayor-President.⁶ This concept is not uncommon in our law. Our Charter is our “Constitution” and changes to same involve greater scrutiny. The procedure for amending our State Constitution is a prime example of this same concept.⁷

⁴ Charter, Sec. 7-03(A).

⁵ Charter, Sec. 7-03(A).

⁶ Charter, Sec. 2-13(D).

⁷ See La. Const. art. 13 §§ 1 – 2 (requiring two-thirds affirmative vote of both houses to propose constitutional amendments either legislatively or by calling a constitutional convention).

The purpose for the existence of Section 7-03 in our Charter is clear. The drafters of the document intended to impose a greater level of protection of its Charter's provisions from revision and/or repeal than that which is available to other legislative acts enacted.

The above notwithstanding, on at least one previous occasion, the formation of a Charter Commission (and subsequent submission to the voters of the proposed Charter amendments) has been established by simple majority vote of the then Lafayette City-Parish Council. There, the ordinance cited Article VI, Section 5(A) of the Louisiana Constitution, La. R.S. 33:1395.1, and Section 7-07 of our Charter as authority for the establishment of this Charter Commission. Section 7-07 provides for the establishment of Administrative Boards and Commissions "created by ordinance or in accordance with general state law."

After close review of the Charter and Louisiana law, this previous interpretation is problematic. Should only a simple majority vote of the Councils be utilized to establish a Charter Commission, and should that Charter Commission's proposal to amend or repeal the Charter be subsequently submitted to and ratified by the voters, the Charter will have been amended or repealed without ever applying the specific voting requirement in the section of our Charter titled "Amending or Repealing the Charter" (*i.e.*, the two-thirds vote requirement under Section 7-03(A)). The reading out of the specific voting requirement in the section of our Charter titled "Amending or Repealing the Charter" does not give effect to the express purpose of Section 7-03 and is contrary to this State's jurisprudence.

"[E]ffect should be given to the purpose indicated by a fair interpretation of the language employed, and the construction which effectuates, rather than that which destroys a plain intent or purpose of the constitutional provision.") *See Kishbaugh v. City of Lafayette Gov't*, 19-417 (La. App. 3 Cir. 6/21/19), 275 So. 3d 471, 479 (citing *Bd. Of Comm'rs of Orleans Levee Dist. v. Dep't of Nat. Res.*, 496 So. 2d 281, 298 (La. 1986) (on rehearing) (citations omitted)). Furthermore, "the rules of statutory construction require that the general intent and purpose of the Legislature in enacting the law must, if possible, be given effect [and] Courts should give effect to all parts of a statute and should not give a statute an interpretation that makes any part superfluous or meaningless, if that result can be avoided." *Montgomery v. St. Tammany Par. Gov't by & through St. Tammany Par. Council*, 17-1811 (La. 6/27/18), --- So. 3d. ---, 2018 WL 3151290 (internal citations omitted).

As a final point, the authority for the Councils to establish a Charter Commission to amend or repeal our Charter is found in Article VI, Section 5 of the Louisiana Constitution. Under this Section of the Louisiana Constitution, "[t]he governing authority of a local governmental subdivision may appoint a commission to prepare and propose a charter or an alternate charter, or it may call an election to elect such a commission." La. Const. Ann. art. VI, § 5(A). State law further provides that a Charter Commission "shall be elected or appointed in the manner provided by the governing authority of the municipality or parish." La. R.S. 33:1395.1.

Reading the Louisiana Constitution and Title 33 of the Louisiana Revised Statutes together, it becomes clear that the grant of authority to the Councils to utilize a Charter Commission includes the express requirement that the "manner" (*i.e.* procedure) in which said Commission is created is to be that which is provided by the local governing authority. Section 7-03 of our Charter does

just that, incorporating and applying the two-thirds vote requirement to the Councils' initiation of *all* procedures and methods utilized to amend or repeal the Charter – whether on their own or by Charter Commission. Such an interpretation gives effect to the purpose indicated and this construction effectuates, rather than destroys, the plain intent and purpose of our Charter and its provision.

CONCLUSION

Section 7-03(A) of the Charter requires a two-thirds affirmative vote of the authorized membership of each of the City Council and the Parish Council to initiate proposals to amend or repeal the Charter. This two-thirds voting requirement exists for both proposals to amend or repeal the Charter offered directly by the Councils via joint ordinance, or through the Councils' establishment of a Charter Commission.