

January 17, 2023

Richmond Town Council
c/o Erin Liese, Town Clerk
Richmond Town Hall
Richmond, RI

Re: Vacancy on the Chariho Regional School Committee

Dear Councilors:

This firm represents the Chariho Regional School District. Reference is made to the agenda for the January 17, 2023, meeting ("Agenda") for the Richmond Town Council.

In particular, I write with regard to Item J.6:

Discussion and Consideration of Appointment of the Chariho Regional School
Committee member to fulfill the term expiring November, 2024

While I recognize that the Agenda states that "the Council May Review, Discuss and/or take Action" on any items, I am not clear from the Agenda what action the Council intends to take with regard to the vacancy created by the resignation of Gary Ligouri from the Chariho Regional School Committee ("Chariho School Committee"). I don't know what it means to "consider" an appointment when the agenda does not specify who is being appointed. See Tanner v. Town Council, 880 A.2d 784, 798 (R.I. 2005) (notice included list of potential appointees to be interviewed).

I bring this matter to your attention because I fear that there is some confusion that there is a "conflict" between the Chariho Act, 1958 R.I. Pub. L. ch. 55, § 10(1)(c) ("Chariho Act"), and the Richmond Home Rule Charter, 2009 R.I. Pub. L. ch. 12, §§ 1-2 ("Richmond Home Rule Charter"). In fact, there is no conflict whatsoever between the Chariho Act and the Richmond Town Charter when it comes to filling vacancies on the Chariho School Committee. Consequently, the Council need only follow the plain language of the Chariho Act and the Richmond Home Rule Charter and appoint the next highest vote getter. There is no need to explore the rules of statutory construction as suggested elsewhere.

Hopefully, we can all agree that the Rhode Island Supreme Court has posited that, if at all possible, statutes should be interpreted so that they are consistent and not conflicting. "When confronted with statutory provisions that are *in pari materia*, this Court will 'construe them in a manner that attempts to harmonize them and that is consistent with their general objective scope.'" Kells v. Town of Lincoln, 874 A.2d 204, 212 (R.I. 2005) (quoting State v. Dearmas, 841 A.2d 659, 666 (R.I. 2004). By doing so, a court avoids negating an enactment by the General Assembly because statutory repeals by the court, as opposed to the legislature, are disfavored. Berthiaume v. Sch. Comm., 121 R.I. 243, 248, 397 A.2d 889, 893 (1979). Thus "[w]here there are two acts upon the same subject, effect should be given to both if possible." Posadas v. Nat'l City Bank, 296 U.S. 497, 503 (1936). Every effort should be made to

harmonize the two laws. DeSanto v. Hyundai Motor Fin. Co., 882 A.2d 561, 562 n.2 (R.I. 2005). If necessary to harmonize two rules, a court will construe one or both strictly. [CITE]

Those principles apply here. The Rhode Island Supreme Court has said that “[w]hen the language of a statute, or correspondingly a charter, is clear and unambiguous, we interpret the statute literally and give the words their plain and ordinary meaning.” Kells, 874 A.2d at 212.

Section 10(1)(c) of the Chariho Act states:

In the event of any vacancy by death, resignation or incapacity to serve of any of term of any member of said regional school district committee, the town council of the member town in which such vacancy occurs shall fill such vacancy by election by a majority vote of the town council of said town for the unexpired term of the member whose office is thus vacated.

1958 R.I. Pub. L. ch. 55, § 10(1)(c). Put simply, the town council, be it in Charlestown, Richmond, or Hopkinton, fills the vacancy by election by a majority vote. In other words, the town council, not the town clerk or the town manager or the board of canvassers is responsible for filling any vacancy on the Chariho School Committee in each of the three Chariho towns.

In Richmond, however, the voters of Richmond and the General Assembly sought to further limit who the Richmond Town Council can elect to fill that vacancy. Not only does the person filling the vacancy have to live in Richmond, for example, see R.I. Gen. Laws § 16-2-5, the voters of Richmond and the General Assembly have further limited who can be appointed. The Richmond Home Rule Charter states, in relevant part:

If a Town Council seat or a school committee seat becomes vacant, the Town Council shall appoint the unelected candidate who received the greatest number of votes for that office in the most recent general or special election.

2009 R.I. Pub. L. ch. 12, § 1 (ratifying Art. 2, § 5(B)). Thus, just like the Richmond Town Council cannot appoint someone from Cranston or Cumberland to fill a vacancy on the Chariho School Committee, the Richmond Town Charter limits who the Richmond Town Council can appoint/elect: “the unelected candidate who received the greatest number of votes for that office in the most recent general or special election.” Id.¹

¹ A good example of this principle of making every effort to read statutes consistently is Local 799 v. Napolitano, 516 A.2d 1347 (R.I. 1986). In Napolitano, the court looked at the Providence City Charter ratified by the General Assembly in 1981 which required that all firefighters had to reside in the city of Providence. The court held that the Providence City Charter ratified by the General Assembly superseded a statute already in place that posited the opposite—that firefighters did not have to reside in Providence. The fact that the legislation ratifying the Providence City Charter said that “all acts and parts of acts inconsistent herewith are hereby repealed” made it clear that the pre-existing prohibition on a residency requirement for firefighters had been repealed by the subsequent enactment of the Providence City Charter. Id. at 1349.

Ordinarily, a court “will not look beyond” a statute’s “clear and sensible meaning.” Such v. State, 950 A.2d 1150, 1159 (R.I. 2008) (quoting First Republic Corp. of Am. v. Norberg, 116 R.I. 414, 418, 358 A.2d 38, 41 (1976)). Just for the sake of argument, however, let’s assume that the two statutes could not be read consistently—they are “irreconcilably repugnant,” McKenna v. Williams, 874 A.2d 217, 241 (R.I. 2005) (quoting Berthiaume, 121 R.I. at 248-49, 397 A.2d at 893), even though they were both enacted by the same legislative body. See Such, 950 A.2d at 1156. In that situation, the Richmond Home Rule Charter would provide the correct rubric because a court would follow the last enacted statute, not the first. McKenna, 874 A.2d at 241. The result here, therefore, would be the same—the Richmond Home Rule Council would appoint the unelected candidate who received the greatest number of votes for that office in the most recent general or special election.”

If the Town Council believes that there is a conflict, notwithstanding the plain language of both the Chariho Act and the Richmond Home Rule Charter, the Town Council cannot ignore another canon of construction—the specific controls the general. See Felkner, 968 A.2d 870 (collecting authorities). “No direct conflict is required: the rationale against applying a general provision in this circumstance is to protect against ‘undermin[ing] limitations created by a more specific provision.’” In re Lazarus, 478 F.3d 12, 19 (1st Cir. 2007) (applying the doctrine of specialis derogate lex generalis and quoting Varity Corp. v Howe, 516 U.S. 489, 511 (1996)).

I fully respect the right of the Richmond Town Council to disagree with my analysis. I respectfully give notice, however, that I will advise the Chariho School Committee not to recognize any person putatively appointed to the Chariho School Committee in violation of both the Richmond Home Rule Charter and the Chariho Act because both can be read together. I have no choice in the matter to give such advice. Otherwise, every decision of the Chariho School Committee would be subject to challenge on the grounds that the Chariho School Committee was improperly constituted and, thus, every decision of the Chariho School Committee would be void. Such a case would go to the Rhode Island Supreme Court pursuant to a writ of quo warranto. See generally, Felkner, 968 A.2d at 865 (upholding the position of the Chariho School Committee; Hopkinton town charter precluded resident from serving simultaneously on the Chariho School Committee and the Hopkinton Town Council).

Moreover, the Chariho Act and the Richmond Home Rule Charter are not inconsistent. The fact that the enabling legislation for the Providence City Charter said that prior inconsistent acts were repealed is not relevant in Richmond’s case because the Richmond Home Rule Charter and the Chariho Act (1) can be harmonized without that language in Napolitano, and (2) the General Assembly knew that the Chariho Act and the Richmond Home Rule Charter were consistent, and, accordingly the General Assembly did not find it necessary to amend the Chariho Act in 2009. See Peter Scotti & Assocs., Inc. v. Yurdin, 276 A.3d 915, 927 (R.I. 2022).

The one simple way to avoid any disputes is to read the Richmond Home Rule Charter and the Chariho Act consistently, as this Town Council did most recently in 2016 and appoint/elect the next unelected person who received the most votes. I respectfully ask that you consider that option.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jon M. Anderson", with a long horizontal flourish extending to the right.

Jon M. Anderson

cc: Chariho School Committee
Karen Ellsworth, Richmond Solicitor