

Ben Martig

From: Ben Martig
Sent: Thursday, May 25, 2017 10:54 PM
Subject: FW: INFORMATIONAL EMAIL: Charter Commissioners Colby & Schotzko
Attachments: Thompson Order Appointing Members.pdf; 2017_04_26 Chief Judget Letter to Charter Chair.docx

Importance: High

Honorable Mayor & City Council;

For your information, the City Charter Commission met this evening. I am forwarding you an email I had sent to them – including attachments - regarding the Judge’s appointment of Charter Commissioner Colby and Charter Commissioner Schotzko. Charter Commissioners Ludescher (Chair), Heisler, Swift, Oney, and Colby were present at the meeting this evening. Commissioners Schotzko and Dennison were absent. Chair Ludescher suggested at the beginning of the agenda that because the Colby and Schotzko submitted their applications directly to the District Court, they should not be recognized as members. The following is a reference to the City Charter that he has referenced requires all applications go through the Charter Chair:

Section 2.3. - Home Rule Charter. As provided by Article XII, Sections 4 and 5 of the Minnesota Constitution, and Minn. Stat. ch. 410, the City of Northfield voted in 1910 to adopt home rule government and define it as a charter which is now part I of the City Code. The statutes provide that the process of originating and amending of a charter be managed by a charter commission of seven (7) members. Any registered voter of the city may submit an application for appointment. The chairperson of the charter commission will oversee the process for receiving, verifying eligibility and forwarding applications of qualified applicants to the Chief Judge of the Third Judicial District Court who will make the appointment(s). Ord. No. 934, 7-10-2012, effective 10-12-2012)

Please see my email and attachments for the position of the City Attorney and I on related to the interpretations of Chair Ludescher.

There was one other applicant Mr. David Roberts who did not submit an application directly to the District Court Judge, but did through the City Clerk that was provided to Chair Ludescher. Colby and Schotzko had also originally submitted their applications to Chair Ludescher in December before they submitted their applications directly to the Judge in April, possibly due to failure of submitting the applications to the District Judge. Chair Ludescher has also argued that Schotzko had withdrawn her application and therefore Chair Ludescher had intended to forward on Mr. Colby and Mr. Roberts as nominees to the District Court Judge. Ms. Schotzko has disputed that she ever committed verbally or in writing her intent to rescind her application. The applications were submitted in December of 2016 to Chair Ludescher and I is my understanding they were not forwarded until sometime in April, which caused issues in the process.

My email, which was drafted in consultation and support of the City Attorney, outlines our opinion of the matter. The Charter Commissioners did not recognize Commissioner Colby at the meeting this evening. Commissioner Schotzko was unable to attend. Because Commissioner Colby was not recognized by the Chair or other Commissioners I will be following through with further actions as outlined toward the end of the email below.

There is significant background to this issue and I suspect this email may not be completely clear due to complexity of the issue, details of the process or otherwise. City Attorney Hood and I will be giving more information but just consider this awareness of an issue for now. I would be happy to talk by cell phone anytime 507-838-2764 if you would like clarification.

Additionally, I will be sending another update by separate email on a proposed amendment to the Charter that passed by the Commission this evening.

Ben Martig
City Administrator

CC: City Attorney Hood, City Clerk Little

From: Ben Martig
Sent: Thursday, May 25, 2017 5:04 PM
Subject: INFORMATIONAL EMAIL: Charter Commissioners Colby & Schotzko
Importance: High

Charter Commissioners;

Attached is the appointment order by the Chief District Judge that was referenced in the email notice I sent you last week but inadvertently did not include it previously. Thank you for bringing it to my attention that it was not attached. The City Clerk is responsible for administering oaths to those persons that the Chief Judge appoints by order and has done this and transmitted those signed oaths back to the court. By so acting, the two persons appointed by court order are now seated Charter Commission members having all powers and authority of such public office. Notwithstanding the continuing objections of the Charter Commission Chair, the court order as issued by the Chief Judge is legally binding and enforceable upon the City and Charter Commission.

As you will further note from the Judge's letter (see attached also provided to the Commission), there is nothing to prevent any person on their own initiative from submitting their name directly to the Chief Judge for appointment to a vacant charter commission position based on Minnesota Statutes, section 410.05, notwithstanding Charter, Section 2.3, which otherwise has the chair of the Charter Commission administering this process. Minnesota Statutes also authorizes the City Council, in its sole judgment and discretion, to submit names of qualified applicants to the Chief Judge. They did not do so in this case, but may do so in the future. See relevant statutory language below:

Subd. 2. "Vacancies in the commission shall be filled by appointment of the chief judge for the unexpired terms. Upon the expiration of each term, the chief judge shall appoint new commission members. ... Appointments shall be made by order filed with the court administrator of the district court. ... The commission shall submit to the chief judge of the district court, on or before December 31 of each year, an annual report outlining its activities and accomplishments for the preceding calendar year. The commission shall forward a copy of the report to the clerk of the city, ..."

Subd.3. "A city council, a charter commission, or the petitioners requesting the appointment of a charter commission may submit to the court the names of eligible nominees which the district court may consider in making appointments to the charter commission."

It is also in the Judge's discretion to appoint whom he or she deems qualified and such appointment is by court order. I would also note that the only eligibility requirement is to be a qualified voter of the city. The Charter Commission Chair simply oversees the process in an administrative capacity (and for their own purposes not restricting other processes for appointment) and may not interfere with or obstruct those persons seeking to act as volunteers and serve on the Charter Commission for the betterment of the City of Northfield.

If the other Charter Commission members fail to recognize Charter Commissioner Schotzko or Colby I will be contacting the Chief Judge on the issue as well as consulting the City Attorney on potential actions that may be appropriate.

I will print a copy of this email and attachments to have available this evening.

Ben Martig
City Administrator

507.645.3009



www.ci.northfield.mn.us

801 Washington Street
Northfield, MN 55057-2598

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DISTRICT COURT OF MINNESOTA

THIRD JUDICIAL DISTRICT

JEFFREY D. THOMPSON

CHIEF JUDGE

COURTHOUSE

171 WEST THIRD STREET
WINONA, MN 55987-3197

(507) 457-6375

FAX (507) 457-6392

April 18, 2017

Deb Little

City Clerk, City of Northfield

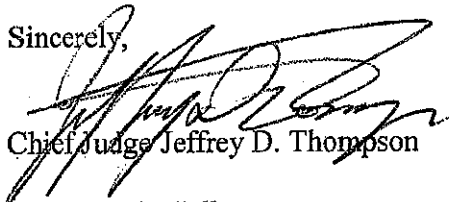
301 Washington Street

Northfield, MN 55057

Ms. Little:

I received communications directly from applicants seeking appointment to the Charter Commission for the City of Northfield. Appointing individuals to charter commissions is one of my duties as Chief Judge of the Third Judicial District. I have drafted an order appointing the requested individual to the Northfield Charter Commission. Please find the order enclosed with this letter. I am pleased to be of service to the City of Northfield. If you have any questions or concerns please contact my law clerk, Paul Ellison, at 507-457-6545 or Paul.Ellison@courts.state.mn.us.

Sincerely,


Chief Judge Jeffrey D. Thompson

CC: Greg C. Colby

CC: Judith G. Schotzko

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RICE

THIRD JUDICIAL DISTRICT

ORDER APPOINTING CITY OF NORTHFIELD
CHARTER COMMISSION MEMBERS

Whereas, two partial term vacancies exist on the Charter Commission; and

Whereas, the applicants eligibility has been verified and applicants have been out forth
for service on the commission;

NOW, THEREFORE, IT IS HEREBY ORDERED:

Pursuant to Minnesota Statute § 410.05, the undersigned Judge of District Court appoints
the following qualified voters to the Charter Commission of the City of Northfield, MN,
effective the date of this order and expiring December 31, 2017:

1. Judith G. Schotzko, 1400 Heritage Dr., #114, Northfield, MN 55057
2. Gregory G. Colby, 810 Washington St., Northfield, MN 55057

Dated: April 17, 2017

BY THE COURT:



Jeffrey D. Thompson
Chief Judge, Third Judicial District

April 26, 2017

David Ludescher
Chair, Northfield Charter Commission
801 Washington Street
Northfield, MN 55057

Mr. Ludescher:

I received your communication regarding appointments to the Northfield Charter Commission. As you know, I issued an order appointing two individuals to the commission shortly before receiving your communication. I have reviewed the communication you sent me, my previous order, and applicable Minnesota statute. You cite to a provision of the Northfield Charter. This provision does state that you will oversee verifying eligibility and submitting applicants. However, I do not read the charter provision as removing my ability to appoint individuals to the commission who submit their applications directly to me as occurred in this case. At this time, I am not inclined to rescind my initial order. If you have further information to convince me that a new or amended order is needed you are certainly welcome to submit that information. Unless I am convinced that my initial order was erroneous, my order will stand.

Sincerely,

Jeffrey D. Thompson, Chief Judge