Memo

To: Josh Kelly, Town Manager
Re: Elimination of Civil Service Commission/Board
Date: September 29, 2022

QUESTIONS PRESENTED

1. May the Town of Winchester eliminate its Civil Service Board and, if so, what is the required procedure.

2. May the Town of Winchester eliminate the Merit System from its Town Charter and, if so, what is the required procedure.

SUMMARY ANSWER

The Town may eliminate its Civil Service Board by repealing the ordinance establishing the Commission in accordance with the procedures set forth in Article III, Sections 302 and 303 of the Town charter.

Eliminating the Civil Service Board leaves in place the Merit System that requires all officers and employees in the classified service of the Town to be “appointed on the basis of merit and in conformity with recognized principles of public personnel administration.” Currently, the Civil Service Board oversees compliance with the Merit System. If the Civil Service Board is eliminated the Merit System would be administered by the Manager and the Board of Selectmen.

Elimination of the Merit System would require an amendment to the Town Charter pursuant to procedures set forth in Conn. Gen. Stat. § 7-187 et seq.
FACTS\textsuperscript{1}

Prior to 1997, the Town of Winchester (the "Town") did not have a Civil Service Commission or Board. In 1996, the Town's charter was amended to include a provision for a merit system for all appointments in the classified service. In 2001, the charter was again amended. The merit system is contained in Article XII as follows:\textsuperscript{2}

**ARTICLE XII – MERIT SYSTEM**

Section 1201. THE MERIT SYSTEM ESTABLISHED

All officers and employees in the classified service of the Town, as described in Section 1202 below, shall be appointed on the basis of merit and in conformity with recognized principles of public personnel administration.

Section 1202. THE CLASSIFIED SERVICE

The classified service shall include appointees to all positions now or hereafter created, except the following: Elective officers and persons appointed to fill vacancies in elective offices; members of boards and commissions and other offices appointed by the Board of Selectmen; employees of the Board of Education; members of the Parking Commission; persons employed in a professional capacity to make a temporary and special inquiry, study or investigation; the judges, clerks and other personnel of the Probate court; and persons employed for a temporary period not exceeding three (3) months. It shall be the duty of the Manager to cause to be prepared a statement of the duties and responsibilities of each position in the classified service and of the minimum qualifications for appointment to such positions. These statements shall comprise the classification plan of the Town, which shall become effective upon approval by resolution of the Board of Selectmen and which may be amended upon recommendation of the manager, by resolution of the Board of Selectmen. New or additional positions in the classified service may be created and changes in the duties and responsibilities of existing positions may be made by resolution of the Board of Selectmen upon the recommendation of the

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\textsuperscript{1} The "facts" are derived from an opinion of the State Board of Labor of Relations in *Town of Winchester*, Decision No. 2007 (2004) involving the issue of whether or not the Town's creation and adoption of a civil service system in 1997 affected the parties' rights and obligations concerning promotional examinations. Such "facts" appear to be correct based upon the only two documents we have, i.e., the amended charter of 2001 which contains a merit system, and an ordinance adopted in December of 2006 both of which are attached hereto.

\textsuperscript{2} It is not clear whether the 2001 version is the same as the 1996 amendment which created the merit system.
Manager. The Manager shall also cause to have prepared a set of personnel rules which shall provide, among other things, for the method of holding competitive examinations, administration of the classification plan, probationary periods of employment, hours of work, vacations, sick leaves and other leaves of absence, removals, and other such rules as may be necessary to provide an adequate and systematic procedure for the handling of the personnel affairs of the Town. Such rules and any amendments thereto shall become effective upon being filed by the Manager with the Town Clerk. Copies of such rules and any amendments thereto shall be distributed to all members of the classified service.

In December 1996, the Board of Selectmen adopted the following ordinance which created the Civil Service Board ("Board"):

SEC. 172 CIVIL SERVICE BOARD

Be it ordained by the Board of Selectmen of the Town of Winchester, Connecticut that the following ordinance is hereby adopted:

There shall be a Civil Service Board which shall consist of three members who shall be appointed by the Town Manager. Those first appointed shall be designated to serve for two, four and six years respectively and thereafter members shall be appointed annually to serve for six years. Each member shall serve until a successor is appointed and any vacancy shall be filled by the Town manager for the unexpired term. The members of the Commission shall receive no compensation for their service but shall be reimbursed for their necessary expenses incurred in the performance of their official duties. Two Commissioners shall constitute a quorum. All appointments to said board, both original and to fill vacancies, shall be so made that not more than two members shall, at the time of appointment, be members of the same political party, and no such Commissioner shall, during their term of office, hold any other lucrative office or employment under the United State or the state or any political subdivision thereof having employees classified under the provisions of this part. Each Commissioner, before entering upon the duties of the office, shall take the oath prescribed for executive officers. The Town manager may remove any Commissioner for lack of moral character, incompetency, neglect of duty, malfeasance or partisan activity while in office, but the Town Manager shall, at the same time, file with the clerk of the Superior Court for the appropriate judicial district a report, in writing, of such

3 This Ordinance is essentially identical to Conn. Gen. Stat. § 7-408.
removal, with the reasons therefore. The Civil Service Board shall exercise all powers set forth in Chapter 113 Part I of the Connecticut General Statutes.

EFFECTIVE DECEMBER 12, 1996.

In 1997, the Town Manager made the first appointments to the Board and the Board’s Civil Service Rules became effective August 25, 1997, which rules established the classified and unclassified service for Town employees.

The Town now seeks to abolish the Board and the merit system pursuant to which it was created.

ANALYSIS

Conn. Gen. Stat. § 7-407 et seq. sets forth the statutory procedure for the adoption of a merit system by a municipality such that the legislative body must vote to adopt a merit system for selecting and promoting public employees. Winchester adopted the merit system decades ago. Some towns adopt a merit system without establishing a civil service commission. Examples of these towns are Plainville, Mansfield, Glastonbury and East Hartford. Other towns, such as Winchester, also adopt a civil service commission by the procedure set out in the statutes. Conn. Gen Stat. § 7-408. Accordingly, Winchester established its Board by enacting Ordinance 172. However, the statutes do not limit, restrict, or govern the elimination of a civil service commission once it has been created and no Connecticut case was found dealing with this issue. The only case found was a decision by the State Board of Labor Relations in Town of Winchester, Decision No. 4007 (2004) where in dicta the Board noted: “There is no argument in this case that employers are restricted in the unilateral right to establish or abolish civil service systems....” Id. at p. 6.

In the instant matter, there is no statutory prohibition on abolishing the Board or any statutory procedure for doing so. Since the Board was created by ordinance, the following charter provisions contained in Winchester’s charter, Article III regarding ordinances and repeal thereof are applicable:

Section 302. ORDINANCES

...the Board of Selectmen shall have the power to enact, amend, or repeal ordinances for the preservation of good order, peace, health and safety of the town and its habitants, so long as such ordinances are not inconsistent with this Charter or the General Statutes of the State; and, not limiting the powers of the foregoing, the Board of Selectmen shall specifically have the power to ordain the following:
A. Boards and Commission. **The Board may** create or **abolish** boards, **commissions**, department and offices, **other than those established by this Charter.**

**Section 303. ENACTMENT OF ORDINANCES**

Before the . . . repeal of any . . . ordinance, the Board of Selectmen shall cause to be published twice in a newspaper having a substantial circulation in the Town of Winchester a notice setting forth the subject matter of the proposed ordinance. Said notice shall be published once a week for two (2) consecutive weeks not later than two (2) days before the enactment, amendment or repeal of the ordinance. After the board has enacted, amended, or repealed any ordinance, said ordinance shall become operative fifteen (15) days after the entire text of the same shall have been published once in a newspaper having a substantial circulation in said Town. **Any ordinance made by the Board of Selectmen may be . . . repealed by them in the same manner in which . . . ordinances are enacted.** The form of all . . . ordinances shall be as follows: “Be it ordained by the Board of Selectmen of the Town of Winchester, Connecticut”.

(Emphasis added.)

Reading sections 302 and 303 of the charter together, the Board of Selectmen has authority to abolish the Civil Service Board since it was not established by the charter. To do so, the Board of Selectmen would need to follow the procedure in section 303 to repeal section 172 of the Town Ordinances. The Board of Selectmen must publish notice of the proposed repeal of the ordinance at least once a week for two (2) weeks and the latest publication cannot be any later than two (2) days before the ordinance is due to be repealed. Moreover, such repeal would not be operative until fifteen days after notice of repeal is published.

Once the Commission is repealed, the process for implementing the Town's merit system would be handled by the Town Manager and Board of Selectmen.

To abolish the Merit system altogether, the Town charter would need to be amended by repealing and/or amending Article XII which sets forth the Town’s merit system and may need to amend Article VIII which references salaries for employees in the classified service of the Town.  

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4 Conn. Gen. Stat. 7-474(g) provides:

Nothing herein shall diminish the authority and power of any municipal civil service commission, personnel board, personnel agency or its agents established by statute, charter or special act to conduct and grade merit examinations and to rate candidates in
The procedures for amending the Town’s charter are set forth in Conn. Gen. Stat. § 7-187 et seq. and can be summarized as follows:

1. The Board of Selectmen must adopt a resolution to amend the charter by two-thirds vote. Conn. Gen. Stat. § 7-188(b).

2. Within thirty (30) days of adopting such resolution, the Board of Selectmen shall appoint a commission (hereinafter “Charter Commission”) which shall consist of not fewer than five or more than fifteen electors to draft amendments to the charter.\(^5\) Conn. Gen. Stat. § 7-190(a).

   i. The Board of Selectmen shall specify by resolution the date the Charter Commission shall submit its draft report, which shall be not later than sixteen months from date of appointment. Conn. Gen. Stat. § 7-190(b).

   ii. The Board of Selectmen may make recommendations to the Charter Commission on proposed amendments and the Charter Commission can consider other changes it deems desirable or necessary as well. In its draft report, the Charter Commission must comment on each recommendation made by the Board as well as

the order of their relative excellence from which appointments or promotions may be made to positions in the competitive division of the classified service of the municipal employer served by such civil service commission or personnel board. The conduct and the grading of merit examinations, the rating of candidates and the establishment of lists from such examinations and the initial appointments from such lists and any provision of any municipal charter concerning political activity of municipal employees shall not be subject to collective bargaining, provided once the procedures for the promotional process have been established by the municipality, any changes to the process proposed by the municipality concerning the following issues shall be subject to collective bargaining: (1) The necessary qualifications for taking a promotional examination; (2) the relative weight to be attached to each method of examination; and (3) the use and determination of monitors for written, oral and performance examinations. In no event shall the content of any promotional examination be subject to collective bargaining.

Thus, under § 7-474(g) the Town is relieved from bargaining over certain topics related to promotional exams if the municipality has a civil service commission or other merit examination agent. The Act only allows bargaining if a change is proposed in one of the three specific areas listed in the statute. However, the Town should be aware that in the event the Town abolishes the Board it may have a duty to bargain with each Union regarding the hiring/promotional process, if requested.

\(^5\) Not more than one-third of the electors appointed shall hold any other public office in Town and not more than a bare majority shall be members of one political party. Conn. Gen. Stat. § 7-190(b).

3. The Charter Commission must hold at least two public hearings on proposed charter amendments, one prior to beginning substantive work on such amendments, and the other after its draft report has been completed but not yet submitted to the Board of Selectmen. The Charter Commission may also hold any additional hearings it deems necessary and can amend its draft report after such hearings. Conn. Gen. Stat. § 7-191(a).

4. After conducting hearings and making any amendments to its draft report, the Charter Commission must submit such report to the Town clerk who shall transmit it to the Board of Selectmen. Conn. Gen. Stat. § 7-191(b).

5. Upon receipt of the Charter Commission’s draft report, the Board of Selectmen must hold at least one hearing on the draft report. However, any hearings must be held within forty-five days after the Charter Commission’s submission of the draft report to the Town Clerk. Conn. Gen. Stat. § 7-191(b).

6. Within fifteen days after the last hearing held on the Charter Commission’s draft report, the Board of Selectmen shall make recommendations to the Charter Commission for any changes it deems necessary. Conn. Gen. Stat. § 7-191(b).

   i. If no changes to the draft report are recommended by the Board of Selectmen within fifteen days after the last public hearing thereon, the Charter Commission’s report becomes final and Board of Selectmen shall act thereon. Conn. Gen. Stat. § 7-191(c).

   ii. If changes to the Charter Commission’s draft report are recommended, the Charter Commission shall confer with the Board of Selectmen on such recommendations and may make or reject any changes recommended. However, the Charter Commission’s final report including and/or rejecting the recommended changes must be made to the Board of Selectmen within thirty (30) days of receiving the Board of Selectmen’s recommended changes. Conn. Gen. Stat. § 7-191(c).
7. Within fifteen days after receipt of the final report from the Charter Commission, the Board of Selectmen shall approve or reject the charter amendments by a majority vote. Conn. Gen. Stat. § 7-191(d).  

i. If the Board of Selectmen rejects the proposed amendments, a petition for a referendum may be filed with the Town Clerk by not less than ten percent of electors not later than forty-five days after of the Board of Selectmen’s vote to reject. Conn. Gen. Stat. § 7-191(d). Such petition must be certified by the Town Clerk in accordance with the statutory procedures set forth in Conn. Gen. Stat. § 7-188.

8. Within thirty days of the Board of Selectmen’s approval of the charter amendments or certification of petition for a referendum by the Town Clerk, the charter amendments must be published at least once in a newspaper having a general circulation in the Town with a notice that a complete copy is available in the Town Clerk’s office and a copy shall be mailed to any person who requests such copy. Conn. Gen. Stat. § 7-191(d).

9. After publication, the Board of Selectmen by majority vote shall decide whether the charter amendments shall be submitted to electors for approval or rejection at a regular election or a special election to be held no later than fifteen months after the approval by the Board or the certification of the petition for referendum. Conn. Gen. Stat. § 7-191(e).

10. The proposed charter amendments shall be prepared for ballot by the Board of Selectmen and submitted in the form of one or several questions. If approved by a majority of electors voting thereon at a regular election, or if approved by a majority equaling at least fifteen per cent of the electors of the Town at a special election, the charter amendments shall become effective thirty days from such approval. Conn. Gen. Stat. § 7-191(f).

11. Within thirty days of the approval of the charter amendments, the Town Clerk shall file with the Secretary of State: (1) three certified copies thereof with the effective date or dates indicated thereon; and (2) three

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6 Charter Commission terminates upon acceptance or rejection of its final report by the Board of Selectmen. Conn. Gen. Stat. §7-190(c).

7 Town Clerk must compare the signatures contained on the petition for referendum with the Town’s last-completed registry list and then certify to the Board of Selectmen the petition’s sufficiency or insufficiency. See Conn. Gen. Stat. § 7-188(c).
certified copies of the complete charter incorporating such amendments. Conn. Gen. Stat. § 7-191(g).