

Selectmen's minutes of Executive Session October 1, 2020

Members present: Brian O'Rourke, Mark Newman, George Riley (5:10), Joanne Grybosh by remote, Town Counsel Brian Maser, Fire Chief Ralph Morrison, Police Chief Michael Morrison, Dolores Harasyko, Admin. Asst.

Brian announced that the meeting is being recorded.

Called to order at 5:00 p.m.

Motion by Brian to enter into Executive Session for the express purpose to discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual and to adjourn immediately after.

Roll call vote: Brian, yes, George, yes, Mark, yes

Brian explained that we are here to discuss Mass General Law which states the Fire Chief must retire at the age of 65. This law was enacted in 1987 for members in certain positions such as police and fire. Brian stated that the reason for the meeting was for 2 reasons: 1 was to make sure we removed any legal liability to the Town for employing a fire or police chief over the age of 65 and the second was that we did not want to leave the Town without an active fire department due to the age restrictions. Per town counsel the only way to extend the age is by a town meeting vote to pass special legislation. Ralph will be 66 this month and Mike will be 65 next year.

Michael stated that since we are not a part of the Massachusetts Police Association and are not full time are they exempt from this law? Counsel responded that it doesn't matter whether full time or part time. It is a safety issue. The state legislature states that you must retire in the last month you are 65.

Mike said he feels it can and should be extended to age 70.

Brian responded that he reached out to town counsel, the choices are retirement or firing.

The vote to extend is to be done before turning age 65.

This pertains to anyone such as police or fire, emt's are exempt.

Ralph spoke to the fire chiefs from Mansfield, Tolland and Sunderland and was told that since they don't make their living from fire and police that they are not required to retire at 65. Town Counsel responded that will full respect that they are hearing from other fire chief's. The law does not exclude part time, it pertains to all duties. Ralph said that they are not a paid department. Town Counsel stated that Ralph does indeed get paid, he gets a stipend and an hourly rate.

Selectmen Brian explained the liability to the town. If a fire fighter over the age of 65 enters into a fire it could create a lawsuit for the town. Per town counsel if the town knowingly allows a fire

fighter over the age of 65 to respond to a fire the town is liable. Mike responded that there are several fire and police that are nearing the age of 65 or are already over 65.

Mark asked if there is a process for increasing the age.

Town Counsel responded that there is a special act that must be passed at a town meeting to go forward.

Ralph explained that he, Mike, Eric, Zoe are all near or over 65, John Burrows is around 78. If we follow this law it would decimate the fire department and leave the town without coverage.

Ralph spoke with the corporations insurance company today and they will cover the firefighters. Our insurance MIIA will not cover any firefighters over the age of 65. The corporate insurance will cover to age 100.

Brian asked if we are putting the town at risk for keeping them over the age of 65.

Ralph said he could stay on as an administrator, attend fires but not participate.

Town Counsel has seen this done for an interim period especially in small communities.

Town Counsel suggested putting articles on a special town meeting warrant to pass special legislation either as a blanket exemption or an article for each individual person.

Brian wants to make sure we are not employing over age that puts us at a liability and also to avoid decimating the fire department leaving the town without coverage.

Mike suggested that it is upon the annual appointments that this should be dealt with.

Town Counsel suggested an annual physical be required that they are capable of doing the job before annual appointments.

George is concerned on two levels, one is the legality and then the insurance. He does not want to go forward unless the insurance covers the town.

Town Counsel stated that once the special legislation is passed as long as the insurance covers the town we would be ok. We should re title Ralph's position now as Fire Administrator. Ralph responded that he has a problem with that, he has to sign ambulance paperwork as the Fire Chief. Town Counsel responded that it does take time to get this done, it is not a quick fix. George is concerned that the insurance will be on board.

Mark wants to make sure we have a fire department, he is ok with moving forward with the special legislation with an annual physical at the expense of the employee, not the town. He also does not the physical to be a result of a CDL physical, it must come from a physician.

Brian asked Town Counsel for a step by step instruction for the warrant, he agreed.

Brian's opinion is to move forward with special legislation but would like the stipulation that we start looking for a replacement for the fire chief and not wait until he turns 70.

Mike responded that the town needs to look into all departments not just the fire department.

Discussed insurances, Ralph will contact the corporation insurance, Brian wants to see it in writing that they will cover the firefighters and the town.

Per Town counsel we need a job description for the Administrative Fire Chief.

Motion by Brian, second by Mark to authorize Town Counsel to create a warrant article to exempt the Police and Fire personnel from Section 2 of Chapter 45 of the Special Act of 1987 for the mandatory retirement and with wording that includes an annual physical, the cost of the physical to be paid by the employee, not the town.

Roll call vote: Brian, yes, George, yes, Mark, yes

Motion to exit Executive Session

Roll call: Brian, yes, George, yes, Mark, yes

Meeting adjourned at 5:44 p.m.

Brian O'Rourke

George Riley

Mark Newman