

March 14, 2014

Nathan A. Poore
Town Manager
Town of Falmouth
271 Falmouth Road
Falmouth, ME 04105

RE: Regional Assessing

Dear Nathan:

I have been asked for my opinion on whether the current proposal to use the regional assessing services of Cumberland County violates the Falmouth Charter or ordinances. Based upon my understanding of the proposed agreement between the Town and the County and my review of the Charter and ordinances, I find that the regional assessing proposal does not violate the Charter or the ordinances.

Town Charter, Article VI, section 601 provides:

There shall be established a division of assessment, the head of which shall be the Town Assessor. The Town Manager shall have exclusive authority with respect to the appointment and firing of the Town Assessor. The Town Assessor shall exercise the same powers and be subject to the same duties and liabilities that similar officers of the several towns and cities in the State may exercise, and may or hereafter be subject to, under the laws of the State of Maine.

It is worth noting that the language in section 601 which grants exclusive hiring and firing authority over the assessor to the town manager was added as part of the last Charter revision. Prior to that, the hiring and firing was under the authority of the Town Council.

Under the regional assessing proposal, the town manager will appoint an individual as the Falmouth Town Assessor. (The draft Town/County agreement states that the person so appointed will be a sworn officer of the Town.) The division of assessment within Falmouth town government will continue to exist and this individual will be its head. The individual will carry out the duties of assessors prescribed by State statute and in performing those duties will, like all assessors, be acting as an agent of the State. For administrative purposes, however, the individual will be answerable to the town manager through the county manager. The initial term of the agreement with the County ends June 30, 2015. However, the Town reserves the right to terminate the agreement at any time for cause.

The fact that the individual appointed as the Falmouth Town Assessor will be an employee of the County and not of the Town does not in my opinion make the arrangement a violation of the Charter. The Charter does not by its terms require that the assessor be a Town employee. Further, under the terms of the agreement with the County, the town manager can exercise *administrative* control over the position, including stripping the assessor of authority to act for the Town and having the individual removed by the county manager. (The town manager cannot now and will not be able to exercise control over the assessor's work as assessor. As stated above, assessors act as agents of the State.)

When we look at the Code of Ordinances we find that the assessor shall be the head of the division of assessment within the Department of Financial Administration. Ord. sec. 2-273, 274. The assessor is not a department head.¹ Again, there is no requirement that the assessor be an employee of the Town.

Other than employment status and the hours spent working at the Town offices,² the assessor appointed by the town manager pursuant to the terms of the agreement with the County will be substantially the same as an assessor appointed as a Town employee. The assessing function, which is dictated by State statute, will be the same under both models. While some people may feel that the regional assessing model does not provide the "connection" between the citizens of the Town and the assessor's office that the town employee model provides, this is a policy matter and not a question of law.

I trust that this responds to your request.

Very truly yours,



William L. Plouffe

¹ Note that section 2-274 should be amended to provide that the Assessor is appointed by the Town Manger. It currently states that the Town Council appoints the Assessor. This should have been changed when the Charter was amended. In any event, the Charter "trumps" the ordinance.

² I understand that the agreement with the County has the assessor working at the Town offices a certain number of hours per week.