Winsted's Water and Sewer Commission Improperly Formed

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In 1997, the Board of Selectmen appointed a Charter Revision Commission (which included as members Alan Colavecchio, Judith Dixon, Richard Lavieri, Linda Colavecchio, Mary Cocklin, Linda Vaccari and Richard Naletteh. One of several recommendations made by that Commission that was put before the voters was the provision to combine the Water Board with the Water Pollution Control Authority to form a new Water and Sewer Commission.

According to the minutes and records of the 1997 Charter Revision Commission (CRC), there was no legal opinion sought about this action. The CRC included two attorneys (one a former town attorney) as members, yet neither apparently researched this proposed provision. The record indicates only that the CRC included an Explanation of Proposed Changes to the Charter. This "explanation" merely describes the feelings of the CRC that the Board of Selectmen is overburdened with work and that therefore, "it would be best for the Town of Winchester to have a combined Sewer and Water Commission." There is no review of this proposal in the file by the town attorney, or by the attorney acting on behalf of the commission (Ms. Dixon).

The voters accepted this proposed revision in 1998 (by a vote of 1422-1021).There is a good argument for the overturning of Article XIV because it is improper under state law.

A review of the history of the Winsted Water Works is helpful. In 1860, the Connecticut General Assembly chartered the Winsted Water Works. The authority to operate the water works was vested in an elected 3-member board of water commissioners under the direction of the elected warden and 6 burgesses. *This special act could only be amended or repealed by the general assembly.*

In 1897, the general assembly amended the charter of the Winsted Water Works to abolish the 3-member elected water commission and to vest the authority in the elected warden and burgesses. It also authorized the election of a superintendent of water works. In 1915, the general assembly amended the water works charter and vested the board of selectmen with the rights that were vested in the water commissioners in the original law, and subsequently to the warden and burgesses of Winsted.

Then, in 1960, Winsted adopted its first home rule charter. This Charter included the section on the water works that vested authority in the Board of Selectmen. But the 1960 Charter also included language that was confusing. It stated that the water works would be under the care and management of the superintendent of public works, subject to the direction of the manager, who shall have exclusive control and direction of the water works. This provision made it unclear whether the board of selectmen or the town manager had the "exclusive control and direction" of the water works.

Throughout all these changes in the law, one thing remained constant: an elected body (whether the water commissioners, the burgesses or the selectmen) was the entity that established the rates for water use by ordinance.

So in 1963, after the first home rule charter was adopted, it was still necessary that the general assembly adopt a law to amend and clarify the water works section of the Charter. The new language made it clear that the water works was under the care and management of the town manager subject to the direction of the board of selectmen, who shall have the exclusive control and direction of the water works.

In his April 19, 1993 opinion, Town Attorney Kevin Nelligan stated that in regard to the powers of the Board of Selectmen relative to the Winsted Water Division, "the legislative history of Article XIV demonstrates it (the Board of Selectmen) stands alone as the governing provision of the Winsted Water Division. The explicit terms of Article XIV to the surviving provisions of the Special Acts (those not inconsistent with Article XIV) govern the ability of the Board of Selectmen to spend $100,000 without the approval of a Town Meeting or town referendum." The 1960 Charter allowed the continuing existence of all provisions of the special acts regarding the water works not inconsistent with the provisions of the new charter.

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