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SJC-13154

CITY COUNCIL OF SPRINGFIELD vs. MAYOR OF SPRINGFIELD.

Hampden. December 6, 2021. - February 22, 2022.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt,
& Georges, JJ.

Municipal Corporations, City council, Mayor, Police, By-laws and ordinances, Contracts. Police, Hiring. Power of Appointment. Contract, Municipality. Constitutional Law, Police hiring, Separation of powers, Municipalities.

Civil action commenced in the Superior Court Department on October 2, 2020.

The case was heard by Francis E. Flannery, J., on motions for summary judgment.

The Supreme Judicial Court granted an application for direct appellate review.

Michael P. Angelini for the defendant.
Thomas Lesser (Michael Aleo also present) for the plaintiff.

KAFKER, J. As cities across the country consider changes to their police departments to ensure greater accountability, control over these decisions can be hotly contested, as it is in

the instant case. This appeal requires us to determine whether the city council of Springfield (city council) can reorganize the Springfield police department to be headed by a five-person board of police commissioners rather than a single commissioner under the provisions of the Springfield city charter passed in accordance with G. L. c. 43, §§ 46-55. The city council contends it can do so pursuant to its legislative powers, and the mayor of Springfield (mayor) disagrees, claiming it infringes on his executive appointment authority. We conclude that the city council may so reorganize the police department, based on the plain language of the relevant statutes and city ordinances, and therefore affirm the Superior Court's entry of declaratory judgment in favor of the city council.

Background. 1. Springfield's city government. The parties agree to the material facts.

In 1962, the city of Springfield adopted a "Plan A" model city charter based on G. L. c. 43, §§ 46-55, codified in the city charter at sections 46-55. See Kaczmariski v. Mayor of Springfield, 346 Mass. 432, 432-433 (1963). In a Plan A model, the division of executive and legislative powers is as follows. The mayor is the "chief executive officer" of the city. G. L. c. 43, § 48. The mayor can appoint "all heads of departments and members of municipal boards" without approval from the city council. G. L. c. 43, § 52. The appointment becomes effective

when the mayor files a certificate with the city clerk providing that the appointment is made "solely in the interest of the city" and that the appointee either "is a recognized expert in the work which will devolve upon [him or her]" or "is a person specially fitted by education, training or experience to perform the duties of said office." G. L. c. 43, § 53. The mayor can also remove a head of department or board member without city council approval by filing a statement with the city clerk. G. L. c. 43, § 54. Due in part to these unilateral appointment and removal powers, Plan A is also referred to as a "responsible executive," Kaczmariski, supra at 432, or "strong mayor" government, City Council of Boston v. Mayor of Boston, 383 Mass. 716, 719 (1981).

The city council is vested with the legislative powers of the city. G. L. c. 43, § 50. Another section of G. L. c. 43, not connected to any particular model charter plan, provides:

"[T]he city council or other legislative body may at any time by ordinance, consistent with general laws, reorganize, consolidate or abolish departments, in whole or in part; transfer the duties, powers and appropriations of one department to another, in whole or in part; establish new departments; and increase, reduce, establish or abolish salaries of heads of departments or members of boards."

G. L. c. 43, § 5. Springfield adopted this section in its city charter as section five.

2. The Springfield police department. In 1902, pursuant to a grant of authority by the Legislature, the city council

established a police commission to manage and control the Springfield police department. The commission had five unpaid members, who were required to be residents of Springfield and could not be employees of the city. The mayor had appointment and removal powers over the commissioners, subject to approval of the city council. The commission had the power to appoint a chief of police and other officials. St. 1909, c. 244. This remained the case even after Springfield adopted the Plan A city charter in 1962.¹

In 2004, the Legislature responded to Springfield's acute fiscal distress by creating a finance control board that assumed all powers of the city government, both of the mayor and city council. See St. 2004 c. 169. In 2005, the finance control board abolished the five-member commission and restructured the Springfield police department to be headed by a single, professional police commissioner. The commissioner was appointed solely by the mayor, but had a three-year term, which was not to be coterminous with the mayor's term; and the commissioner could only be removed for cause. The commissioner was to have at least seven years of experience as a captain or its equivalent and a master's degree or its equivalent. The

¹ The record does not show whether the city council continued to exercise these powers after the adoption of the charter.

2005 ordinance authorized the police commissioner to appoint, establish, and organize the police department and provided that the police commissioner would hold office until a successor was appointed and qualified. The new commissioner position integrated the duties of the "chief of police," which were laid out in separate ordinances. The finance control board was dissolved in 2009, when the fiscal health of the city had recovered.

In 2018, the city council attempted to restore the pre-2005 structure of the police commission, passing an ordinance that replaced the professional commissioner with a board of police commissioners (board) comprised of five unpaid civilians, and reimposed the requirements that the members of the board be residents of Springfield who were not city employees,² as provided in sections 67-84 to 67-96 of the municipal code. The mayor vetoed the ordinance, and the city council voted to override the veto.

The mayor refused to implement the ordinance, and entered into a contract with a new, full-time professional police

² The city council had passed a similar ordinance in 2016 over the mayor's veto, but it was never implemented. Unlike the 2018 ordinance, the 2016 version required city council confirmation of the mayor's appointees to the board, which the council later acknowledged was invalid because it conflicted with the mayor's unilateral appointment authority under the city charter.

commissioner in 2019. The council responded by commencing the present action in October 2020 seeking declaratory relief, an injunction, and mandamus to require the mayor to comply with the ordinance. The parties filed cross motions for summary judgment.

The motion judge held that all provisions of the ordinance were valid except for the eligibility criteria for board members, which he held violated the mayor's appointment authority under the charter. The court entered a judgment declaring that the mayor must "without further delay and in good faith endeavor to identify and appoint qualified individuals to serve on the [b]oard." However, the motion judge refused to grant an injunction or mandamus relief. The mayor appealed and filed an unopposed motion to stay enforcement of the judgment, which a Superior Court judge granted.³ We granted the parties' joint application for direct appellate review.

Discussion. 1. Standard of review. We review a grant of summary judgment de novo. Berry v. Commerce Ins. Co., 488 Mass. 633, 636 (2021), citing Federal Nat'l Mtge. Ass'n v. Hendricks, 463 Mass. 635, 637 (2012). There are no factual disputes, and the only issue is one of statutory interpretation.

³ The city council did not appeal from the motion judge's adverse rulings abrogating the qualifications provision and declining to grant injunctive or mandamus relief, so we do not review them.

2. The city council's powers under G. L. c. 43, § 5. As explained above, G. L. c. 43, § 5, gives the city council the power to "reorganize, consolidate or abolish departments, in whole or in part" and to "establish new departments." The city council claims, and the motion judge held, that the 2018 ordinance was clearly within the scope of its power to "reorganize" municipal departments. We agree.

"Ordinarily, where the language of a statute is plain and unambiguous, it is conclusive as to legislative intent" (citation omitted). Ryan v. Mary Ann Morse Healthcare Corp., 483 Mass. 612, 620 (2019). "If the words used are not otherwise defined in the statute, we afford them their plain and ordinary meaning." Matter of E.C., 479 Mass. 113, 118 (2018). "Reorganize," unsurprisingly, means to "organize again or anew." Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/reorganize> [<https://perma.cc/9LTV-RTXN>]. "Organize" means, inter alia, "to set up an administrative structure for." Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/organize> [<https://perma.cc/FT2T-XLXJ>].

The plain meaning of "reorganize . . . departments," in § 5, clearly encompasses changing the structure of the department, including how it shall be overseen. See Duggan v. Third Dist. Court of E. Middlesex, 298 Mass. 274, 280-282 (1937)

(city council used § 5 to abolish department of public safety headed by public safety commissioner and replace it with police department and fire department with heads appointed by mayor); Reynolds v. McDermott, 264 Mass. 158, 165 (1928) (city council has authority under § 5 to abolish administrative offices and create new department heads appointed by mayor); Gabriel v. Mayor of Fitchburg, 14 Mass. App. Ct. 984, 984 (1982) (ordinance allowing police chief to designate officer to assist city solicitor valid exercise of city council's authority under § 5 to "define by ordinance the powers and duties of the officers and employees of the city").

3. The mayor's appointment and removal powers. The mayor contends that even if the 2018 ordinance was within the scope of G. L. c. 43, § 5, it violates G. L. c. 43, §§ 52-54, which give him the unilateral right to appoint and remove "all heads of departments and members of municipal boards." G. L. c. 43, § 52. In challenging the validity of the ordinance, the mayor "bear[s] a heavy burden." Springfield Preservation Trust, Inc. v. Springfield Library & Museums Ass'n, 447 Mass. 408, 418 (2006), citing Grace v. Brookline, 379 Mass. 43, 49-50 (1979). For the ordinance to be invalid, "[t]here must be a 'sharp conflict' between the ordinance or bylaw and the statute" (citation omitted). Easthampton Sav. Bank v. Springfield, 470 Mass. 284, 289 (2014).

Again, we look to the plain meaning of the words of the statute. "Appoint" means, inter alia, "[t]o choose or designate (someone) for a position or job, esp[ecially] in government." Black's Law Dictionary 124 (11th ed. 2019). Section 52 of G. L. c. 43 does not give the mayor the power to determine the structure or number of the heads of departments or boards (properly the province of the city council under § 5), but rather the identity of the people who will fill them.

We detect no conflict between the mayor's rights under G. L. c. 43, §§ 52-54, and the 2018 ordinance, much less one "sharp" enough to invalidate an otherwise valid ordinance. The city council concedes that the board members are subject to the mayor's unilateral appointment and removal powers. Indeed, the ordinance itself provides that the board members are appointed by the mayor, pursuant to section 67-84 of the municipal code.⁴

4. The contracting power under G. L. c. 41, § 1080. The mayor next argues that the 2018 ordinance is invalid because it interferes with what he claims to be his authority under G. L. c. 41, § 1080, to enter into an employment contract with a police chief.

⁴ The mayor certainly cannot protest the infringement of his removal powers under G. L. c. 43, § 54, because the 2018 ordinance allows him to remove the board members at will, unlike the 2005 ordinance imposed by the finance control board, which provided the police commissioner with for-cause protection.

The statute provides:

"Any city or town acting through its appointing authority, may establish an employment contract for the salary, fringe benefits, and other conditions of employment, including but not limited to, severance pay, relocation expenses, reimbursement for expenses incurred in the performance of his [or her] duties or office, liability insurance, conditions of discipline, termination, dismissal, and reappointment, performance standards and leave for its police chief and fire chief, or a person performing such duties having a different title."

G. L. c. 41, § 1080, first par.

We discern no "sharp conflict" between the appointing authority's contracting power regarding a police chief provided by G. L. c. 41, § 1080, and the city council's power to reorganize the police department as provided by section five of the city charter and G. L. c. 43, § 5.

The city council has the right to define the organizational and oversight structure of the police department. That organizational structure is most likely, if not certainly, going to include a police chief or a person performing the duties of a police chief but with a different title. That person would also be expected to have an employment contract. The appointing authority for the police chief would also be expected to "establish" such a contract.

There is nothing in this statute that precludes the city council from reorganizing the police department to have either a single commissioner or a multiperson police commission. It is

possible for the city council to consolidate the police chief and police commission functions into one person, as was done under the finance control board, but there is no legal requirement to do so. The city council is also free to replace a single police commissioner with an unpaid, five-member board. Under this structure, the board performs an oversight function for the department but not a daily managerial function as would be performed by a police chief. These duties are already defined elsewhere in the Springfield municipal code, and are separate from those of the board, although they happened to be

exercised by the same person between 2005 and 2018.^{5,6} Someone will have to perform that daily managerial function, but it is not, and does not have to be, the commission.

⁵ For example, section 27-26 of the Springfield municipal code provides that the chief of police "shall, subject to the rules and regulations of the Board of Police Commissioners, from time to time issue orders . . . as may be necessary for the maintenance of proper discipline in the Department, for the detail and duties of its members and employees, and for the use and disposition of its equipment." Other duties concern the day-to-day operation of the police department, including approving payroll and overtime, "command and control" of all other department members, and, along with other department members, "see[ing] that the provisions of all ordinances are enforced," as provided in sections 27-25 to 27-36 of the municipal code. The chief of police also has duties outside of the department itself, including collecting contact information from security alarm system owners, issuing permits to hold auctions, and issuing emergency parking bans, pursuant to sections 100-14, 115-1, and 385-9 of the municipal code.

In contrast, as provided in sections 67-90 to 67-92 of the municipal code, the duties of the board concern "the appointment, management and control of the members and employees of the Police Department," including the power to "make such lawful rules for the maintenance of the Police Department, . . . including the regulation, government and discipline of such members and employees" and "the power to examine into absences of members and employees of the Department."

⁶ The motion judge ordered the parties to submit all ordinances relevant to the police commission from at least 1962 to 2005. However, despite this specific order, the record still contains gaps. Some of the ordinances cited above were not included in the record appendix and were not cited by the parties in their briefs, although they do appear on the Attorney General's website: <https://www.mass.gov/guides/massachusetts-city-and-town-ordinances-and-bylaws> [<https://perma.cc/SE3W-QJP7>]. Although not necessary to our decision, these ordinances were informative and readily accessible. If they were statutes or a municipal charter, we could have easily taken judicial notice of them. See Mass. G. Evid. § 202(a), (b) (2021). As

The real conflict here is not between the statutory provisions but who will have control over the department, and the selection of the police chief. The city council and mayor disagree over who is the appointing authority for a police chief under G. L. c. 41, § 1080, when the police chief and the department head are not one and the same. When the police commissioner is the police chief, as he or she was before 2018, the mayor is clearly the appointing authority under G. L. c. 43, § 52. When the board of police commissioners is a five-person board, an argument can be made that the board itself is the appointing authority for the police chief, as was the case under St. 1909, c. 244, as discussed above.

municipal ordinances, however, they are treated differently, as a "peculiar species of fact, requiring formal proof." Commonwealth v. Bones, 93 Mass. App. Ct. 681, 685 (2018), quoting 2 McCormick on Evidence § 335, at 334 (K.S. Broun ed., 7th ed. 2013). See Mass G. Evid. § 202(c). See also Halbach v. Normandy Real Estate Partners, 90 Mass. App. Ct. 669, 675 n.5 (2016) (Milkey, J., concurring). The Appeals Court has also thoughtfully invited us to reconsider this rule stating, "We have noted that 'reliable versions of municipal ordinances and by-laws now may be as generally accessible as statutes.' . . . The time may have come for the rule prohibiting judicial notice of municipal ordinance and bylaws to be revisited by the Supreme Judicial Court." (Citation and footnote omitted.) Bones, supra at 685-686. We agree that the time has come to reconsider this rule, which appears, as the Appeals Court recognizes, to be a relic of another era. See id. As the ordinances have been provided to the Attorney General for widespread public dissemination and are thus readily available, we take judicial notice of them in the instant case. We also refer the matter to the Supreme Judicial Court Advisory Committee on Massachusetts Evidence Law for further consideration of the issue.

As this issue has not been properly briefed, and is not necessary to decide whether the city council has the power to restructure the police commission from a single police commissioner to a five-person board, we decline to do so. We further note, however, that the mayor appoints all five members of the board, so his power to influence, if not control, the selection of any police chief is significant, even when the city council has created a five-person board of police commissioners.

5. Separation of powers. The mayor urges us to look beyond the language of the relevant statutes and charter provisions and to limit the city council's power so that it does not interfere with what he claims is the general intention behind the "strong mayor" Plan A form of government. The mayor claims that, by interposing the civilian board of police commissioners, the city council is usurping his right as the chief executive officer to decide that the police force would be better administered with a single, professional commissioner who answers directly to him. This, we conclude, is an important policy question, but not a separation of powers problem given the structure of the city charter. The statutes and ordinances permissibly divide legislative and executive responsibilities over the police department between the mayor and the city council, recognizing their mutual responsibility and accountability for the performance of the department.

We begin by acknowledging that the present dispute is rooted in both parties' understandable concerns for how one of the most, if not the most, important and powerful departments of a modern city government should be run. Both the 2016 and 2018 ordinances and the present action arose from a Commonwealth- and nationwide reevaluation of policing, which extends beyond the behavior of individual officers to how police leadership and city governments supervise and discipline them. See, e.g., St. 2020, c. 253 (creating, inter alia, Massachusetts Peace Officer Standards and Training Commission, empowered to investigate police misconduct and decertify police officers). These concerns are especially acute in Springfield where, since at least 2004, allegations of abuse and discrimination against the department have led the community to call for greater civilian control over the police.⁷ In addition, shortly before the city council commenced this action, the United States Department of Justice released a report concluding:

"[T]here is reasonable cause to believe that [the Springfield police department's] Narcotics Bureau officers engage in a pattern or practice of excessive force in violation of the Fourth Amendment of the United States Constitution. . . . This pattern or practice of excessive force is directly attributable to systemic deficiencies in policies, accountability systems, and training."

⁷ The prior mayor, by executive order, created the community complaint review board in 2007, now referred to as the community police hearing board.

United States Department of Justice, Civil Rights Division, & United States Attorney's Office, District of Massachusetts, Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau, at 2 (July 8, 2020).⁸

Here, the Legislature (and the citizens of Springfield in adopting the city charter) vested the mayor with executive authority and the city council with legislative authority. This traditional separation of powers has been applied to the oversight of the police department as well as other municipal functions. Although constitutional separation of powers principles applicable to Federal and State governments do "not generally apply to municipal governments," 4 E. McQuillin, *Municipal Corporations* § 13:1, at 1278 (3d rev. ed. 2019), where a statutory scheme "delineate[s] clear spheres of activities to be exercised by the separate branches of municipal authority," that division of authority should be respected. Tierney v. Mayor of Boston, 10 Mass. App. Ct. 404, 406 (1980), S.C., 383 Mass. 716 (1981). Casamasino v. Jersey City, 158 N.J. 333, 343 (1999) ("Principles of separation of powers are applicable where the Legislature has specifically delegated to the mayor and to the council separate functions"). As in the constitutional separation of powers analysis, however, there are often

⁸ Available at <https://www.justice.gov/opa/press-release/file/1292901/download> [<https://perma.cc/AY33-WDL4>].

overlapping and intersecting powers. The "separation of powers does not require three watertight compartments within the government" (quotation and citation omitted). Opinion of the Justices, 372 Mass. 883, 892 (1977). Rather, "there is a need for some flexibility in the allocation of functions among the three departments" (quotation omitted). Desrosiers v. Governor, 486 Mass. 369, 383, cert. denied, 142 S. Ct. 83 (2020), quoting Boston Gas Co. v. Department of Pub. Utils., 387 Mass. 531, 541 (1982).

The division of powers here reflects the mutual responsibility and ultimate accountability of the executive and legislative branches of municipal government over policing in their city. Rather than give the mayor essentially complete authority over the police department as he claims here, the statutes provide the city council with the legislative power to reorganize the department to determine its oversight structure while the mayor retains the executive power of appointment over the commission the council establishes. The result provides some checks and balances regarding control over the police department. It also recognizes that both the mayor and the city council are answerable to the voters of Springfield for the performance of the police department. We have not found a separation of powers problem in other contexts where municipal authority and control have been so shared and divided. Cf. City

Council of Boston, 383 Mass. at 720 (city council possessed "a check on the mayor's executive function through the power of appropriation"); Sherriff v. Mayor of Revere, 355 Mass. 133, 137 (1969) (although mayor could not fire city clerk's employee, he could limit staffing budget to provide for fewer positions); Mayor of New Bedford v. City Council of New Bedford, 13 Mass. App. Ct. 251, 256 (1982) (city council's employees were not subject to mayor's appointment power, but their hiring was "subject, however, to such appropriation and other powers as may be held by the mayor"). We likewise fail to discern a separation of powers problem here.

Conclusion. We affirm the motion judge's grant of summary judgment to the city council and denial of the mayor's cross motion.

So ordered.