



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNSEL

MEMORANDUM

To: Rep. Emilie Kornheiser
From: Tucker Anderson, Legislative Counsel and Records Officer
Date: February 6, 2023
Subject: Brattleboro “youth voter” proposal; capacity to contract

Background

H.361 (2021) proposed to amend the charter of the Town of Brattleboro to allow 16- and 17-year-old residents to vote in Town elections. Because officers are elected from among the qualified voters, these “youth voters” would have been qualified to run for and hold an elected Town office. H.361 passed both chambers and was subsequently vetoed by the Governor. During the veto override debate, there was significant discussion of whether a “youth voter” would have capacity to form and execute contracts on behalf of the Town. This memo addresses the question of whether the common law “infancy doctrine” would apply to a youth voter who is elected to a Town office.

Question of Law

If a “youth voter” is elected to a Town office, will the minor be legally capable of forming and executing contracts on behalf of the Town?

Analysis

Under both statute and common law, it is likely that a “youth voter” who is elected to a Town office will have the capacity to contract on behalf of the Town when the contract relates to their official duties. Common law allows a minor to form a contract with an adult. However, a contract formed by a minor is voidable at the minor’s option, unless an exception applies. State law supersedes the common law “infancy doctrine” and may modify the doctrine by defining what constitutes a “minor,” revoking the option of

voidability, granting emancipation upon certain terms, or defining certain contracts as binding on the parties regardless of their class or status.

The Brattleboro “youth voter” charter amendments are likely sufficient to supersede the common law “infancy doctrine” and authorize an elected minor to perform the duties of the office. The charter amendments would likely allow an elected youth voter to form and execute binding contracts on behalf of the Town. However, all doubt could be eliminated by adding a provision that expressly states that a “youth voter” shall be capable of performing all duties related to the youth voter’s elected office, including the formation and execution of binding agreements.

The Common Law “Infancy Doctrine” May be Modified by Statute, Including the Brattleboro Charter.

In general, the parties to the contract must be capable of contracting in order for a contract to be formed. The capacity of any person to contract is presumed unless that person is deemed by the law to have no capacity, or only a limited capacity, to contract.¹ Under the common law, minors or “infants” are one class of persons who have been deemed to lack full capacity to contract.

Under the common law “infancy doctrine,” any contract formed by an individual who is under 21 years of age *may be voided by the minor*.² The doctrine does not deem the contract to be void, neither does it render every contract invalid. Instead, the “infancy doctrine” provides the minor with the option to void most contracts formed with adults.³ The “infancy doctrine” is founded on the legal principle that minors “are not fully accountable for their actions because they lack the capacity to exercise mature judgment.”⁴

State law supersedes and controls the application of common law minority status. In most states, including Vermont, the common law age of majority has been lowered by

¹ Restatement (Second) of Contracts § 12.

² Restatement (Second) of Contracts § 14 (1981). See also *Beaudry v. Beaudry*, 132 Vt. 53, 56–57 (1973) (discussing common law age of majority in Vermont).

³ *Id.*

⁴ Wayne R. Barnes, *Arrested Development: Rethinking the Contract Age of Majority for the Twenty-First Century Adolescent*, 76 Md. L. Rev. 405, 410 (2017).

statute from 21 to 18.⁵ “Minority is a status created by law and is subject to statutory limitation and exception.”⁶ In other contexts, the General Assembly has modified common law minority status by enacting exceptions to the default legal incapacity of minors. For example, minors may seek relief from abuse orders despite the general rule that minors do not have legal capacity to be parties to court proceedings.⁷ In other jurisdictions, courts have found that statutory schemes can create limited exceptions to the infancy doctrine when it is clear that the legislature viewed minors as capable and competent to contract.⁸

The Brattleboro “youth voter” charter amendments provide express authority for a 16- or 17-year-old to vote in Town elections and be elected to certain Town offices. The amendments express the clear intent of the General Assembly to allow these minors to hold these Town offices, perform official duties, and exercise official powers. In this context, the minors are acting in their official capacity, not in their individual capacity. While there are no Vermont court decisions that may guide the interpretation of this exact legal question, it is likely that a youth voter would be capable of forming a contract without the threat that it might be voided at the minor’s option.

To Completely Eliminate the Potential Application of the Infancy Doctrine, the Charter Should Expressly Grant Capacity to Elected Youth Voters.

In order to completely eliminate the possibility that the infancy doctrine could be applied to Town contracts executed by a youth voter, the Brattleboro charter should be amended to grant youth voters full capacity to contract. The following language is likely

⁵ 1 V.S.A. § 173. “Persons of the age of eighteen years shall be considered of age and until they attain that age, shall be minors.”

⁶ *Beaudry v. Beaudry*, supra n.2 (citing *Rafus v. Daley*, 103 Vt. 426 (1931)) [Emphasis added].

⁷ 15 V.S.A. § 1103(a) and 1104(a).

⁸ *Douglass v. Pflueger Hawaii, Inc.*, 135 P.3d 129, 138 (Haw. 2006). “With respect to contracts of employment, it is apparent that, by relaxing the requirements for sixteen—and seventeen-year-olds to obtain employment, the legislature clearly viewed minors in this particular age group—being only one to two years from adulthood—as capable and competent to contract for gainful employment and, therefore, should be bound by the terms of such contracts[.] We conclude that, inasmuch as the protections of the infancy doctrine have been incorporated into the statutory scheme of Hawaii’s child labor law, the general rule that contracts entered into by minors are voidable is not applicable in the employment context.”

sufficient to eliminate any doubt as to the capacity of a youth voter to form contracts on behalf of the Town:

A youth voter who is elected to a Town office shall be capable of performing all duties and exercising all powers of that office, including the formation and execution of contracts relating to the office or official duties.