

1984 WL 63421 (Vt.A.G.)

\*1 Office of the Attorney General

State of Vermont  
Opinion No. 84-12  
January 17, 1984

**Re: Brattleboro Charter**

Senator Robert A. Bloomer  
State House  
Montpelier, Vermont 05602

Dear Senator Bloomer:

On March 1, 1983, the voters of Brattleboro adopted a new charter which is now before the legislature for review, pursuant to [17 V.S.A. § 2645\(e\)](#).

The Proposed Amendment to the Brattleboro charter contains the following limitation on the terms of office that an elected official may serve:

Section 9. Limits on terms of office. A member of any town or town school district board, commission or committee shall not serve for more than nine consecutive years or two consecutive terms, whichever is longer. He shall thereafter be ineligible for one year to serve in such office. This section does not apply to town meeting members or to appointed town officials.

An opinion has been requested of this office as to the constitutionality of the above quoted section. I find that the proposed charter is an unconstitutional limitation on the right of freemen of this state to be elected to office.

The legislature has all the law-making power of the people not expressly reserved by the constitution. [State v. Mahoney, 122 Vt. 456 \(1961\)](#). Among its powers, is the power to create, direct and control the local units of government within the state. [Vermont Constitution, Chapter II, Section 6](#) and [Section 69](#).

What the legislature may not do is to narrow or dilute the provisions of the Constitution. [Chapter II, Section 6 of the Constitution](#) states:

. . . (the General Assembly) shall have no power to add to, alter, abolish, or infringe any part of this Constitution.

The legislature may not restrict rights given by the Constitution and the Constitution is explicit on the right of freemen to elect and be elected. Article 8 of Chapter I provides that all freemen, having a sufficient, evident, common interest with, and attachment to the community, have a right to elect officers, and be elected into office, agreeably to the regulations made in the constitution.

As noted in the 1960 Opinion of the Attorney General at 217, the qualifications for officials set forth in the Constitution are few and vary from office to office. Nowhere in the Constitution is there any restriction as to the number of terms or years a person may serve if elected as a member of a town or town school district board, commission or committee.

The Constitution envisages no greater restriction on a freeman's right to run for office than that he have a sufficient, evident, common interest with and attachment to the community, except for certain high offices mentioned in the

constitution with specific qualifications set forth in the Constitution. An example of specific qualifications for election is found in [Chapter II, Section 18](#), which establishes qualifications for Senators. (The Constitution also provides a definition of ‘freeman’ which must be met to bring a person under Article 8 of Chapter I.)

\*2 The proposed charter for Brattleboro holds a person ineligible to run for office where the Constitution does not. Since there is no authority for the Legislature to establish qualifications for office in excess of those imposed by the Constitution, qualifications for office in excess of those imposed are unconstitutional. [Marra v. Zink, 256 S.E.2d 581 \(W. Va. 1979\)](#).

Where an office is created by the constitution and where the constitution fixes the grounds of qualification and disqualification, the legislature cannot be statute take from or add to those grounds. However, where an office is created by statute the legislature can deal with the subject of qualification and disqualification so long as it does not impinge upon any express provision in the state or federal constitution. [Parks v. Ash, 149 S.E. 207 \(Georgia, 1929\)](#); [Estes v. Jones, 48 S.E.2d 99 \(Georgia, 1948\)](#) .

Selectmen and school board members, for example, are creatures of the legislature and therefore, the legislature can determine the qualifications for the position so long as those qualifications do not impinge upon any express provision in the state or federal constitution. Unfortunately, the Constitution grants a right to be elected into office, limited only by the regulations made in the Constitution. Thus, the Constitution obviously severely restricts the limitations the legislature may impose upon an office it creates .

We recognize that others may argue that the constitutional mandate applies only to offices created by the Constitution. We cannot say for certain that Vermont courts would reject these arguments and strike down the limitation proposed by Brattleboro. But being required to choose one view over the other we conclude that the limitations are improper.

Sincerely,

Marilyn Signe Skoglund  
Assistant Attorney General

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