

Town of Bethlehem – Governance Committee

Term Limits Subcommittee

Final Report

Summary

The phrase “term limits” is generally used in two ways. First, this phrase is employed to indicate the number of consecutive or total terms an elected official can serve before becoming ineligible to run. Second, the phrase can indicate the length of each term to be served by an elected official once elected.

As used in this report, “Term Limits For Number of Terms” shall mean the number of terms an elected official can serve, consecutively or in total. “Term Limits On Years Per Term” shall mean the limit on the length of an elected official’s term.

This report shall discuss both uses of the “term limit” phrase and, more specifically, their importance and potential effect on governance in the Town of Bethlehem if different term limits, in either sense, were adopted or if the status quo was maintained. The Subcommittee’s findings and conclusions are included throughout this report. Supporting documentation and references are attached to and/or described in this report.

Current Status of Term Limits For Number of Terms in Bethlehem:

The Town of Bethlehem has a set of elected officials typically found in a NY governmental entity of similar size, location and economic status. We have a Supervisor with a term of office of two years. The Town Board consists of four members each elected for four-year terms on a repeating two-year cycle; that is, two members in a specific year and the two other members two years later. There is a Receiver of Taxes elected to a 4-year term, a Town Clerk elected to a 2-year term and a Highway Superintendent, also elected to a 2-year term. Finally, Bethlehem has two Town Justices, elected for four-year terms in different years.

The foregoing is consistent with the number of elected positions in municipalities of similar population and proximity as to length of term and election cycles. There are currently no limits on the number of terms in a specific office that an elected official in Bethlehem can serve, either consecutively or in total.

The use of term limits to keep elected officials from serving too many terms in a specific office is a known concept dating back to ancient Greece. In the interesting and informative article *Arguments For and Against Term Limits* by Mayraj Fahim (Attachment A), it is pointed out that "Term Limits can be a productive if not blunt instrument despite the powerful passions they may invoke. And, witness the many web sites and organizations advocating various term limit positions, it is clear that strong opinions, both pro and con, exist for limiting the number of terms in office for an elected official.

The Greeks and Romans were both concerned with abuses by office holders and imposed various limits on the number of terms they could serve. Concern over this issue was voiced early on in the United States, by some of our constitutional framers. For example, Thomas Jefferson said "To prevent every danger which might arise to American freedom from continuing too long in office, it is earnestly recommended that we set an obligation on the holder of that office to go out after a certain period." Benjamin Franklin and John Adams also expressed their opinion that term limits were an important way of placing checks on individual power.

The Articles of Confederation limited delegates to just three year terms. A similar provision was not included in the U.S. Constitution. George Washington, however, choose to leave office after his second presidential term, creating an example that lasted almost 150 years. After Washington left office, eight presidents served two full terms and declined a third while three presidents served one full term and refused a second.

Then, Franklin D. Roosevelt was elected to four terms, running from the end of the Great Depression and through most of World War II. In 1951, a few years after FDR's death, mandatory term limits were imposed on the position of U.S. President although such restrictions were not applied to members of Congress. However, advocacy for limiting the terms of U.S. Senators and Representatives remains strong and ongoing.

Thus, while results on a national level for limits on the number of terms that can be served, as discussed above, are mixed, the more important question for the Subcommittee is how and to what extent such term limitations have been adopted in New York at the municipal level.

New York City, the largest NY municipality, has had term limits in place for several years limiting elected officials including the Mayor to two consecutive terms in office. In October 2008, the NYC Council voted to expand the limit to three consecutive terms. There has been recent talk seemingly for politically based reasons, about challenging or changing NYC's term limit restrictions.

Outside of NYC, there have been ten instances in which term limits for the number of terms to be served have been imposed for elected officials in municipalities. In some instances, the term limits were applied to all elected officials. In other instances, only specified elected officials were term limited.

The municipalities that adopted term limits on the number of terms to be served included several cities and towns and one county (Suffolk). A list of these municipalities, the legislation language they adopted and the elected offices the term limits applied to can be found in Attachment B to this report. It should be noted that the village of Village of Islandia (Suffolk County) repealed term limits in 2009 for its Mayor and Trustees. These term limits had been in effect since 2005.

An important aspect of the number of terms an elected official can serve is the fact that there is currently no recall procedure or process available with respect to elected officials in NY. There have been a few decisions and opinions from the Schenectady City Attorney and the NY Attorney General's Office on point, see Attachments C, D and E, to the effect that recall is not permitted or possible in the absence of an enabling constitutional provision or state statute. No such constitutional or statutory language enabling recall provisions currently exist although legislation for that purpose has been periodically introduced in the State Senate and Assembly, including a bill as recently as 2011.

In the absence of recall, it would seem prudent for a town board to consider adopting term limits rather than waiting for a regular election to possibly discharge a poorly performing, but popular official from office. While the ballot box is our accepted, even preferred way of rendering opinions on elected officials, in the absence of recall in New York, a great deal of harm may be inflicted while waiting for an end-of-term election to take place.

Reasons for supporting limits on the number of terms that can be served by an elected official:

1. Increases ratio of competitive elections,
2. Creates greater opportunities to serve in public office, and allows more minorities and women to enter the political sphere,
3. Curbs the influence of lobbyists,
4. Produces a "citizen legislature" of more ordinary people rather than professional politicians since term-limited representatives would be more in harmony with public opinion and with their districts' constituents,
5. Promotes fresh ideas and minimizes reelection pandering, and
6. Avoids incumbency, which promotes more spending and bureaucracy.

Reasons against supporting limits on the number of terms that can be served by an elected official:

1. Leads to a loss of experience,

2. Inexperienced leaders will likely make beginner mistakes and possibly subject to the will of special interests,
3. Term limits remove popular elected officials,
4. Term limits conflict with what would have been the will of the people with respect to successful office holders, and
5. Term limits can result in negative impact on projects that outgoing officials sponsored, but newcomers delay or shelve.

It is important to note that there are cogent reasons for and against the use of term limits. However, that doesn't mean that term limits are beyond formal review or use in municipalities such as Bethlehem. As stated in the Conclusions portion of the above-cited Fahim article, "*While the subject of term limits evokes powerful passions on both sides of the argument, as this discussion has illustrated, the subject is rich in nuances. Term limits can facilitate the refreshing of the system, but they are not necessarily blunt instruments.*" In other words, term limits directed to the number of terms that can be served by an elected official in Bethlehem merit full consideration.

Current Status of Term Limits For Length of Terms in Bethlehem:

As previously noted, the Town of Bethlehem has a set of elected officials typically found in a NY governmental entity of similar size, location and economic status. The Town's Supervisor has a two-year term. The Town Board's four members are each elected for four-year terms on a repeating two-year cycle. Since the Subcommittee is primarily concerned with the difference in length of terms between that of the Supervisor and those of the Town Board members, no further comment on the terms of Bethlehem's Receiver of Taxes, Town Clerk, Highway Superintendent or Town Justices will be made.

The position length of each term for Bethlehem's elected officials is consistent with the length of elected positions in the majority of surveyed municipalities of similar population and proximity. The focus in this report is on the differences in the length of a specific term for the municipality's Supervisor and Town Board members or their equivalent positions.

The Supervisor in Bethlehem serves each term for 2 years. Town Board members serve 4-year terms. As shown in Attachment F, the majority of similar municipalities also have 2-year Supervisor terms and 4-year Town Board member terms. There are a lesser number of municipalities shown in this attachment that have 4-year Supervisor terms and 4-year Town Board member terms.

Not so surprisingly, some of the same arguments, both pro and con, that have been applied to the issue of number of consecutive or total terms that can be served by an elected official also apply to that same official's length of term. In this instance, the question centers on the length of the Supervisor's term. More specifically, the question can be stated "should the Bethlehem Supervisor's term be extended by adoption of local law from the present 2-year term to a term of 4 years?"

The historical background shows, as described in Attachment G, the August 4, 2011 memorandum from former Supervisor Sam Messina to the Bethlehem Town Board, that this question has been discussed for years. It is one of the issues described in the 21st Century Governance and Management Structure Report. The Supervisor's Report goes on to

discuss the timing, process and language that should be used to enable its proposed change in the length of the Supervisor's term from 2 to 4 years through the use of a new local law.

As noted, the Supervisor's current term is 2 years. The Supervisor is a full time official. The four Town Board members have terms of 4 years each and serve on a part time basis. The Supervisor and the Town Board members collectively serve as Bethlehem's legislative, policy and financial body. The Supervisor also serves as the day-to-day, chief executive officer of the Town.

As of the date of the Supervisor's Report, around 280 towns, or approximately 30% of towns statewide, have changed the length of their Supervisor's term from 2 to 4 years. Our updated findings, see Attachment H, reflect an equivalent difference of approximately 30% in the Supervisor's term for towns of the same approximate size as Bethlehem.

It is important to note that public comments were received at meetings conducted for that purpose in May and June of 2011. These comments generally mirror the arguments made on the issue of lengthening a supervisory term in other municipalities. They also are consistent with the conclusions of the Subcommittee.

The above-referenced public comments were directed to two main points in favor of expanding the Supervisor's term:

1. The short 2 year term forces the Supervisor to focus too much on reelection concerns, and
2. More frequent elections for and changes in the Supervisor's office are disruptive to efficient operation of Town departments and fulfillment of Town projects and initiatives.

The Subcommittee also concluded that

3. A four year term would match the length of term of Town Board members and tend to engender more cooperation,
4. A four-year term for the Supervisor would definitely prevent the loss of experience and institutional memory.

The public comments also noted a few points offered in opposition to the expansion of the Bethlehem Supervisor's term:

1. If the Supervisor has done a good job, there should be no problem with respect to reelection, and
2. The current staggered cycle for electing the Supervisor/Town board members ensures that the public has a frequent opportunity to change their Town representation.

The Subcommittee also concluded that:

3. Shorter terms might increase opportunities for other citizens to serve and expand the possibility that minority members would become more involved, and
4. Shorter terms that involve more people would also create opportunities for fresh ideas to be introduced.

With respect to the public comments, it seems unlikely that expanding the Supervisor's term to 4 years would meaningfully disturb the staggered election cycle since two Town Board members and the Supervisor would run every four years and the remaining two Town Board members would run in staggered fashion two years before and after the Supervisor runs. This factor would still have to be weighed in the deliberations about expanding the Supervisor's term to 4 years.

It should be noted that there are other length of term differences in Bethlehem with respect to other elected officials. For example, the Receiver of Taxes is elected for a 4-year term while other elected department heads (for example Highway Superintendent and Town Clerk) serve for only 2 years. It seems, for the same reasons as applied to lengthening the Supervisor's term that the 2-year terms of the elected department heads in Bethlehem could also be expanded to 4 years. That would readily fit into Bethlehem's staggered election cycle.