

NH Citizen Powers of Recall

In January 2011, the New Hampshire Deputy Secretary of State wrote about the availability of local recall elections, ***"The courts in New Hampshire have not supported recall provisions in municipal charters because they are not granted that authority in state statute."***^[1]

As background, a state law in [New Hampshire, New Hampshire Revised Statutes Annotated 49-D:3\(e\)](#), mentions the availability of local recall elections in municipalities that have their own charter.

RSA 49-D:3(e) says:

"(e) Other matters of local concern may be included in a charter including, but not limited to, conflict of interest provisions which shall be at least as strict as those established in the general laws, citizen powers of initiative, referendum and recall as described in [RSA 49-C](#), and adoption and periodic review of an administrative code, a merit personnel system, a purchasing system, and a town investment policy."

However, [RSA 49-C](#), the statute cited in **RSA 49-D:3(e) as authorizing "citizen powers of...recall" does not in fact mention recall as a citizen power.** (RSA 49-D:3(e) does, however, mention the citizen powers of initiative and referendum).

The power of municipalities in New Hampshire to set their own charters at all is laid out in [Article 39 of Part I, the New Hampshire Constitution](#), which says in part, "The legislature may by general law authorize cities and towns to adopt or amend their charters or forms of government in any way which is not in conflict with general law, provided that such charters or amendments shall become effective only upon the approval of the voters of each such city or town on a referendum." This means that cities and towns can adopt their own charters. **What [RSA 49-D:3\(e\)](#) (the recall authorization) says is that if a city or town had adopted its own charter, that charter can -- but does not have to -- include the rights of initiative, referendum and recall.**

Since, however, [RSA 49-C](#) does not in fact assert a citizen power of recall, the New Hampshire courts have struck down city charters that attempted to include a recall provision. As a result, New Hampshire municipalities as a matter of court interpretation regarding the relevant statutes do not have the ability to recall their local elected officials.