Memo

To: Janice O’Connell, Clerk
From: Robert S. Troy, County Counsel
Date: August 11, 2017
Re: Proposed Ordinance 17-11

This shall respond to your request for my Opinion as County Counsel as to whether the Assembly of Delegates may lawfully adopt Proposed Resolution 17-11. Proposed Resolution 17-11 seeks to amend Barnstable County’s Budget for FY2018 by making a supplemental appropriation to the Group 1 Salaries Account “for the purpose of increasing the scheduled work hours of the Human Rights Coordinator from 13 hours per week to 19 hours per week”.

The proposed Ordinance would add the sum of $8,000.00 to the above cited Salaries Account and fund this appropriation by transferring this sum from the Statutory Reserve Account. As previously observed in my Opinions of April 5, 2017 and April 26, 2017, the Assembly of Delegates has authority to add and subtract from line items in the Proposed Budget submitted by the County Commissioners pursuant to authority in the Charter. This authority continues during the Fiscal Year and permits the Assembly of Delegates, through the Ordinance procedure, to add and subtract from line items in the adopted Budget through the supplemental appropriation process.
I, therefore, conclude that the Assembly of Delegates has authority to transfer the sums of money, as included in the Proposed Ordinance, and to effectuate a modification of the Budget by adding and subtracting from the line items referenced therein.

Nonetheless, while the Assembly of Delegates may utilize the supplemental budget process to transfer funds, as proposed, the Assembly may not through the Ordinance process, increase the scheduled work hours of any employee.

Section 3-5 of the Charter provides that “The board of regional commissioners shall appoint and in appropriate circumstances may remove, subject to the provision of any collective bargaining agreements as may be applicable, all Cape Cod regional government officers, department heads, members of multiple member bodies and all Cape Cod regional government employees.”

Inherent in the appointment power for “all Cape Cod regional government employees” is the unbridled right to establish the terms and conditions of employment, including the number of hours during which the employee will work for the County.

I therefore conclude that to the extent the Proposed Ordinance establishes terms and conditions of employment for a County employee, that exercise of authority is ultra vires and an intrusion into the executive branch of the County.

The Proposed Ordinance, however, could be amended to request the County Commissioners to act in a manner that would effectuate the intent of its terms. This would obviate the legal impediments of jurisdictional authority of the current proposal.
Absent amendment, it is my Opinion as County Counsel, that passage of the Ordinance transfers the sum of money identified within it from the accounts specified for an intended purpose. The decision, however, as to whether the transferred sum is expended for the purpose of increasing the hours of the Human Services Coordinator is squarely within the province of the County Commissioners.

RST:geo
Cc: County Commissioners
     County Administrator
     Director of Finance
     Assembly of Delegates