

# Memo

**To:** Michael Brillhart, County Administrator  
**From:** Robert S. Troy, County Counsel *RST*  
**Date:** August 12, 2014  
**Re:** Proposed Resolution 14-01

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This will respond to your request for my Opinion as County Counsel with respect to Proposed Resolution 14-01. You have asked whether or not the Resolution is consonant with the provisions of the Barnstable County Charter and the Barnstable County Administrative Code. My response tracks the comments that I made in Open Session with the Assembly of Delegates at its Meeting of August 6, 2014. My response is that the Proposed Resolution is consistent with the Barnstable County Administrative Code in some respects but violates the Barnstable County Charter in other respects.

First, the Proposed Resolution seeks to "approve the hiring of legal counsel" to advise the Assembly of Delegates. My Opinion is that the Assembly of Delegates may lawfully seek to have Special Counsel represent the Assembly of Delegates on specific issues in accordance with the procedures of the Charter and Administrative Code.

Section 2.3 of the Administrative Code of Barnstable County provides that "The Board of County Commissioners shall coordinate and administer legal services for all County departments, offices and agencies...." The County Commissioners are given the authority to

appoint Counsel for the County on terms established by it. See Section 2.3(a) of the Administrative Code.

Section 2.3 also provides for the appointment of Counsel to serve other needs. Section 2.3(c) recognizes that "...County departments, offices and agencies may have different and unique needs for legal services and, thus, appropriations for special legal services or special counsel are expected." Section 2.3(c) delineates procedures by which this process may be implemented.

Section 2.3(d) of the Administrative Code provides that nothing in the Section "shall limit the authority of the Assembly of Delegates from utilizing the services of County Counsel or from employing separate counsel."

Given these options included in the Administrative Code, it seems clear that the Assembly of Delegates has a number of options available to it, in appropriate circumstances, to secure the services of Counsel.

Since The Administrative Code specifies that the County Commissioners "shall coordinate and administer legal services for all County departments, offices and agencies," it seems clear that the Assembly of Delegates must frame its request and forward it to the County Commissioners for response. The Administrative Code does not require any specific procedure and, therefore, it appears that the Assembly of Delegates may make such a request through an administrative procedure and/or through the Ordinance process. A practical approach would include a request by the Assembly to authorize the Speaker and Clerk of the Assembly to transmit a request for legal services for a specified need to the County Administrator, who, in turn, would discuss the request with the County Commissioners in an Open Meeting. If the Commissioners granted the request, administrative staff could implement the appointment and contract of Special Counsel for the approved purpose and the County Commissioners could vote to appoint Special Counsel and execute the appropriate contractual documents. In the event the Commissioners declined the request, the Assembly of Delegates could formalize its request through the Ordinance process. Moreover, because the process of employment of counsel necessarily involves the expenditure of public funds, the

Ordinance process would accomplish the objective of appropriating funds, if necessary. Section 2-8(d) (iii) of the Barnstable County Charter requires that "appropriations" or "transfer" of appropriations be effectuated through the Ordinance procedure.

Notwithstanding the foregoing, the Proposed Resolution also contains provisions that are in violation of the provisions of the Charter. It "directs the Speaker" to prepare a list of qualified legal firms "to represent and counsel them in all matters deemed appropriate." Moreover, the Proposed Resolution also provides that the Assembly... "by simple majority vote, select legal counsel to advise and represent them." It is unclear whether the term "by simple majority vote" is intended to circumvent the requirements of the Charter with respect to the requisite vote to approve an Ordinance and whether it seeks to nullify the role of the County Commissioners in the Ordinance process. If so, that provision of the Proposed Resolution is *ultra vires*.

Moreover, the process of appointment of Special Counsel outlined in the Proposed Resolution violates Section 3-3(g) as well as Section 3-5 of the Charter. The power to make appointments of all officials representing Barnstable County as well as the authority to enter into and execute contracts on behalf of the County is exclusively an executive function vested by law in the County Commissioners.

For these reasons, while I conclude that the Assembly of Delegates may lawfully request Special Counsel for specified purposes, I also conclude that the mechanism to effectuate that goal in Proposed Resolution 14-01 violates the Barnstable County Charter. I respectfully suggest that the Assembly of Delegates pursue the appointment of Special Counsel through the procedures enumerated in paragraph seven of this Opinion.

Cc: County Commissioners  
Clerk, Assembly of Delegates