

# Memo

**To:** Janice O'Connell, Clerk, Assembly of Delegates  
**From:** Robert S. Troy, County Counsel *RST*  
**Date:** December 2, 2016  
**Re:** "Swearing-in" of Newly Elected Commissioners and  
Members of the Assembly of Delegates

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This will respond to your request for my Opinion as County Counsel as to whether the Clerk of the Cape Cod Regional Government has the authority to "swear-in" newly elected County Commissioners and Members of the Assembly of Delegates.

Some background is helpful. The Barnstable County Charter is a "Home Rule Charter" authorized by the Massachusetts Legislature. As such, it is an independent codification of the rules that govern the model it reflects and is distinct from other state laws that regulate city, town or county government through the provisions of Massachusetts General Laws. The first sentence of the Charter confirms this: "*Notwithstanding the provisions of any general or special law to the contrary* the county of Barnstable shall be governed by the provisions of the following revised home rule charter." (Emphasis added.)

The Charter defines the responsibility, authority and procedures of each of its bicameral branches in distinct sections: Article 2 is entitled "Legislative Branch" and Article 3 is entitled "Executive Branch."

Article 2, Section 2-1 identifies the Composition, Mode of Election and Term of Office of the Assembly of Delegates. Included in this provision is the requirement that Delegates are elected for terms of two years at the biennial state election, for a term beginning on the first business day in January following the election. By operation of law, the Delegates whose election is certified by the Clerk of the Cape Cod Regional Government, will commence their term of office on the first business day of 2017. The terms of Organization of Assembly of Delegates (Section 1 of the Manual of Governance and Procedures) provides that the Delegates shall then be sworn to the faithful performance of their duties. The Clerk of the Cape Cod Regional Government shall act as Assembly Clerk Pro Tempore for this meeting. Reading the Charter and the Manual of Governance and Procedures together, I conclude that the Clerk of the Cape Cod Regional Government is authorized to swear in the newly elected Members of the Assembly of Delegates. Because the Charter is a Home Rule enactment, it has provided provisions for its operations that govern, notwithstanding contrary provisions of any general or special law of the Commonwealth.

While the Assembly of Delegates is a creature of the Charter, the Board of County Commissioners was originally a statutory office that was the model for the Board of Regional Commissioners that is the Executive Branch recognized in the Charter. Article 3, Section 3-1 (c) provides that the Board of regional commissioners shall meet to organize on the first business day of January and shall choose a chairperson and a vice-chairperson to serve for a term of one year.<sup>1</sup>

The Charter and the Manual of Governance do not provide a requirement or a methodology for the swearing into office of newly elected Commissioners of the Cape Cod Regional Government. Since the Board of Regional Commissioners is a “multiple member body” under the Charter, the Charter includes a mechanism for such bodies to determine the Rules and Order of Business that it intends to adopt as its protocol. Section 9-6 of the Charter provides: “Each multiple member

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<sup>1</sup> This provision is inconsistent with state law that governs counties (MGL Chapter 34, Section 4) that provide that the county commissioners terms begin on the first Wednesday in January after being sworn, and who shall at their first meeting after the first Wednesday of January, chose, by ballot, a chairman.

body shall determine its own rules and order of business, unless otherwise provided by the charter, by ordinance or by law....”

The Commissioners have multiple options with respect to establishing a protocol for the swearing-in of newly elected County Commissioners. First, the Commissioners, by majority vote, may adopt such a protocol as an “order of business” pursuant to Section 9-6 of the Charter. Second, the Commissioners could file an Ordinance with the Assembly of Delegates to designate the Regional Clerk of the Cape Cod Regional Government to be authorized to swear in newly elected County Commissioners in addition to the Clerk’s current authority to swear in newly elected Members of the Assembly of Delegates. Third, the Commissioners may request the appointment of a statutory Commissioner through the Program Manager at the Governor’s Office.

It is therefore my conclusion that the Charter, Administrative Code and Manual of Governance do not provide for the methodology of qualifying, by swearing-in, a newly elected member of the Cape Cod Regional Commissioners. It is my Opinion that the County Commissioners may lawfully determine a protocol for this action in accordance with the preceding paragraph.

RST:geo

Cc: County Commissioners  
County Administrator