

To: Bob Troy, Esq., Barnstable County Counsel

From: Deborah L. McCutcheon, Assembly of Delegates, Truro Representative

Re: Charter Change Process and Procedure

Date: February 29, 2016 (by email)

Cc: Ron Bergstrom, Speaker

Janice O'Connell, Clerk of Assembly and of Barnstable County

Members of the Assembly of Delegates

Dear Attorney Troy:

As I understand the situation, you have been designated to advise me and Patrick Princi concerning the legal requirements for submission of proposals for charter change which affect, *inter alia*, (a) the existence of the County Commissioners, the manner in which the County Commissioners are elected, their compensation, the constituency they represent, and their powers and duties in office, (b) the existence of the Assembly of Delegates, the manner in which they are elected, their compensation, and their powers and duties in office, manner in which the Assembly of Delegates and (c) the existence of a chief executive or chief administrative officer of the county, the manner in which those individuals are elected, or appointed, or their term of office.

For clarity, I have submitted a revised charter which would, *inter alia*, (a) abolish the county commissioners, (b) expand the duties and powers of the Assembly of Delegates, and (c) change the manner of appointment of the chief executive/administrative officer of the county; Patrick Princi, Assembly Delegate from the Town of Barnstable, has submitted a revised charger which would, *inter alia*, (a) abolish the Assembly of Delegates, and (b) change the manner in which the County Commissioners are elected, their constituency, and (c) their powers and duties in office.¹

On or about February 22, 2016, I received from the Clerk of the Assembly, the following memoranda, reprinted herein insofar as might be relevant to my inquiry:

“... the proposed charter amendment you submitted
... I spoke to Bob Troy and he has indicated that your
proposed charter amendment *must be submitted as a
Proposed Ordinance*. ... The Speaker has asked that
technical corrections be done no later than March 16th. Bob
(Troy) and I suggest that you withdraw what you have
submitted and *re-submit as a Proposed Ordinance* titled as

¹ This description summarizes Mr. Princi's submission as I understand it in its current form, as to those elements that are relevant to my present inquiry of you as County Counsel.

such (with or without suggested correction) at either the 3/2/16 or 3/16/16 assembly meeting ... I realize this is a formality but we all want to make sure it follows the Charter (see Section 2.8 – *this must be done as a Proposed Ordinance*)² in correct form and process. ...” (emphasis by underline, so in original; emphasis by italic, added)

The Current Charter, at Article 9 - in Section 9-1 provides as follows:

“Section 9 - 1. Charter Changes.

This charter may be replaced, revised or amended in accordance with the procedure made available under chapter eight hundred and one of the acts of nineteen hundred and eighty-five and it may also be amended in accordance with the following procedures.

The assembly of delegates may, by a two-thirds vote of its full membership, provide for the submission of any proposed amendments to this charter to the voters except any amendment which related in any way to the composition, mode of election or term of office of the legislative body or of the mode of election, or appointment, or term of office of the chief executive or administrative officer of the Cape Cod regional government. Amendments proposed by the assembly of delegates shall become effective if approved by a majority of the voters voting thereon at the next regular biennial state election held more than one hundred and fifty days following the date of the vote of the assembly of delegates.

Amendments to this charter which relate in any way to the composition, mode of election, or term of office of the legislative body, or the election or appointment or term of office of the chief executive or administrative officer of the Cape Cod regional government shall be proposed to the voters only after the enactment by the state legislature of a special law approving of a petition filed by the assembly of delegates with the approval of the board of regional commissioners.

² The charter reference here is to “Ordinance” as distinct from “Resolution”, and is general as to actions of the Assembly as opposed to Article 9-1, which is specific as to Charter Amendments. See Section 9-2, post, quoted herein. The general work of the Assembly does not include regular consideration of such things as “Petition” or “Petition for a Special Law”. ,

The assembly of delegates may, by a vote of its members representing a majority of the population of Barnstable county, file a petition for a special law relating to the organization or operation of the Cape Cod regional government with the clerk of either branch of the general court at any time. Such petitions shall, upon receipt be referred by such clerk to an appropriate legislative committee.

Whenever, pursuant to the provisions of this section relating to charter amendments, the assembly of delegates intends that a question is to appear on the state election ballot, the county clerk shall at the earliest possible date, but not later than the first Wednesday in August in an even numbered year, notify the office of the secretary of the commonwealth of the pendency of such question, or questions, and the form in which such question or questions are to appear on such ballots.

Of course, I, and I am sure Mr. Princi, agrees, want the time and energy put into the question of charter change to be in compliance with the requirements of law, including the current charter. Therefore, pursuant to the direction from the Speaker that you are the County's legal resource available for me to consult concerning proposed charter change, I have the following questions.

1. Directing your attention to the quotations attributed to you in the email from Assembly Clerk O'Connell, are the quotations, particularly those attributed to you which have been emphasized by me by italics, correct? If not, please explain what part or parts of these quotes are inaccurate and, if so, what information you meant to convey.

2. I note that Section 9-2 provides that the general provision must yield to specific provisions when interpreting the Barnstable County Home Rule Charter. Does that apply to sections 9-1 and 2-8? If so, do you agree that 9-1 is specific as to charter change proposals and 2-8 is of general applicable to acts of the Assembly, and does not control over section 9-1?

For clarity, Section 9-2 provides that :

Section 9 - 2. Specific Provisions to Prevail.

To the extent that any specific provision of the charter shall conflict with any provision expressed in general terms, the specific provision shall prevail.

3. With regard to the second paragraph of Section 9-1, can we agree that the term “legislative body” refers to the Assembly of Delegates? Can we also agree that the term “chief executive or administrative officer of the County government” refers to the position now held by John Yunits and that it does not refer to the “Board of Regional Commissioners”?

If so, then am I correct in understanding that the second paragraph of Section 9-1 permits a voter referendum on elimination of the Board of Regional Commissioners on a two thirds vote of the Assembly? If that is not correct in your opinion, then what is the basis for your rejection of that interpretation?

This seems to be a fairly straightforward interpretation of the language of the second paragraph of Section 9-1. That interpretation is supported by the fact that it is logical for those who drafted this legislation to assume that the “Board of Regional Commissioners” would not approve legislation from the Assembly which would abolish their positions entirely. Further, paragraph three of Section 9-1, further specifies the procedure to be followed to change (or eliminate) the Assembly or the Chief Executive, and specifically does not refer, and therefore does not apply, to the Board of Regional Commissioners.³

4. What does the 4th paragraph of Section 9-1 give the Assembly authority to seek that is not available elsewhere, with simpler procedures? Alternatively, what do the terms “... organization” and “operation” mean when used in conjunction with the preceding three paragraphs and in the context of charter change?

Reading this legislation as a coherent whole, paragraph 4 appears to provide an alternate route for the Assembly, if it lacks a 2/3s vote, or if it otherwise does not want to go direct to a voter referendum, to go first to the legislature by way of a petition for a special law, and then to follow the standard legislative route for legislation requested by a single political entity, here the county of Barnstable. I note that the direct petition to the legislature for a special law does not require the approval of the Board of County Commissioners. Do you agree? If not, then why not?

I believe that the answers to these questions, particularly the required vote, the issues of approval by the county commissioners, and the interpretation of paragraphs 2

³ The limitation on changes in the Assembly or the Chief Executive or administrative officer, refers only to “composition, mode of election or term of office”. Giving those words their “ordinary” meaning, am I correct in understanding these words as (a) “composition” means how many delegates and whether from districts or towns, whether elected from the local board of selectmen, or from the finance committee, or simply a member of the general public, (b) “mode of election” means whether elected by voters or by board of selectmen or city counsel and (c) “term of office” means whether two year, or three, or four year term, for example. Powers or authority while in office are not included in this limitation, so for example, a change giving all the power and authority of the County Commissioners to the Assembly is not subject to the limitations of paragraphs 2 and 3, of Section 9-1. Is that your opinion also?

and 3, are of vital importance to the debate in the Assembly as to the “reform of county government” sought by both of the current draft proposals. Therefore I would appreciate your response to these questions of interpretation and application of the charter language as soon as possible, but in any event before the legislative deadline of March 16, 2016, imposed by the Speaker of the Assembly, in order to provide time for the debate.

Please let me know if you need any further authority to provide your opinion, as County Counsel, on these issues. Thank you for your time and attention.