

Memo

To: Janice O'Connell, Clerk, Assembly of Delegates
From: Robert S. Troy, County Counsel *RST*
Date: March 22, 2016
Re: Barnstable County Charter

This will respond to your request for my Opinion as County Counsel with respect to a series of questions that have been formulated by the Delegate from Truro. My responses are set forth in tandem with the order of the inquiry.

1) Does the reference in the second paragraph of Section 9-1 to the term "legislative body" refer to the Assembly of Delegates?

It is my Opinion that the term "legislative body" in the second paragraph of Section 9-1 refers to the Assembly of Delegates.

2) Does the term "chief executive or administrative officer of the Cape Cod regional government" refer to the position now held by John Yunits and not to the Board of Regional Commissioner?

It is my Opinion that the term "chief executive ...of the Cape Cod regional government" is the Board of Regional Commissioners, or in today's parlance, the County Commissioners. The Charter provides support for this interpretation. Article 3 - Executive Branch

provides that "The executive powers of the Cape Cod regional government shall be exercised by a board of regional commissioners consisting of three members." See Section 3-1(a). Section 3-2 entitled "Executive Powers" provides that "The executive powers of the Cape Cod regional government shall be vested solely in the board of regional commissioners and may be exercised whether directly by such board, or through the several regional agencies under its direction and supervision." Most persuasively, Section 3-3 of the Charter entitled "Powers and Duties" provides that "The board of regional commissioners shall have, possess and may exercise all the powers, rights and duties commonly associated with the office of chief executive of a local government unit." In my Opinion these provisions of the Charter make it clear that the County Commissioners are the "chief executive of the Cape Cod regional government" referred to in the second paragraph of Section 9-1.

3) Does the second paragraph of Section 9-1 permit a voter referendum on elimination of the Board of Regional Commissioners on a two thirds vote of the Assembly?

In my Opinion, the second paragraph of Section 9-1 specifically excludes "any amendment which related in any way to the.....mode of election or appointment, or term of office of the chief executive ... of the Cape Cod regional government." The Charter does not permit the elimination of the Board of Regional Commissioners to be effectuated through the second paragraph of Section 9-1. However, the Charter does permit an Amendment that would eliminate the Board of Regional Commissioners through the third paragraph of Section 9-1. See my Opinion of March 11, 2016, attached hereto for analysis of that paragraph and its required procedures.

4) Does the fourth paragraph of Section 9-1 bestow authority on the Assembly of Delegates that is not available elsewhere? What do the terms "organization" and "operation" mean in conjunction with the other paragraphs of Section 9-1 in the context of Charter change?

In my Opinion, the fourth paragraph of Section 9-1 permits the Assembly, by a vote representing a majority of the population of Barnstable County, to file a petition proposing "a special law relating to the organization or operation of the Cape Cod regional government..." with the clerk of the House of Representatives or Senate of the Commonwealth. Utilization of the authority in this paragraph does not require the approval or consent of the County Commissioners.

The terms "organization" and "operational" are defined in Black's Law Dictionary. "Organization" is defined as "A body of persons (such as a union or corporation) formed for a common purpose." "Operation" is not specifically included but "operational" is defined as "Engaged in operation; able to function" and, alternatively, as "Ministerial." Reading the Charter in the context of the definitions suggests that the Assembly of Delegates has broad authority to file a petition with the General Court relating to issues relating to the day-to-day functions and facets of the regional model that is envisioned by the Charter. Nonetheless, in the context of the specific provisions relating to the process by which amendments to the structure of county government that is the core of the Charter, it is my Opinion that paragraph two of Section 9-1 governs. Paragraph three does not provide an alternative method to accomplish the acts that are specifically referred to in the preceding paragraph. Simply put, the Assembly of Delegates may not request the General Court to make changes to the "structural" core of County government. The Legislature has already decided upon the required procedures to effectuate these changes.

Please contact me if there are any additional questions relating to my response. Thank you.

RST:geo

Enclosure: County Counsel Opinion dated March 11, 2016

Cc: County Commissioners
County Administrator

Memo

To: Janice O'Connell, Clerk, Assembly of Delegates
From: Robert S. Troy, County Counsel *RST*
Date: March 11, 2016
Re: Barnstable County Charter - "Charter Changes"

This will respond to a request for my Opinion as County Counsel as to the required process for Barnstable County to utilize the third paragraph of Section 9-1 of the Charter that empowers the County to "petition" the Legislature to amend the current Charter's provisions relating to the "composition, mode of election or term of office of the chief executive or administrative officer of the Cape Cod regional government."

There are numerous references in the Charter that underscore the significance of the Ordinance process in exercising the authority that the Legislature has given to the County. See Sections 1-6 (a), 2-8 (a) and 2-8 (d). These provisions, read together, raise an issue as to whether the Charter envisions proposals to change the "structure" of County government to be evaluated through the Ordinance process. While there is support for this proposition, I conclude that analysis of Section 9 of the Charter suggests that the Legislature intended that the specific procedure outlined within that Section be followed in these circumstances.

Section 9-1, entitled "Charter Changes" includes two paragraphs that focus on the mechanism to make "structural" changes to County government: paragraphs three (3) and four (4). Paragraph three provides that proposed "structural" changes can be approved only after a four step process: (1) Approval by the Assembly of Delegates of a "petition" detailing the proposed changes; (2) Approval by the County Commissioners of the "petition" filed by the Assembly of Delegates; (3) approval by the Legislature of a "special law" after the petition is filed by the Assembly of Delegates, with the approval of the County Commissioners; and (4) approval by the voters of Barnstable County at a state election.

The fourth paragraph of Section 9-1 identifies the quantum of vote necessary for the approval of a "petition" by the Assembly of Delegates: "a vote of its members representing a majority of the population of Barnstable County."

Applying the tools of statutory construction that require that each provision be interpreted so as to give each word its full meaning and the rule that particular provisions of a statute should be read in the context of the document as a whole requires that the provisions of Section 9-1 should be given their full operative effect. "A fundamental tenet of statutory interpretation is that statutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result". Comm'rs of the Bristol Cnty. Mosquito Control Dist. v. State Reclamation & Mosquito Control Bd., 466 Mass. 523, 997 N.E.2d 1188 (Mass., 2013).

While there is general language in the Charter suggesting that the County acts through the Ordinance process, there is a specific path for approval of proposals to change the structure of the County in Section 9-1. A canon of statutory construction requires the utilization of a specific provision over conflicting general provisions. Section 9-1 establishes a specific process, and, in my Opinion, governs in pursuing "Charter Changes" that effect the subjects described in that Section. "When two statutes (or provisions within those statutes) conflict, we have stated that the more specific provision, particularly where it has been enacted subsequent to a more general rule, applies over the general rule". Lukes v. Election

Comm'rs of Worcester, 423 Mass. 826, 829, 672 N.E.2d 976 (1996) ("[w]here two provisions are in conflict, if a specific provision ... is enacted subsequent to a more general rule, the specific and not the general provision applies"). See also 2B Singer, Sutherland Statutory Construction, supra ("[w]here a conflict exists the more specific statute controls over the more general one"). Doe v. Attorney General, 425 Mass. 210, 216 (1997).

It is therefore my Opinion that proposals for "Charter Changes" that implicate the third and fourth paragraph of Section 9-1 are subject to the procedural requirements contained in that Section.

In my Opinion, the Assembly of Delegates must approve a "petition" by a vote of its members representing a majority of the population of the County; the "petition" must then be approved by a majority of the County Commissioners; the "petition" must then be filed as a request for enactment of a Special Law of the Legislature; and, if approved by the Legislature and the Governor, the proposal must then be approved by a majority of voters of Barnstable County voting at a state election. This is the process by which "Charter Changes" that affect the "composition, mode of election or term of office of the chief executive or administrative officer of the Cape Cod regional government" must follow.

RST:geo

Cc: County Commissioners
County Administrator