

Memo

To: Janice O'Connell, Clerk, Assembly of Delegates
From: Robert S. Troy, County Counsel *RST*
Date: April 22, 2016
Re: Barnstable County Charter Section 9-1

This will respond to your request for my Opinion as County Counsel with respect to two issues raised by the Delegate from Truro pertaining to Section 9-1 of the Charter. Section 9-1 of the Charter requires that "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."

This requirement would require the Clerk of the Assembly to place any question regarding Charter Amendments on the ballot for the state election in November 2016 to notify the Secretary of State "at the earliest possible date" but not later than August 3, 2016. This date has consequences for two distinct paragraphs of Section 9-1, that have been explored in my previous Memos of March 11, 2016 and March 22, 2016. Paragraph two of Section 9-1 requires that Charter Changes that do not effect "structural changes" to County government, as more fully analyzed in the memoranda cited herein,

must be approved by the Assembly of Delegates, by a two-thirds vote of its full membership, and become effective if approved by a majority of voters at the next state election held more than 150 days following the date of the vote of the Assembly of Delegates. Applying this time frame to the current year establishes that the Assembly of Delegates must act as specified in the Charter on or before June 10, 2016 in order to be placed on the ballot at the state election on November 8, 2016. Accordingly, the Clerk must notify the Secretary of State of the pendency of such question and the form of the question prior to August 3, 2016.

Charter Amendments that pertain to what has been characterized as "structural" changes to the form of County government are governed by the third paragraph of Section 9-1. These Amendments "shall be proposed by the voters only after the enactment by the state legislature of a special law approving a petition filed by the assembly of delegates with the approval of the board of regional commissioners. Hence, a petition for a "structural" change to county government must meet the following prerequisites before being placed on a state election ballot: Approval by the Assembly of Delegates and County Commissioners of a "petition" seeking such an amendment to the Charter; and approval by the State Legislature of a special law approving such a Petition. In order to be placed on the ballot for the November 8, 2016 election, approval by the Assembly of Delegates, County Commissioners and the State Legislature must be effectuated before the August 3, 2016 deadline for the County Clerk to submit the pendency and form of the question to the Secretary of State.

Please advise if you have any additional questions.

RST:geo

Cc: County Commissioners
County Administrator