

Memo

To: Barnstable County Commissioners

From: Robert S. Troy, County Counsel

RST

Date: June 20, 2017

Re: Resolution 14-01

As you know, the Assembly of Delegates is considering issues relating to Resolution 14-01 at tomorrow's Meeting. While the Assembly may elect to take action with the implementation of advisory councils proposed by the Resolution, the current provisions of the County Administrative Code already provide for appointment of Special Counsel for the Assembly when circumstances warrant.

Resolution 14-01 recognizes the distinct legislative and executive branches of the County and that "...both branches utilize a common legal counsel in the course of executing their duties..." This language reflects the provisions of the Barnstable County Charter requiring a single legal officer to be responsible for the legal affairs of the County. The County Commissioners appoint the "Cape Cod Regional Government Legal Officer". See Section 3-5 and Section 7-2 of the Charter for authority on this point.

Nonetheless, there are circumstances when Special Counsel is needed to represent distinct interests and times when the County requires the services of a lawyer other than County Counsel. The County Commissioners and the Assembly of Delegates has addressed this situation by adopting the Administrative Code. Section 2.3 (c) of the Administrative Code provides: "It is understood 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. Nothing in this section shall limit the authority of the Board of County Commissioners to employ special counsel.” The County Commissioners have consistently approved any requests for Special Counsel.

Legal authority on this issue supports the proposition that appointment of Counsel for a government agency is an executive power. The Massachusetts Appeals Court has ruled on a similar issue and decided that the Boston City Council could not hire a lawyer to represent the Council and that the Mayor of Boston had exclusive authority to hire Counsel to represent the corporation of the City of Boston. See, City Council of Boston v. Mayor of Boston, 58 Mass. App. Ct 542 (Mass. App. 2003).

As a result, it is respectfully suggested that the County does not need to vary the existing provisions of the Administrative Code of the County that provide for "different and unique needs for legal services”.

RST:geo

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