

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