TROY WALL ASSOCIATES
ATTORNEYS & COUNSELLORS AT LAW
A Professional Association of Individual Practitioners

Memo

To: Suzanne McAuliffe, Speaker, Assembly of Delegates

From: Robert S. Troy, County Counsel RST

Date: December 12, 2017

Re: Proposed Ordinance 17-16

This will respond to your request for my Opinion as County Counsel as to whether Proposed Ordinance 17-16 may be lawfully adopted by the Assembly of Delegates and County Commissioners. This Proposed Ordinance is described as a "proposed amendment to the Barnstable County Home Rule Charter" to be submitted to the General Court as required by Article 9, Section 9-1. It would add to Article 7, a new Section designated as Section 7-6, after renumbering current Section 7-6 as Section 7-7.

The proposed new Section 7-6 would insert provisions in the Charter relating to "Recall of Elected Officials." The provisions reflect a series of procedural mechanisms to provide for the recall of "Any elected officeholder serving all of Barnstable County."

Section 9-1 of the Barnstable County Home Rule Charter provides for "Charter Changes." This Section authorizes the Assembly of Delegates, by a two-thirds vote of its full membership, to provide for the submission of any proposed amendments to the Charter to the voters, except any amendment which relates in any way to the composition, mode of election or term of office of the legislative body or to the chief executive or administrative officer of the Cape Cod regional government. See Section 9-1, Paragraph two. Amendments that relate to this latter category require approval by the Legislature "...of a special law

approving a petition filed by the assembly of delegates with the approval of the board of regional commissioners." See Section 9-1, Paragraph three. Paragraph three of Section 9-1 does not include the quantum of vote necessary for action by the Assembly that is specified in Paragraph two.

Reading the Charter, it is my Opinion that the Proposed Ordinance relates 'in any way" to the composition, mode of election or term of office" of the Board of Regional Commissioners, and therefore, requires legislative enactment of a "...special law..." approving a "petition" filed by the Assembly of Delegates with the approval of the board of regional commissioners." See Section 9-1, Paragraph three.

The Ordinance process is subject to provisions of the Charter that permit an Ordinance to be enacted without the approval of the board of regional commissioners. I conclude that the filing of an Ordinance to advance the objectives of this Charter Amendment is not the appropriate procedural mechanism given that the Charter requires a "petition" be filed with the Legislature by the Assembly of Delegates "...with the approval of the board of regional commissioners."

If the "Petition" is approved by the Assembly of Delegates, it should be forwarded to the Board of Regional Commissioners with a request for approval.

The fifth paragraph of Section 9-1 suggests that the Charter contemplates that Charter amendments be approved or rejected by voters by "state election ballots." The Charter requires that the Secretary of State be notified on or before the first Wednesday in August in an even numbered year of any ballot questions relating to Charter Changes.

There are a series of issues relating to the substantive content of Proposed Ordinance 17-16. I have conferred with Michelle Tassinari, Esquire, Director and Legal Counsel, Elections Division, Office of the Secretary of the Commonwealth. Ms. Tassinari has agreed to review the substantive content of the recall process against the requirements of Massachusetts Election law. I have forwarded a copy of the Proposed Ordinance to the Secretary of State's Office.

In sum, it is my Opinion as County Counsel that the required procedural route for this request for a Charter Change is the filing of a petition in the Assembly of Delegates. In the event that the Assembly of Delegates approves the petition, it should forward it to the County Commissioners with a request for approval. If the County Commissioners approve the petition, it should be submitted to the General Court for filing.

As to the substantive provisions of the petition, I leave this decision to the Assembly of Delegates after the Assembly receives guidance from the Secretary of State.

RST:geo
Cc: Janice O'Connell, Clerk, Assembly of Delegates
Owen Fletcher, Acting Clerk, Assembly of Delegates
County Commissioners
County Administrator