

The 2021 Wicomico County Charter Review Committee met on Thursday, July 1, 2021 at 5:00 p.m. in Council Chambers, Government Office Building, Salisbury, Maryland.

Members Present: Mike Dunn, Chair; Robert Benson, Vice Chair; Dallas Baker, Julie Bellamy, Doug Gosnell, Katherine Jones, Sharon Morris, David Plotts, Michelle Chesnik, Anthony Sarbanes, Wayne Strausburg, Mat Tilghman, Philip Tilghman, Blair Todd, and Sonya Whited.

Staff Present: Laura Hurley, Recording Secretary, and Paul Wilber, County Attorney.

Approval of Agenda:

On motion by Mr. Mat Tilghman and seconded by Mr. Philip Tilghman, the agenda was unanimously approved.

Approval of Minutes from June 17, 2021:

On motion by Mr. Phil Tilghman and seconded by Mr. Sarbanes, the Minutes from the meeting of June 17, 2021 were unanimously approved.

Section 507 – Department of Law

Mr. Dunn said, for background, when the new County Executive form of government occurred in 2006, they named the Department of Law. He said, historically speaking, the Department of Law in Wicomico County has, for all intents and purposes, been the County Attorney. He said, when the Department of Law was first ordained as such, the County Attorney was a gentleman named Ed Baker, whose office was across the street, and when the Department of Law was created, he was the County Attorney. He said, once this reorganization occurred, Mr. Ed Baker and the Wicomico Department of Law leased some space for the Department of Law. He said sometime around 2010 Mr. Ed Baker and the Department of Law and that leased space came into this building and was housed in this building.

Mr. Dunn said Mr. Culver won the election as the new County Executive in 2014, and shortly after taking Office decided to hire the current County Attorney, Paul Wilber, which is certainly within the rights of the County Executive, and Mr. Wilber operated and continues to operate as the County Attorney on a contractual basis. He said, when Mr. Ed Baker was the County Attorney, he had a salary of about \$112,000 to be the County Attorney in the Department of Law in this building. He said, when Mr. Wilber was hired, Mr. Culver decided he preferred to go back to a contractual by-the-hour County Attorney, and Mr. Wilber and his firm are the defacto Department of Law and operate across the street. He clarified, the Department of Law does not operate in this building. He said, when Mr. Wilber is called upon, approximately 70 percent of his time as the County Attorney is spent dealing with the various Departmental needs, about 20 percent is dealing with the needs of the County Executive, and about 10 percent is the needs of the County Council. He said Mr. Wilber has four members of his firm who also perform duties as part of the Department of Law with the County Attorney.

Mr. Dunn said the following is a personal opinion; by calling this the Department of Law the same way as other County Departments, what has occurred is debate in the community of which is the right way to handle what is called the Department of Law. He said, because there was a period of time when the County Attorney worked in this building under the Department of Law, but Mr. Culver, and subsequently Acting County Executive Psota, are continuing the contractual not-on-site Department of Law with the County Attorney, there is some consternation in the public that the current setup with a contractual

lawyer is in violation of the Charter; however, in Section 507 describing the Department of Law there is no language that says the Department of Law must be housed here, so there is nothing that says they cannot do it the way it is currently being done, and it does not say it could not be done the way it was when Mr. Baker was the County Attorney under Executive Pollitt. He clarified, there is no differentiation, and that is part of the challenge. He said, in speaking with Mr. Wilber and Mrs. Hurley to get some of this background, one thing that strikes him is maybe they should just not call it the Department of Law and maybe think about calling it the Office of the County Attorney. He concluded, he just wanted to provide the group and the public the background on the Department of Law and the County Attorney.

Mr. Strausburg said, to give the group a sense of Executive Culver's thinking, he thought it was a significant cost-saving move. He said, by the time Mr. Culver arrived he thinks they actually had three attorneys, a paralegal, and an administrative assistant, so they, in fact, had a small law firm. He said they were not only paying salaries but paying benefits, which were becoming more and more expensive, particularly with regard to health insurance. He said Executive Culver thought they would revert to outsourcing law, hire a competent attorney and a competent firm, and shed the ancillary benefits costs, and that is why he made that decision. He said, moving forward, having worked under both scenarios, they both work. He clarified, having the County Attorney housed in this building really makes no difference at all because most of the County Departments do not work in this building, so the sense that the County Attorney must be in the Government Office Building, from his standpoint, from a practical standpoint, just does not hold water. He said it is a very short walk across the street to Mr. Wilber's office, and he came from a background where they had locations in 20 different states and did a lot of lawyering on the phone. He said the physical presence in this building, to him, is nonconsequential.

Mr. Dunn said he spoke with Mr. Wilber about this and, from a budgetary perspective, it is somewhat of a wash that Mr. Culver thought that outsourcing would be a cost saving, and, in fact, it sort of ended up being the same. Mr. Wilber said he thinks the difference was about 30 to 33 percent between having it outside versus inside, and it was the benefits – the health and the pension. He said they just earn an hourly rate, but as an employee there are going to be benefits.

Mr. Sarbanes said, when he left Office, he was under the impression there would be a Law Department in the building. He said he agrees with Mr. Strausburg that the lawyer could be across the street or in the building, but he thinks when they get done with this they either have to say there is not a Department of Law and they are going to contract the services out, or they are going to have a Law Department. He said it needs to be one or the other because, to him, it is not clear. He said the attorney can really influence what members of the Council or the public do, and that is the reality as far as he is concerned.

Ms. Chesnik said she thinks they need to look at whether there should be an attorney for the Council and possibly one for Planning and Zoning since that is a very specialized area.

Ms. Morris asked if the County is currently contracting a firm or an attorney, to which Mr. Wilber responded, he holds the position of County Attorney, but he uses other partners of his to do various aspects of that work. He clarified, the entire firm is involved in representing the County.

Mr. Strausburg said he thinks an important clarification is that the other attorneys Mr. Wilber utilizes do not give guidance to the County Council or to the County Executive; that comes from Mr. Wilber.

Section 507.a:

There was discussion about employment contracts. Ms. Bellamy said she thought they were contracting with a firm that had a plethora of other people they could bring in with advice, and it just seemed a lot more open. She then asked, if they are going to have an employee, are they going to have an employment contract, to which Mr. Strausburg responded, the issue is the County does not have employment contracts, and that is a serious hurdle in trying to find an experienced attorney with the requisite experience with government law to leave their practice and be subject to removal by the Executive or the County Council. He said that is a tall order, so it is a real, real problem.

Mr. Strausburg said the other problem he sees in the second paragraph is they get back to the issue of the County Council having its own attorney, so why should they have their attorney but also have a say over who the County Attorney is? He said it is completely lopsided and makes no sense to him at all.

Ms. Chesnik asked if the Council actually has their own attorney who is strictly theirs, to which Mr. Strausburg responded, yes.

Mr. Dunn said, to Mr. Strausburg's point, here is what happened to the current County Attorney in Wicomico County in the last year and a half; by a two-thirds vote of the County Council, the County Attorney was, in effect, fired. He clarified, he was dismissed. He said the County Executive at that time, Mr. Culver, did not like that decision by the County Council so Mr. Culver appointed Mr. Wilber as the Acting County Attorney right after he was dismissed by the County Council. He said fast forward about another year and the County Council that a year ago dismissed Mr. Wilber rehired Mr. Wilber. He summarized, the County Attorney was dismissed by a two-thirds vote of the County Council, the County Executive did not like that so the County Executive reappointed Mr. Wilber as the Acting County Attorney and he then continued in that role until, low and behold, come full circle for reasons never stated to the public, the County Council then rehired the man that they had fired a year earlier. He clarified, those are just the facts and he thinks it is incumbent upon this Committee to help clean that up because it is not a good look. He said it has been fairly consistent that there are certain things that go on with the County Council, and, again, this is a dispassionate observation, but the County Council fired the County Attorney, never gave the public a reason because it was "personnel" and the County Executive did not like what they did so hired him as the Acting County Attorney, but then the County Council rehired the very man they fired. He said one way he might suggest so that does not happen again is if they got rid of where it says the County Attorney may be removed from office by the County Executive with the consent of a majority of the Council.

Mr. Dunn said, again, the Council has their own attorney fulltime and they also have at their disposal a County Attorney. He clarified, there is a Council Attorney and a County Attorney, and, as Mr. Strausburg said, the Council, in effect, has control over two different attorneys; they have their own and in the case that just occurred they dismissed one because they can, so then they had this revolving door.

Ms. Chesnik said she wants to make sure they are not just going over one bad incident that occurred. She then asked if any problem occurred like this prior to this situation? She further asked what the role of the Council Attorney is and whether it is simply to advise them on what they can and cannot do, or things they wish to vote on, and what role does the County Attorney play with the County Council?

Mr. Wilber responded, under functions they can see the answer for the County Attorney as it says that by written request of a County Councilman, the attorney can give answers to legal questions affecting

opinions and preparing Legislation. He said most of the rest of that paragraph relates to the County Executive and the Departments.

Ms. Chesnik asked if there are only specific things the County Attorney can advise the Council on, and what does the Council Attorney actually do, to which Mr. Wilber responded, that is in Section 304, but there is potentially overlap between the two positions. He said that Section says the Council can hire an attorney to aid in its inquires, investigations, or the drafting or codification of Legislation, so there can be overlap there. Ms. Chesnik asked if there is normally overlap, to which Mr. Wilber responded, he thinks until recently the Council Attorney position has been very intermittent and there was not much call for a Council Attorney, but in the last four to five years there has been a Council Attorney who attended Council meetings and provided advice to the Council. He said most of the County Attorney's work has been for the Executive and all of the Departments, and to a limited degree for the Council.

Mr. Baker said he liked Mr. Dunn's suggestion because it treats the County Attorney very similar to other Department Heads. He said Departments Heads get confirmed when they are first appointed and then they have to be reconfirmed every four years, but at no point in a normal Department Head's tenure does the Council ever have an opportunity to just solely on their own terminate them. He clarified, the Executive can and the Department Heads serve at the will of the Executive, so they can get fired, but at no point does the Council ever have the ability to just fire a Department Head. He said he feels like this would make things more uniform as far as treating the Department of Law or the County Attorney as it does every other Department in the County.

Mr. Phil Tilghman said this is very interesting but he asks that they remember that there are two functions – the Executive function and the Legislative function. He said the Executive function includes all the Departments that are in the County, so in the second paragraph of Section A if they keep "the County Attorney shall serve at the pleasure of the Executive," period, and remove the rest of that, it seems to him that would solve the problem. He said the County Council in its efforts to Legislate still has the opportunity to call upon the County Attorney and they can also hire someone else if they want to, so he would move that they recommend putting a period after Executive in the second paragraph.

Mr. Phil Tilghman made a motion to put a period after Executive in the second paragraph, which was seconded by Mr. Sarbanes.

Mr. Benson said this Section was amended in August 2012 by Resolution No. 131-2012, which is in their book. He said the prior language said the County Attorney shall be a resident of the County at the time of the appointment and shall continue to be a resident for the duration of the term of office, but that got deleted. He clarified, he does not know why they amended the language in 2012, but they said the County Attorney does not have to be a County resident and he does not know why they took that out. He said they also took out that he would be removed in accordance with Section 413, which he assumes is exactly what they are talking about going back to. He clarified, that may make sense, but for some reason it got changed in 2012.

Ms. Chesnik asked if anyone knows why that was changed, to which Mrs. Hurley responded, her recollection is that the attorney who was going to be promoted to County Attorney once Mr. Ed Baker resigned did not live in Wicomico County, so that was removed to allow her to be promoted.

Mr. Benson said they specifically changed the language and added language about the County Council being able to remove the County Attorney, and that was in 2012 before Bob Culver. He said he does not know why it was done, but now they are talking about reversing what was done nine years ago.

Mr. Dunn said, if they do this it would contradict what was done back in 2012, to which Mr. Benson responded, it might be warranted, but he does not understand why they did it in 2012.

Ms. Chesnik suggested they talk to Mr. John Cannon or Mr. Joe Holloway, or one of the folks who was on the Council at that time to get them to explain this. She said this was done for a purpose, so before they undo what was done they should do some research.

Mr. Strausburg suggested talking to Matt Creamer, who was the Council Administrator at the time. He said Mr. Creamer may be able to give them some real insight as to why and how that happened.

Mr. Phil Tilghman said, speaking on behalf of his motion, when this recommendation goes to the Council they can decide whether or not to put it on the ballot. He said he does not think they have to reinvent everything and he would urge they vote in favor of this motion.

Ms. Chesnik made a motion to table this until they get some answers, which was seconded by Mr. Mat Tilghman. The motion to table failed with a vote of 6 in favor and 9 opposed.

There being no further discussion, on motion by Mr. Phil Tilghman and seconded by Mr. Sarbanes, the recommendation to put a period after Executive in the second paragraph was approved. Ms. Chesnik and Mr. Todd opposed.

Mr. Dunn said Ms. Chesnik had a nice idea and he is going to assign her to do some homework for the Committee and speak to whichever Councilmember and/or Mr. Creamer and come back and give a little background. Mr. Phil Tilghman said, if Ms. Chesnik finds something, she can move to reconsider this motion and if there is a second to that they could vote in the affirmative to reconsider it.

Mr. Benson said, in the 2012 amendment they removed the requirement that the County Attorney be a resident of Wicomico County, which apparently was done for a reason that does not make any sense to him, but he guesses the question is whether the County Attorney should be a resident of Wicomico County, to which Mr. Baker responded, that is not a requirement of any Department Head. Mr. Benson said that means they could hire an attorney from Baltimore to represent Wicomico County.

Ms. Chesnik asked if there are any legalities that the person should be a resident of the County if they are going to legally represent them, to which Mr. Wilber responded, to him, it is just a choice. He said what they want is a competent attorney. Mr. Benson said he thinks they want an attorney who is familiar with Wicomico County and the issues that are involved with Wicomico County, which would tend to mitigate toward having somebody who is a resident of Wicomico County, and that is his only point. He said he suspects that never in the history of Wicomico County has there been an attorney for the County who has not been a resident of Wicomico County.

Mr. Sarbanes said he thinks Mr. Benson has a very good point. He said, in his opinion, he is disappointed that Department Heads do not have to live in the County. He said they make nice salaries, in his opinion, and he thinks they ought to live in the County, so if they want a job here they should move here.

Mr. Mat Tilghman said his only argument would be, for example, if they had an absolutely phenomenal experienced attorney who lived in Berlin. He said, if he is an experienced attorney dealing with local

government, he does not see a problem with that. He said the only thought he has is maybe they have to be a resident of Wicomico County or any immediately adjacent County.

Ms. Chesnik said they require the County Executive to be a resident, to which Mr. Baker responded, those are elected positions, not staff.

Mr. Strausburg said, according to the Charter, the seven Councilmembers, the Executive, and the Director of Administration are required to be residents of the County, so he tends to agree with Mr. Sarbanes and Mr. Benson. He said people making important decisions and taking important actions that impact County citizens ought to be in the same boat as the citizens, but that is a personal opinion.

Mr. Phil Tilghman said he is thinking of Mr. Wilber's law firm and other firms in town where one of the attorneys might live outside the County but comes everyday and works here. He then asked if they want to eliminate that person, to which Mr. Benson responded, this would not affect that as the only one who has to live in Wicomico County is the County Attorney. Mr. Phil Tilghman clarified, if that is who they want to appoint, do they want to eliminate the one who may be the most competent when it comes to local government? He said he is just thinking of possibilities. He clarified, if he were choosing, he would choose a local attorney, but there might be extenuating circumstances.

Ms. Bellamy suggested leaving this alone. She said she believes that people should be from Wicomico County, but she does not believe it has to be a Charter issue, to which Mr. Dunn responded, it might be a political issue if the County Executive decides to hire someone from Seaford.

Mr. Baker said Mr. Wilber's firm has represented a lot of the Lower Shore Counties. He then asked how many other Counties have a residency requirement for the County Attorney, to which Mr. Wilber responded, he cannot tell him off the top of his head, but it is easy enough to check. Mr. Baker said he likes Mr. Mat Tilghman's idea because he is a come-here from Anne Arundel County originally, but he would not want somebody from Baltimore serving here as the County Attorney, he would want someone from the Lower Shore. He said he just feels like they want somebody local who knows the issues, so he likes the idea of them being a Wicomico resident or an immediately adjacent County.

Mr. Dunn said he thinks the County Attorney should live in Wicomico County, but he thinks that decision should probably be up to the County Executive.

Mr. Strausburg said it may be best for them to just leave this alone in the Charter. He said the personnel manual is being rewritten at this current time, and maybe it is better to address this issue in the job descriptions that are developed in the rewrite of the personnel manual, wherein they could say Department Heads must be a resident of Wicomico County.

Section 507.b:

Mr. Dunn said number one reads "by written request of a County Councilman" but maybe that should be by the whole County Council instead of just by one Councilmember. He then asked Mr. Wilber if right now any member of the Council can at any time call his office and ask for a law to be drafted, and if that Council person asks that in writing either via Mrs. Hurley or Mr. Wilber to draw up Legislation, is Mr. Wilber required to submit that Legislation to the Council, to which Mr. Wilber responded, yes. Mr. Dunn said he is looking at saving taxpayer dollars and efficiencies, so if a Councilmember wants a legal interpretation, that is one thing, but if any Councilmember has the ability to ask Mr. Wilber to draft any law they might think of without the consent of the majority of the Council, in theory, Mr. Wilber could

be drafting laws for every Councilmember as currently written, to which Mr. Wilber responded, theoretically, there could be seven variations on the same subject. Mr. Dunn said he think perhaps the request to prepare Legislation should come from a consensus of the Council as opposed to getting legal opinions. He said, in order to consider an actual new law, perhaps it should be from a majority of the Council. He clarified, he is just throwing this out there for discussion.

Mr. Benson said, if Council has questions, it seems to him they should ask their own Council Attorney and not the County Attorney. He said they need to address whether or not there should be a Council Attorney position created in the Charter because, if so, they should not be directing questions to Mr. Wilber anymore, but if there is not going to be a Council Attorney, they need to go to Mr. Wilber.

Ms. Morris said, in Section 306 it says all of the functions of the County Council should be as a Body.

Mr. Benson asked if individual Councilmembers are abusing the privilege of asking the attorney to draft Legislation, to which Mr. Wilber responded, no, it has not been a problem.

Mr. Phil Tilghman said, if it is not being abused, they should leave it alone.

Section 507.c:

There was no discussion.

Section 507.d:

Mr. Dunn said, for the first nine years of the Executive form of government there was not a County Council Attorney. He said the County Council Attorney came into being by certain members of the current Council around 2015. He said this Section states the County Attorney shall serve as a legal advisor and a Legislative draftsman for the Council; however, the Council may elect to employ other attorneys as provided in Section 304.c. He said he is not sure that the Charter allows for a permanent County Council Attorney, and if the group decides the Council should have one, he thinks it should be spelled out because he does not view it as spelled out. He clarified, he is not here to say whether they should or should not, he is just trying to be consistent with the Charter.

Mr. Phil Tilghman said he is going to refer to Mr. Taylor who at the last meeting said at the microphone that 60 to 80 percent of the time he was in total agreement with Mr. Wilber. He said to him, from a budget point of view, the County Attorney can advise to the best interest of the Council on a regular basis, but if they need to invoke this Section of the Charter, they have every right to do so. He said, if they want to keep that person every time they have a meeting, he thinks they have that right to do so.

Mr. Strausburg said there is a difference between giving legal advice and acting as an eighth Councilmember.

Mr. Baker said the last sentence says the County Council may elect to employ other attorneys as provided in Section 304.c, so there is nothing saying they cannot hire an attorney, so he does not understand the confusion.

Dr. Jones said it was on the ballot on November 8, 2016 to amend the County Charter to change the role of the County Attorney in the representation of the County Council and the Council's right to employ counsel. She read "The current Charter requires that the County Attorney be the legal advisor of the Council and the Charter amendment modifies this requirement."

Ms. Whited said the question for her is clarification on why the Council would go to the County Attorney if they have a Council Attorney.

Mr. Dunn said, in Mr. Taylor's email sent earlier today he referenced that Hartford County and Baltimore County specifically have duties and responsibilities of the County Council Attorney, so other Counties spell it out a little more explicitly and allow for a County Council Attorney. He said the voters of Wicomico County in 2016 made a provision to allow the County Council to seek legal counsel.

Mr. Benson said, if he understands correctly, right now the Council can choose to hire a Council Attorney, but they are not mandated and it is not required by the Charter. He said, if he understands correctly, Mr. Taylor is suggesting they should consider amending the Charter to create a permanent position of a Council Attorney so they do not have the option. He said the initial County Council Attorney was Mr. Ed Baker and then Mr. Baker retired and Mr. Taylor came on, so it did not start with Mr. Taylor. He said the question is whether they want to mandate in the Charter that there is a permanent Council Attorney. He said Mr. Taylor seems to argue on many occasions that Wicomico County is not as large as Hartford and Baltimore County and does not have as big of a budget, and, therefore, should not do certain things because of that, but in this instance he is saying they should have a Council Attorney mandated in the Charter although the two Charters he is referencing are much larger and wealthier Counties. He said it seems to him that if the Council wants to have an attorney they can do that and they are choosing to do that now, so he does not think they should put it in the Charter.

Mr. Sarbanes asked, if the Council had their own attorney, how much work would that individual really have as it pertains only to the Council, to which Mr. Wilber responded, he does about 10 percent of his work for the Council, so, theoretically, that 10 percent of the work would go to the Council Attorney.

Ms. Chesnik asked if decisions that would go into Legislation still have to go before Mr. Wilber as the County Attorney, to which Mr. Wilber responded, yes, they should because, if Council puts forth a piece of Legislation, it has to go through the Executive to either support or veto, so if there is going to be Legislation originated by the Council, it should be in discussion with the County Attorney. Mr. Benson clarified, it is not mandated to go through the County Attorney, but it would be better practice. He said, if the Council wants to put forward a piece of Legislation without asking the Executive in advance, they are free to do that, to which Mr. Wilber responded, that is correct, but a cooperative approach is where everything is on the table ahead of time, otherwise one Body does something and the other Body reacts to it. Mr. Benson said that is the way it is supposed to work, but it did not work that way. He said they are being asked to deal with issues that really should not be a problem under normal circumstances but became a problem, so they are being asked to address what may have been a one-time occurrence and may never happen again.

Mr. Strausburg said, by way of background, he is somewhat familiar with what happened in Hartford County because he resided there for quite a while. He said the political situation there was that the County Council and County Executive were basically at war with one another and that led to the Council hiring their own attorney and the County Executive had his own attorney. He said, actually, the Council locked the Executive out of the Council's building, so it got that bad, and that, he thinks, is the genesis of what happened there. He said he is not familiar with Baltimore County.

Mr. Dunn asked what the current duties of the Council Attorney are and what the Council Attorney does for the Council, to which Mrs. Hurley responded, a lot of times the Council will just seek advice from the

Council Attorney, but there have been times the Council Attorney drafted Legislation and reviewed contracts for the Council, so a lot of what he does is what Mr. Wilber does, so there is a lot of overlap.

Mr. Benson asked, prior to 2016 and the Charter allowing the Council to have a Council Attorney, did the County Attorney go to the Council meetings, to which Mrs. Hurley responded, yes, they had Mr. Ed Baker as well as Maureen Howarth. She said Ms. Howarth handled a lot of the Council work behind the scenes, but she would agree with Mr. Wilber that it was only about 10 percent. Mr. Benson asked, in 2014 if there was a Council meeting, would questions have been directed to the County Attorney, to which Mrs. Hurley responded, yes. Mr. Benson said, assuming things go back to a more even keel between the Council and the Executive, would Mr. Wilber be expected to attend the meetings, to which Mrs. Hurley responded, Mr. Taylor resigned, so they do not have a Council Attorney right now, and Mr. Wilber has been attending the meetings and sitting at the table. Mr. Dunn asked if they are about to have a Council Attorney again, to which Mrs. Hurley responded, yes. Mr. Dunn said, just to be clear, Mr. Taylor is no longer the Council Attorney, but the Council is about to hire a replacement attorney.

Mr. Phil Tilghman asked if they could have a straw vote to see how many agree that the current language is sufficient and leave it alone.

Dr. Jones said they are looking to have a balance of power and they are already recommending to the Council that the County Executive hires and fires the County Attorney. She said, if the Council can have their own attorney, she thinks it is good they can still ask the County Attorney for a second opinion and she thinks that is very appropriate. She said she thinks they did the heavy work already to make that recommendation to have the balance of power, and she thinks they should just leave everything else alone because she thinks it is important that the Council can have a second opinion.

Mr. Baker said the Executive hires the County Attorney who gets approved by the Council, but the Council hires an attorney who is only approved by them. He said it seems like when the Council needs its own attorney it is because they are fighting with the Executive, so there is a little bit of an imbalance of power. He clarified, he knows they just said they would take out that the Council can fire the attorney, but if that does not pass by the Council to go to the voters, that stays in. He said, strategically, if he is on the Council and is fighting with the Executive who has a good attorney, he is going to fire him and hire someone else to hamstring them and he kind of feels like that was part of the intention. He clarified, that is just his opinion.

Mr. Dunn said he agrees with Mr. Baker. He said, while Wicomico County did not get to the point of locking out the County Executive like what happened in Hartford County, it is his opinion that some of the dysfunction their County government has had in these last couple of years in the hiring of the County Council Attorney as a regular member of the government was a result of the feud, a result of the dysfunction. He said anybody who pays close attention would say things have gotten worse since the County Council has had its own attorney. He said he just asked the direct question of the responsibilities of the Council Attorney and they heard the word redundant from at least three different people who are actively involved in the County government. He said it is not their job to clean up the messes that have been made which are personal in nature that are one Branch feuding with the other, but he is of the opinion that the creation of the Council Attorney and the effort to put it on the ballot was, in fact, to Mr. Baker's point, another opportunity for the Council to gain a little more upper hand. He said also to Mr. Baker's point, everything this Committee recommends is not necessarily brought forth, so if the Council were to strike their recommendation from earlier, they would still be in the position they are today.

Mr. Dunn said one thing he has heard in his conversations is there has been a lot of talk in this room that a lot of the dysfunction seems to be laid on the County Executive, but, in his opinion, there is a fair level of tit for tat and the County Council on occasion has been just as egregious in its actions as the County Executive in this war, so he does not think there are any innocent parties here. He said, in his view, having the Council Attorney present just adds another opportunity for conflict within the good governance they are attempting to put forth. He clarified, that is his opinion.

Ms. Whited asked if the position of the Council Attorney is needed and if there is ever a case it is not redundant, to which Mr. Baker responded, from what he saw, there were times. He clarified, if the Council wanted access to a Department Head or the County Attorney, the gateway is the Executive and there were times they were told they could not talk to the Council, so, if that happened, the Council would need to have an attorney to advise them.

Mr. Baker said, again, the Council has the ability to hire their own attorney, so he wants to initiate doing nothing.

Ms. Bellamy said, in reference to having an in-house attorney, this is a very small County and a very small office building, and when they have a door that people are going in and out of, whether they are Councilmembers or a citizen with a complaint, people know. She clarified, they know who is going in there and will talk about why they are going in there. She said, if people do not feel comfortable going to the in-house office because of confidentiality, they need somebody in their own place, and that is the reason she thinks they should have confidentiality outside and separate from the staff position.

Mr. Sarbanes asked if Mr. Wilber sits in on the Council meetings, to which Mr. Wilber responded, currently, yes. Mr. Sarbanes asked, when Mr. Taylor was the Council Attorney, did the two of them attend the meetings, to which Mr. Wilber responded, he only came to Council meetings if the County Executive or Council requested it.

Ms. Morris said she is going to vote to do nothing and she thinks if they look at the Administrative function of the Executive, that is who creates the Departments, so they would have to go back to that in order to give the Council the authority to create a Department of Law. She said the Council's role is Legislative and the County Attorney is the County's attorney, not the Executive's attorney, which can be misleading. She clarified, the legal functions performed are for the County. She said, if the Council wants to hire an attorney for a specific reason then they have the authority already to do that.

Mr. Phil Tilghman said he would still like to have a show of hands to see how many people agree with the opinion that Ms. Morris just shared. He said he agrees, and he would like it to be recorded.

Mr. Dunn said he is going to respectfully deny the request for a straw vote because they have not done that before and he wants to try to be consistent. He said, if they are taking no action, the minutes will reflect what the discussion was.

Mr. Sarbanes said he agrees with what they are doing but, as an outsider looking in, he thinks that has been taken advantage of in that there seems to be a lot of lawyer work going on that he has wondered if it was really necessary. He said he does not come to Council meetings on purpose, frankly, but from the little bit he sees and hears he thinks they have a County Attorney and there is a lot of other stuff going on, so he wonders if a Council Attorney is really needed.

Section 507.e:

There was no discussion.

Section 507.f:

There was no discussion.

Section 507.g:

Mr. Sarbanes said this Section says neither the County Attorney nor any assistant in the Department of Law may at any time while holding such office practice as an attorney before the Council or any Department of the County government other than represent the County's interests.

Mr. Dunn said Mr. Wilber has a private practice. He then asked if that has ever become an issue for him or any of his other partners, to which Mr. Wilber responded, it has not been an issue. He said they have not appeared before a County Body or the Council representing a client. He said they have sent them to other attorneys for representation, so they do not get into that type of conflict.

Mr. Dunn said he wants to go back to in-house versus contractual and the question of the Department of Law or renaming it.

Mr. Mat Tilghman said, in his limited experience, he thinks they are better off having a contractual arrangement. He said they will get a good person who will be willing to do it because they are not giving up their private practice, whereas, if somebody is hired they are probably going to have a challenge getting as good of a person, in his opinion. He said the other thing that happens is, in Mr. Wilber's case, he handles a lot of it, and he does not know for a fact but maybe one of the other partners has a very strong personnel experience dealing with firing or harassment, etc. and Mr. Wilber asks that attorney to be assigned to that. He said most of the firms, particularly in this area, are pretty much generalists, so he likes the idea of having a contracted arrangement. He said the Executive gets to pick that person and the Council has to approve that person or team, but he thinks they get the best of both worlds.

Mr. Strausburg said he thinks, in his opinion, the issue is that there has been an interpretation of the Charter that outsourcing the County Attorney is a violation of the Charter and he thinks they need to clean that up. He said, from his standpoint, they do not know what the circumstances are going to be in the future and he thinks the Charter should provide that it can be done either way. He said, if the County Executive believes it is best to outsource and he convinces the Council that is a good way to go, so be it. He said, if the Executive feels that hiring an in-house attorney or attorneys is a better course of action, again, he has to convince the Council, so he thinks they should leave it flexible and not pigeonhole themselves into only one possible course of action.

Mr. Dunn said the Charter is currently silent on the matter. He then asked Mr. Wilber if he would be willing to draft language to bring forward to the Committee to add a line saying it is the option of the Executive as to whether the County Attorney practices in-house as an employee of the County or is outsourced contractually. He clarified, they are all acknowledging that it is not spelled out and they want it to be, so this would spell it out that it is the choice of the Executive to outsource or hire within.

Mr. Strausburg said the Charter is silent on this matter and over the past six years they have seen that the Charter being silent on this issue has created a lot of problems, so he thinks they should clarify it in the Charter.

Mr. Benson said he has no position on this, but he will point out that it is not only the Executive's decision. He clarified, if the County Executive decides he wants to create an in-house Department of law, he cannot do that unless the Council funds it, so the Executive can say he would like to do it but the Council could say they are not going to fund it for whatever reason. He said he does not think they can put language in the Charter saying it is the County Executive's decision because he can propose it but he cannot mandate it because the purse strings are controlled by the Council.

Mr. Strausburg said he agrees with that and he did not mean to assert that it would be a one-sided decision, but he was suggesting that the Charter should clarify the fact that the County Attorney can be an employee or can be a contractual County Attorney. He said certainly the Executive can propose it, but the Council has to approve it, and he thinks that is critically important. He said, at the end of the day what the Elected Officials are charged with doing is protecting the best interests of the County's citizens, and hopefully they would make their decision in that light during that point in time, but things can change over time.

Mr. Dunn said maybe some of the ambiguity is because it is called the Department of Law, so maybe they should change it to the Office of County Attorney instead of the Department of Law. He said he thinks the Charter is silent and they should fix it as one of their charges is to try to clear up ambiguity.

Ms. Chesnik asked who the people are who have questions about this because she has not heard about that, to which Mr. Dunn responded, in his opinion, part of the challenges with the way the current County government is operating is that people think the County Executive is in violation, or people think the Council is not operating according to the Charter, and that takes on a life of its own. Ms. Chesnik said, no matter what they do with this Charter they are going to have that. She said they cannot put a band aid on everything in here. She said she thinks a lot of what is happening in this room is based on personal experience with the last County Executive and the County Council and it is not something that went on forever. She said she hopes it was an isolated incident and she does not think they can do everything they are doing based on what happened. She said she sees a lot of fixing and she wonders whether they need to be doing this fixing, or if somebody has a lot of angst over something that happened before, to which Mr. Dunn responded, he thinks there is a little bit of both.

Mr. Baker said there were times with the previous Executive, Mr. Pollitt, where the two Branches were not talking to each other, to which Ms. Chesnik responded, she understands that, but, to her point, when they first started this whole process, no one here dared to look at hiring a County Administrator who would be well educated and paid a very good salary and have an Assistant. She said no one in this room wanted to look at a different form of government than what they are in. She said Ms. Morris was here for many years before and the previous system worked very well and really was not a problem and they were ensured that whoever ran this County on the Administrative side was well educated and ready to do the job. She said her biggest concern is that whoever is the person who runs this County is well educated, good with people, good with administration, and good with planning, and that is her biggest concern, but no one here wanted to look at the fact of whether they really want to consider a government for Wicomico County without a County Executive and with a highly educated and skilled Administrator again. She said she hears a lot of people ask why they have a County Executive and why not have it the way it was before, to which Mr. Strausburg responded, they have a County Executive because 70 percent of the electorate voted for a County Executive. Ms. Chesnik said the whole demographics of this County have changed and they have had really rough experiences with County

Executives. She said Rick Pollitt was an excellent one, in her personal opinion, but the last road around was very rocky, and who knows what they will get with the next County Executive.

Mr. Sarbanes said five Councilmembers can decide if they want to do that, or 20 percent of the people can bring it to a ballot. He said, as Mr. Strausburg said, it passed almost 58 percent to 42 percent. He said it was on the ballot, and if people can vote it in, they can vote it out.

Ms. Morris suggested they discuss this when they get to Article X, to which Mr. Dunn agreed.

Mr. Dunn said, to be clear, under both forms of government there is a Director of Administration and an Assistant Director of Administration. He explained, prior to 2006 there was a County Administrator and an Assistant County Administrator, and since 2006 there has been an Administrator and Assistant Administrator who handled the day-to-day operations of the County. He said the County Executive is much like a Mayor or Governor. Ms. Chesnik said the Executive is like a figurehead, to which Mr. Dunn responded, Ms. Chesnik might view it that way, but he thinks others would view it differently, and he knows he does, but he is just saying they have had a County Administrator the entire time. Ms. Chesnik said she understands that, but all she is trying to say is that it may be more efficient or more cost effective when they get the best they can get with a County Administrator.

Section 508: Citizen Advisory Board:

Mr. Dunn said currently, apparently, only the County Executive can appoint a citizen advisory board and the Council cannot appoint a citizen advisory board. Mr. Benson asked if this has been a problem, to which Mr. Dunn responded, he was told that recently there was an attempt to appoint a homeless sort of advisory board that the Council wanted, and the County Executive did not want to do that.

Mr. Mat Tilghman said the list they received from the Council asks to add the County Council after County Executive so they can also appoint citizen advisory boards, but that is coming from the Council.

Mr. Strausburg said, if Mr. Dunn has any email traffic on that he would love to see it because he has never heard this, to which Mr. Dunn responded, he will have the person call Mr. Strausburg. He clarified, he is certain that the request has been made, and Dr. Jones is also certain.

Ms. Chesnik asked, why not allow the Council to do this, to which Mr. Dunn responded, he would have no problem with it.

Mr. Baker suggested the language should say only for new advisory boards because they do not want to see the same boards that are for the Executive in addition to boards that are for the Council, so it would have to be the creation of a new board.

Mr. Dunn said he does not like the word advisory board, he prefers taskforce or workgroup. He said he thinks these are meant as taskforces that might be appointed by members of the government.

Mr. Phil Tilghman said he was not aware this was a problem, to which Mr. Dunn responded, he is not saying it is a problem, but he is aware of an instance recently where the County Council wanted to create a taskforce related to homelessness and that request was denied.

Mr. Strausburg asked if it was the County Council or a Council person, and were they acting as a Body because he does not recall any Work Sessions, so he does not recall any formal request.

Mr. Benson said the Executive creates and appoints boards, but those appointments have to be approved by the County Council, so if the Council is going to create an advisory board, does the Executive have to approve the members they are going to appoint?

Mr. Dunn said they are going to leave this alone for tonight, but will pick this up at the next meeting.

Ms. Whited asked if they can talk about Department attorneys, to which Mr. Dunn responded, they will discuss that at the next meeting as well.

Public Comments:

Mr. Dunn said there are no members of the public here, so that is why they have not gone on to Public Comments.

There was no further discussion.

 

Mike Dunn, Chairman



Laura Hurley, Recording Secretary