

Open Work Session
Resolution to Hire Special Legal Counsel
June 4, 2019

Mr. Taylor said he has drafted what he would suggest as a form Resolution for the appointment of special legal counsel pursuant to the Charter. He said it is based, to some extent, on concerns and comments that have been made during the period in which he has been the Council Attorney, which is about two years now, and it is, essentially, kind of like a contract, if they want to look at it that way, but he thinks it incorporates matters that have been concerns of Council. Mr. Cannon asked Mr. Taylor to give Council a quick overview.

Mr. Taylor said, just to begin, he will run through the subparts, beginning with A titled Supervising Attorney. He explained, in the event a firm is retained as special counsel for a particular matter, a lead attorney can be named, but it can change from time to time, such as if that lead attorney might leave that firm. He said subpart B is titled Compensation and Contractual Arrangement. He said, based on his experience working in a law firm, when they dealt with what he would call larger organizations to do special legal work, such as insurance companies or title companies, there are things they look at, which he thinks would be appropriate for Council to look at, and one of those would be, of course, what the compensation is going to be, and what the contractual arrangement is with the particular lawyer or law firm, and subpart B covers that aspect.

Mr. McCain said some of these could be very specialized, such as a Human Resources issue, or a land use issue. He said just because the County has a history with one guy does not mean he is good at land use. He then asked if that is addressed in this Resolution as to who makes that decision, to which Mr. Taylor responded, he does not think that is necessarily something that would be addressed in the Resolution, but would be addressed in whether they want to retain him or not in the first place. He said, as far as what type of work is concerned, that is right in the title regarding what it would be. He clarified, it is not open ended to retain legal counsel just to do whatever. He said, for example, right now they have bond counsel, and that is all they do is work on the bonds, and would not handle litigation if the County were sued unless, perhaps, it might have something to do with the bonds. He said he thinks who they want to retain, and what their specialties are is something to be considered outside of the Resolution itself. He said, presumably, they would only retain somebody who was qualified and competent in that particular area. Mr. McCain clarified, that was his point. He then asked if they should actually have a statement in the Resolution stating that outside counsel should be qualified and competent in their particular area, to which Mr. Taylor responded, they could certainly add something to that effect, such as they have to maintain competency, but he thinks that is getting a little bit into micromanagement. He said he thinks this is the kind of thing where, if they do not like the services that are rendered, they cut the cord, to which Mr. McCain responded, he is the last one to be micromanaging. Mr. Holloway said, in the beginning, it talks about what they are hiring them for, which kind of nails it down to what they are using them for. Mr. Taylor said, for example, if someone came in and said they would give them a great deal as bond counsel, but they had never done that work before and were, basically, litigation attorneys, he thinks the answer would be pretty quick.

Mr. Cannon asked if these are Resolutions that would be put forward to Council to approve the hiring of outside counsel under numerous different circumstances, and whether Council may see six or seven of these in a year, to which Mr. Taylor responded, correct. He said, for example, right now they have bond counsel, and they have a pension attorney. Mr. Cannon said his question is whether there is any type of Resolution or Legislation that would be necessary to force this policy or procedure of having to have a

Resolution in order to hire outside counsel, to which Mr. Taylor responded, he is not quite sure he understands the question. Mr. Cannon clarified, do they have something in place that requires this, to which Mrs. Hurley responded, yes, the Charter. Mr. Cannon said they are thinking about this now because they have been lackadaisical about it, and have not been doing it at all, even though the Charter requires it, to which Mrs. Hurley responded, that is correct. Mr. Dodd asked if they have to be specific and list the types of special counsel or the need, to which Mr. Taylor responded, he thinks that kind of dovetails with Mr. McCain's concern, but he thinks they would hire somebody to do a specific task. He said, if they look at the Charter language, they are only supposed to hire outside counsel if the County's Law Department cannot handle it. He clarified, that is a slight paraphrasing, but it would be matter specific in that regard to begin with. He said bond counsel and pension counsel are good examples of that because that is pretty highly specialized stuff, and that would be covered in the Resolution. Mr. Dodd said he just does not want somebody to go outside and say it was not listed, so they went ahead and hired that type of attorney anyway. Mr. Taylor clarified, any Resolution is going to come before Council, so Council would know the names of the firms, and the work they are doing. Mr. Dodd said what brought them to this point is that outside counsel has not been brought before Council, to which Mr. Taylor responded, that is right, but that is the past, and this is looking forward to the future.

Mr. Holloway said the other problem is, if they listed the types of attorneys he could hire, if they just listed ten types of attorneys, but then suddenly they needed a different one, they would say it was not on there, so they did not have to come to Council. Mr. Taylor said he will give Council a great example. He said, when Salisbury had the problem with the sewer plant, they hired outside counsel from Baltimore who specialized in that type of highly technical contractual litigation, and that is an example. He said, if it were just a standard type thing, such as a collection case, presumably the County's Law Department could handle it. Mr. Dodd said some people do not realize that attorneys have specialties just like physicians do.

Mr. Cannon asked Mrs. Hurley if they have something already on the books where he would assume at least once or twice in the last ten years a Resolution like this came across the table for a particular counsel, to which Mrs. Hurley responded, not to her knowledge. Mr. Cannon said this is pretty much the template Mr. Taylor is suggesting Council could follow in order to initiate this process, to which Mr. Taylor responded, that is correct. He said he did not go back and try to find anything else in the past, and he discussed it with Mrs. Hurley, and she could not recall anything, and her memory is much more extensive on this than his.

Mr. Taylor said, moving on, subpart C provides that Council may contact the special counsel to discuss things that he or the firm is doing, and they have had some concerns about that in the past. He said subpart D says that the special counsel and the attorneys affiliated with any law firm will not become engaged in services for any County Elected Official or employee regarding matters involving the County. He said, in other words, not billing it and doing it for the County, but doing it for an employee on a matter that involves the County without first getting approval from Council. He said, for example, if the bond attorney was asked to do a will for a County employee, that would not fall under this. He said it would have to be a matter involving the County before it would come within item D.

Mr. Cannon asked what would happen if the search for outside legal counsel involves a personnel matter, which Council could not or would not want to pass in an Open Session through Resolution, to which Mr. Taylor responded, they would have to do it in Closed Session to the extent that it can be done in Closed Session. Mr. Cannon said he has never known that they can pass a Resolution in Closed Session. Mr. Taylor clarified, he thought Mr. Cannon was speaking in terms of speaking with the special counsel. Mr. Cannon said he was going back to the broader picture that, if an issue were to come up

that involves some type of personnel matter to some degree, they have sort of backed themselves into a corner because the only way legal counsel can be approved would be in an Open Session, to which Mr. Taylor responded, if it were necessary to go into details about the personnel matter in order to decide on the special counsel, then he thinks that discussion could be held in Closed Session, and then they would vote in Open Session on the Resolution. Mr. Cannon said they can cross this bridge when they come to it.

Mr. McCain said the interesting thing about this is they are already talking several “ifs” and “buts,” and there are going to be unforeseen circumstances to anything like this. He said he knows exactly why they are doing it, but sometimes the more specific they get, they can be backing themselves into a corner. Mr. Taylor said, in the past, a lot of times he would get contracts from insurance companies and title companies, and they are a lot more detailed than this, to which Mr. McCain responded, he thinks that is a lot different from this. He said this is just about how they are going to go about using outside counsel. Mr. Taylor said they cannot avoid unanticipated circumstances because they happen. Mr. Kilmer said he thinks for the personnel issues they could contract with an outside attorney on personnel issues in general, and then, if they have questions about what that attorney has done, they could talk about anything specific in Closed Session. He said, if there is a grievance, that is not County Council business, but they can check to make sure the legal counsel is doing just that. He said they can write “personnel matters” on the Resolution, and they could then say this is what it was for without any details.

Mr. Taylor said, moving on to item E, this is disclosure to Council about the work that is being done, a summary description, and then a copy of every letter that is sent by the special counsel to the County’s independent auditors. He said, normally, when retained by an organization to do legal work, and this would include himself for Council, they get an annual letter from the County’s auditors asking what they know that is bad, in so many words, and those are the types of questions that are asked.

Mr. Taylor said item F states, on May 1 of each year, something will be furnished from the Executive Branch in meaningful detail that discusses the services performed, and how much is being billed. He said item G provides that the Resolution has no force or effect until special counsel sends the Council Administrator written acknowledgement of receipt of the Resolution, and, in the event of conflict between the Resolution and the contractual arrangement specified, the Resolution will govern, and is, essentially, the final word in terms of the relationship. He said item H provides that it does not authorize the County Executive or Executive Branch to employ special counsel for any services regarding matters other than those expressly described, and dovetails some of the questions asked about specifying what the counsel is to do, and to keep it from being open ended, which is the purpose of item H.

Mr. Dodd said he has a question in reference to item F. He then asked if Council should get that information before May 1 because he knows a lot of things can be forgotten, to which Mr. Taylor responded, he was trying to have it as late in the fiscal year as possible in terms of the budget cycle, and he was afraid if he made it too early, it would not be as meaningful. Mr. Dodd said he would like to see that information as soon as possible, such as when they are done using the attorney, to which Mr. Taylor responded, that is certainly possible on an event type contract rather than a continuing one. Mr. Dodd said that would be instead of it all being dumped in Council’s lap at one time. Mr. Cannon said it could state at the conclusion of the litigation, or by May 1 if it is still being litigated. Mr. Taylor said he is not sure about the pension counsel, but he thinks that sometimes it might be the kind of thing that is sort of ongoing, and there is sort of no end to it because he thinks the pension counsel is probably obtained to furnish advice on changes in the law as they occur, to which Mrs. Hurley responded, it has been on a case by case situation. She said she remembers a special situation where the County hired an environmental attorney, so that would have been for them to handle a particular case, but bond counsel

would be continuing. Mr. Taylor said he was thinking about pensions where changes in pension law occur, so the agreement might be a retainer agreement. He said, in other words, when something changes, they call the County and tell them rather than the County calling them and asking if there has been any change. Mrs. Hurley said she is not certain how often they use the pension attorney. Mr. Taylor said he thinks it would be pretty significant, but the bond counsel would be on what he would call an event basis. He explained, they do the work, and then that is the end of it, and they have no continuing need for their services unless some question would come up, he guesses, that would involve the bond counsel, such as some legal aspect of the bonds that have been issued where they would have to go back and ask questions.

Mr. Cannon thanked Mr. Taylor. He then asked where Council wants to go with this, to which Mr. Holloway responded, maybe they should send it to the Executive's Office for review to see what their thoughts are on this. Mr. Taylor asked if they want him to first do anything in terms of the comment that was made about getting more current information about the billing, to which Mr. Cannon responded, he would say once the case is concluded. Mr. Holloway said it should say May 1 or on demand. Mr. Taylor said he can probably send Council some suggested language for that, and he will try to make it more on demand, or at the end of a particular matter where it does not look like there is going to be any further need for services. Mr. Cannon said, like Mr. Holloway suggested, they can send this to the Executive's Office, and let them take a look at it. He said maybe they can fill it out and send it back with a request to hire outside legal counsel to review it.

Mrs. Hurley clarified that the way this Resolution is written right now, it would only have to be approved one time. She said, for example, with bond attorney, if they use the same law firm every single year, they would not have to come back before Council for approval each year, to which Mr. Taylor responded, he was hoping to set it up that way so it would not need an annual update. Mr. Holloway said he thought it would be per incident. He said, if they pass one Resolution for doing a Human Resources issue, and that is resolved, does that mean they never have to come back? He said that does not make a lot of sense. Mr. Taylor said the difference is whether Council wants to look at this as a retainer agreement to be available if something arises, or do they want to look at it as what he would call event based. Mr. Holloway said he would like it to be event based, to which Mr. Taylor responded, they will probably have a lot of Resolutions then, and that is the only way he can put it. He said, for example, bond counsel would be every year at the time they issue bonds, but he does not know how pension would work because he would have to look at that. Mr. Holloway said, if they do not do this event based, it would just be giving them a blanket Resolution to hire outside counsel, so this really would not be that effective. Mr. Taylor said that is the way it has been done, to which Mr. Holloway responded, that is why they are doing it this way now. Mr. Taylor said, if Council feels it should be event based, or, if it is not event based like bond counsel, such as once a year, he will put that in there. Mr. Holloway said he thought that was what the purpose of this was.

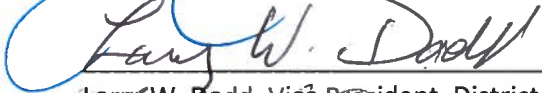
Mr. Cannon asked if they should have another Work Session on this topic, to which Mrs. Hurley responded, her thought is to send it to the County Executive's Office to get feedback from them, and then a Work Session. Mr. Taylor asked if they want him to put the changes in that were discussed, to which Mr. Cannon responded, yes. There was no further discussion.

Signatures on next page

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John T. Cannon, President



Larry W. Dodd, Vice President, District 3



Ernest F. Davis, District 1

Marc Kilmer, District 2




Josh Hastings, District 4



Joe Holloway, District 5



William R. McCain, At-Large



Laura Hurley, Council Administrator