

CITY OF BALTIMORE

SHEILA DIXON, Mayor



DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

October 14, 2009

The Honorable President and
Members of the Baltimore
City Council
c/o Karen Randle, Executive Secretary
409 City Hall
Baltimore, MD 21202

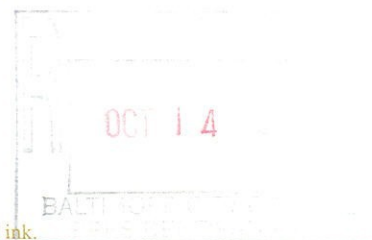
RE: City Council Bill 09-0346 – Charter Amendment-City Council – Independent
Counsel

Dear President and Members:

You have asked the Law Department to review for form and legal sufficiency City Council Bill 09-0346. City Council Bill 346 proposes to amend the Baltimore City Charter to authorize the City Council to obtain independent legal counsel; provide for the qualifications and term of that counsel; specify the duties of that counsel; provide for the compensation and expenses for that counsel; and submit the amendment to the voters of the City for either rejection or adoption.

The bill provides that by resolution, the City Council could employ or contract for the services of independent, general legal counsel. The counsel must be a member of the Maryland Bar and would serve at the pleasure of the City Council. The duties of the counsel would be to provide legal advice to the members, committees and subcommittees of the City Council, assist City Council in its investigations, represent the City Council in judicial or other proceedings to which the Council is a party or desires to intervene, and generally serve as an attorney for the City Council. The compensation for the position would be set by resolution of the City Council. The bill requires that the City Council President certify the estimated amount of money needed for the counsel's compensation and expenses at least 30 days before the Board of Estimates adopts its proposed Ordinance of Estimates for the next fiscal year. The bill requires that the Board of Estimates include up to \$100,000 of this amount in the proposed Ordinance of Estimates, but may include more at its discretion. The amount may not be deducted from the operating budget of the City Council. The bill also adds a sub-section to Section 24(c) of Article VII of the Charter, allowing the City Council to employ independent counsel irrespective of the other requirements in that section pertaining to the authority of the City Solicitor to authorize the employment of outside counsel for the City Council and the authority of the Board of Estimates to approve payment for outside legal counsel.

F/A



The Law Department has several concerns about this bill. First, the bill mandates that the Board of Estimates include at least \$100,000 for this expense in its proposed Ordinance of Estimates. This arguably fragments the power of the Board of Estimates, which is charged with formulating and executing the fiscal policy of the City pursuant to Article VI of the Charter.

Second, the Law Department's current General Counsel Division has historically operated with four full-time lawyers and approximately 75% of their time is spent rendering legal advice to City Council in the form of bill reports and general inquiries. The Law Department's Litigation Division handles judicial proceedings. To expect that one attorney could handle this amount of work is unrealistic.

Third, and most importantly, this law could cause serious conflict in the conduct of the legal affairs of the City. Potentially, the Council could file suit against a third party through its attorney, in direct conflict with the Solicitor's duty to prepare and supervise all trials and appeals. Such actions could also conflict with the Solicitor's authority to institute, defend and discontinue on behalf of the City, any suit, action or proceeding in any local, state or federal court. In addition, the Council's attorney could seek to file an appeal in a matter, which conflicts with the Charter provision mandating that no appeal may be taken without the written order of the City Solicitor. To the extent that the bill is intended to accomplish any of these, or similar results, it conflicts with the specific provisions of Article VII, Section 24 of the Charter. Under standard principles of legal interpretation, the more general provisions proposed in Bill 346 would be trumped and defeated by the more specific provisions of Article VII, Section 24.

In addition, there are other important considerations that make Bill 346 inadvisable. The legal entity that can sue and be sued is the "Mayor and City Council of Baltimore." Any attorney hired by the City Council would not be representing that legal entity. The "Mayor and City Council of Baltimore" cannot be represented by two separate attorneys. Such actions could expose the City to liability in proceedings in which the City Solicitor would have no supervision over the quality of the legal representation. This could also create serious conflict in the conduct of litigation if two attorneys purport to represent the City in the same case. In order to avoid this potential for conflict, the Law Department proposes that the bill be amended to provide that the work of any attorneys hired by the Council be limited so as not conflict to with the specific duties of the City Solicitor provided for in the Charter as discussed above.

Subject to such amendments, the Law Department could approve City Council Bill 346 for form and legal sufficiency.

Sincerely yours,



Ashlea H. Brown
Special Assistant Solicitor

cc: Angela Gibson, City Council Liaison
George Nilson, City Solicitor
Elena DiPietro, Chief Solicitor
Hilary Ruley, Assistant Solicitor
Avery Aisenstark, Legislative Reference