



*January 30, 2013 at 5:00pm*  
*Notice posted*

## **Minutes**

**Meeting of the Charter Review Commission  
Cuyahoga County  
Wednesday, January 30, 2013 at 5:00 P.M.  
Cuyahoga County Administration Building, 4<sup>th</sup> Floor**

Required notices were provided and posted and the meeting was called to order at 5:25 PM by the Chair. The roll was called.

Present: **Akers; Tarter; Russell; Dietrich; Callahan; Headen**

Absent: **McLaughlin; Riley; Albright;**

A quorum was present.

**Akers** called for public comments. There were no public comments.

The CRC had previously asked for brief presentations from **David Lambert, Assistant Prosecuting Attorney** and **Cuyahoga County Law Director Majeed Mahklouf** concerning their thought about the manner in which the County's legal work is distributed.

**Akers** introduced **Lambert**. **Lambert** was clear that the CRC should have as much information as possible about the work performed by the civil branch of the Prosecutor's Office. He provided background about the work performed by the 15 lawyers in the department and the clients that they represented. He noted that the county has components of both the state and other governmental units. He noted that when the county acts as an arm of the state, the charter cannot change the

structure of the operations. He stated that the Board of Elections, while seemingly a county operation, is in fact an arm of the state through the operation of the Secretary of State's office. **Lambert** stated that state-wide comprehensive law that involved certain issues of state issues cannot be altered by a charter amendment. He stated in clear terms that any attempt to alter the form of the civil branch of the Prosecutor's Office would be unconstitutional and would be challenged in court.

**Lambert** took questions from the CRC members. **Dietrich** inquired as to why **Lambert** felt that the form could not be changed as numerous other county agencies had been altered under the new form of government. **Lambert** stated that the state law dictated this and whether other structures would work better was irrelevant to the discussion. **Callahan** asked whether changes in the ORC were needed to alter the legal representation structure. **Lambert** stated that changing the ORC was the only mechanism to make any changes and that numerous changes would be required.

**Headen** noted that numerous other individuals, including **Executive FitzGerald** and **Councilwoman Simon** had sought changes to the scope of the Prosecutor's representation. **Tarter** referred to the AG's opinion and stated that the opinion seems to state that the arrangement for representation could be amended through a change in the County Charter. **Lambert** did not agree with these assertions and restated his position that the charter could not be changed to alter the Prosecutor's duties and scope of representation.

The CRC thanked **Lambert** for his time and comments. **Akers** introduced Law Director **Mahklouf**. **Mahklouf** agreed with some of **Lambert**'s assertions. However, he stated that the charter could be changed to alter the performance of the duties. He noted that the state law did dictate that certain legal matters must be addressed. However, he noted that as long as the county was fulfilling all its legal obligations, the issue of who (or how) the matters were being addressed was immaterial. He noted that the Law Director position in Summit County was much different than in Cuyahoga County. Summit County's Law Director position was created by county ordinance, not by operation of the County Charter. **Mahklouf** noted that the *O'Connor* opinion was not analogous to the situation in Cuyahoga County.

**Mahklouf** stated that having one, consolidated civil legal department was preferred. He felt that arrangement would present the cleanest lines of representation between attorney and client. He stressed that all parties were working very well together currently but issues will undoubtedly arise in the

future. The sooner the issues are addressed, the less likely that any legal vacuum would arise.

**Tarter** asked about the benefits of having a “stand alone” legal agency. **Mahklouf** responded that such a system would allow continuity of legal representation and allow lawyers to work closer with the clients. He noted that the county could adopt a system similar to that instituted in the federal system as well. **Akers** noted that **Lambert** stated that the CRC “could not alter” the structure and **Mahklouf** stated that the CRC “could alter” the structure. **Mahklouf** agreed that those were the positions but any issue and/or litigation on the issue would not be ripe until the matter was approved by the voters. He noted that any discussion about litigating the issue was premature. **Mahklouf** stated that he had the utmost confidence in his legal opinion and noted that it really was a “simple issue.”

**Headen** specifically asked **Mahklouf** to drill down to a specific recommendation for the CRC to review. **Mahklouf** noted that he was essentially saying the same thing as some of the other individuals that had presented, including **Councilwoman Simon**. He felt that the civil matters could be handled by the Law Department and the criminal matters could be handled by the Prosecutor’s Office. **Callahan** inquired as to whether any amendment to the current situation would lead to any cost savings or other efficiencies. **Mahklouf** noted that there were no empirical studies that have addressed this issue but there certainly would be efficiencies created by the easier flow of the workload. Also, there would certainly be less duplication of efforts. **Mahklouf** noted that specific language could be as simple as “all civil duties are vested in the Law Department” or as complex as the CRC wanted to include. He also noted that if changes were forthcoming, the CRC should look to making corresponding changes to charter sections addressing the Prosecutor’s Office to avoid confusion.

**Lambert** further added some comments he labeled as “rebuttal”. **Lambert** felt that ORC section 3.02 referring to an “Alternative Form of Government” and its implications did not apply to a Charter Form of government such as that found in Cuyahoga County. **Lambert** felt that the AG’s opinion did not say anything about the Law Director’s duties and urged the CRC to re-read the *O’Connor* opinion.

Thereafter the CRC addressed procedural issues for the future meetings. **Miller** again asked the CRC to look into the possibility of utilizing the subcommittee format that was authorized in the Ordinance passed by the County Council. **Headen** noted that it probable was not necessary and felt that all members of the CRC should be involved in all dialogues, if possible.

**Akers** addressed future presentations, including the likely appearance by representatives from the League of Women Voters, the chairs of the Cuyahoga County Democratic and Republican parties, hearing officers from the BOR and local activist Homer Taft. **Akers** would follow up with the CRC members as matters became clearer.

Numerous documents handed out by **Lambert** and **Mahklouf** were added to the record and were distributed to all CRC members and other attendees.

There being no further business before the CRC, **Dietrich** made a motion to adjourn. The motion was seconded by **Headen**. The motion was unanimously approved by a voice vote of the CRC members.

Draft \_\_\_\_\_

Issue \_\_\_\_\_

App. 2/23/13

Posted 4/3 3/9/13