

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

February 24, 2022

Westchester County Board of Legislators
800 Michaelian Office Building
148 Martine Avenue, 8th Floor
White Plains, New York 10601

Dear Honorable Members of the Board:

I respectfully request that your Honorable Board adopt the attached Local Law entitled "A LOCAL LAW amending Section 158.11 of the Laws of Westchester County to clarify the retention of outside counsel."

Section 158.11 of the Laws of Westchester County establishes the powers and duties of the County Attorney. Section 158.11(2) provides that the County Attorney:

shall be legal advisor to the County Board and to each and every board, body, commission or officer of the County of Westchester and to each and every employee of the County of Westchester as may be required by section 297.31 of the Westchester County Administrative Code. It shall be his duty to furnish to such county board, body, commission officer or employee all such advice and legal assistance as counsel and attorney in and out of court as may be required by them, or either of them. No such officer, employee, board, body, commission or department of the county shall have or employ any attorney or counsel at the expense of the county unless specifically authorized to do so by the County Board.

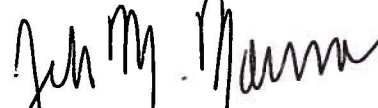
Historically, this Office has interpreted this section to mean that no board, body, commission, officer, or employee could have representation in its official capacity other than the County Attorney's Office, unless outside counsel was retained by Act of the Board of Legislators.

In conducting a recent analysis of this section, a question has arisen as to the meaning of the phrase "at the expense of the county." It is possible to interpret this phrase to mean that county officers or employees could obtain *pro bono* legal services without seeking approval from the County Board. This would then conflict with the first sentence of the provision, which provides that the County Attorney *shall* be the legal advisor for the County.

Because of this potential conflict, I recommend amending this section to remove the phrase "at the expense of the county" so as to ensure a consistent interpretation of this section. Without making such a change, situations could arise where persons or bodies obtain outside legal opinions, without the knowledge of this Office, act on those opinions, and expose the County to potential

liability as a result. This could also result in situations where persons or bodies act against the advice of the County Attorney based on a separate opinion by an outside attorney, create legal liability for the County, and a conflict with this Office which necessitates the hiring of outside counsel. In order to reduce these risks, I recommend the amendment so that all requests for outside legal assistance come through this Board, except where otherwise provided by law.

Respectfully submitted,



John M. Npna
County Attorney

Enclos.

TO: HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of “A LOCAL LAW amending Section 158.11 of the Laws of Westchester County to clarify the retention of outside counsel.”

Your Committee is advised that Section 158.11 of the Laws of Westchester County establishes the powers and duties of the County Attorney. Section 158.11(2) provides that the County Attorney:

shall be legal advisor to the County Board and to each and every board, body, commission or officer of the County of Westchester and to each and every employee of the County of Westchester as may be required by section 297.31 of the Westchester County Administrative Code. It shall be his duty to furnish to such county board, body, commission officer or employee all such advice and legal assistance as counsel and attorney in and out of court as may be required by them, or either of them. No such officer, employee, board, body, commission or department of the county shall have or employ any attorney or counsel at the expense of the county unless specifically authorized to do so by the County Board.

Historically, the County Attorney has interpreted this section to mean that no board, body, commission, officer, or employee could have representation in its official capacity other than the County Attorney’s Office, unless outside counsel was retained by Act of the Board of Legislators.

Your Committee is informed that, in recent analysis, a question has arisen as to the meaning of the phrase “at the expense of the county” in this section. It is possible to interpret this phrase to mean that county officers or employees could obtain *pro bono* legal services without seeking approval from the County Board. This would then conflict with the first sentence of the provision, which provides that the County Attorney *shall* be the legal advisor for the County.

Your Committee is further informed that the County Attorney recommends amending this section to remove the phrase “at the expense of the county” so as to ensure a consistent interpretation

of this section. The County Attorney further advises that, without making such a change, situations could arise where persons or bodies obtain outside legal opinions, without the knowledge of the County Attorney, act on those opinions, and expose the County to potential liability as a result. This could also result in situations where persons or bodies act against the advice of the County Attorney based on a separate opinion by an outside attorney, create legal liability for the County, and a conflict with the County Attorney's Office which necessitates the hiring of outside counsel. In order to reduce these risks, the County Attorney recommends the amendment so that all requests for outside legal assistance come through this Board.

Additionally, and as you know, your Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA"). The proposed project does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. Please refer to the memorandum from the Department of Planning dated January 14, 2022, which is on file with the Clerk of the Board of Legislators

The Committee, after careful consideration, recommends the adoption of this local law.

Dated: 2022

White Plains, New York

COMMITTEE ON

RESOLUTION NO. - 2022

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro No. - 2022 entitled "A LOCAL LAW amending Section 158.11 of the Laws of Westchester County to clarify the retention of outside counsel." The public hearing will be held at __ .m. on the day of _____, 2022 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, N.Y. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.