

I. Summary – Article 22 Spring 2019 Annual Town Meeting

The office of Town Counsel is established in section 3-2-c of the Charter where “a” town counsel is to be appointed by the Board of Selectmen for a one year term and is governed by Article 22 of the Town ByLaws. Article 22 Section 5 of the Town ByLaws states:

“a.....the Town Counsel shall render all legal services as may be reasonably required of him by the vote of the Town or majority of the Board of Selectmen or by the Town Administrator.

b. All other requests for the services of Town Counsel shall, whenever time permits, be submitted to Town Counsel through the Office of the Town Administrator.

c. The following shall have the right to request of Town Counsel advice concerning their duties: members of the Board of Selectmen, Town Clerk, Superintendent of Schools, Building Commissioner, Director of Public Works, Director of Public Health, Town Moderator, Comptroller, Town Treasurer/Collector, Director of Recreation and Parks, Chief of Police, Fire Chief, Community Development Director, and Chairman of the following Boards or Committees acting with the authority of a majority of their members: Board of Assessors, Board of Appeals, Planning Board, School Committee, Finance Committee, Board of Health, Conservation Commission, Retirement Board, Personnel Board and Recreation and Parks Commission.

d. That all other Boards or Committees and other Town Officials desiring to obtain legal advice must first obtain the prior consent of the Town Administrator or Board of Selectmen.

All requests for advice under Section b and c of this Article shall be made in good faith and be of sufficient legal implication to the Town.”

This article seeks to establish a study committee of Town Meeting to examine a number of issues concerning Town Counsel. Several of these issues are stated in the text of the warrant article itself.

Should Requirements for Good Faith and Relevance to Official Duties Apply to All Town Agencies?

These issues include whether the Board of Selectmen and Town Administrator should be subject to a good faith standard and whether they should also involve Town Counsel only for matters pertaining to their official duties and for matters of sufficient legal implication to the Town. Currently, these standards apply to everyone except the Board of Selectmen and Town Administrator.

Legal Services and “Request” vs. “Receive”

These issues include whether other boards or town agencies should have the ability to get the legal services of Town Counsel for matters connected to their jobs. Currently, these other boards and town agencies cannot get legal services unless the Board of Selectmen or Town Administrator authorize it. While some control regarding “legal services” makes sense, the restriction in the current ByLaw might not make sense for other elected boards or for certain functions.

Under the present ByLaw, multiple town agencies have the right to “request” the advice of Town Counsel in connection with their duties. However, they do not have the right to “receive” that advice. In addition, the current ByLaw does not distinguish between legal services and advice.

Town Counsel or Board of Selectmen’s Counsel?

These issues can become a problem when the interests of these other town agencies competes with or differs from the Board of

Selectmen or Town Administrator. Further, in no circumstance should the Moderator or town Meeting be prevented from or delayed in getting answers much less complete answers to legal questions because the Moderator only has the right to “request” and/or that someone must first check with the Board of Selectmen who annually appoints them or the Town Administrator who influences that annual appointment.

A number of instances have cause some to perceive that the office of Town Counsel has become in some circumstances the office of Board of Selectmen’s Counsel. Whether all agree with this perception is a matter for discussion. As discussed later, there appears to be several situations where the influence of the Board of Selectmen as appointing authority might have been a factor. Perhaps this could be addressed by making the appointment of town Counsel longer than one year. Alternatively, there might be different counsel for Town Meeting and other elected boards.

Converting Town Counsel to Employee Status is Very Major, Far Reaching and Involved Decision

Other issues include the implications of converting all or part of the office of Town Counsel from independent contractor status to a town employee. This is a complicated and multi-faceted issue affecting not only the independence of and control over Town Counsel but also the ability of any one employee to cover the breadth and depth of legal matters required by various town agencies and functions.

Currently Town Counsel is a multi-disciplinary law firm with multiple capabilities. Any change from this situation to an internal employee should first carefully identify and consider the legal service and advisory needs of all relevant town agencies. The Town’s needs for legal counsel are unlikely to be fulfilled in the capabilities of a single individual. Some needs might be addressed by an internal employee. These needs should be carefully

evaluated after interviewing different town agencies and incorporated in a job description. Certain needs might require access to outside broader expertise on a regular basis.

Perhaps the office of Town Counsel should be comprised on in house employee for certain functions and an external multidisciplinary law firm for other functions. This would require careful study.

A key issue is the extent to which advice from an internal employee would always be completely objective and independent especially in situations where such independence and objectivity are essential.

Any consideration of making Town counsel an internal employee should also consider the financial implications. Financial implications include retainers and hourly rates on one hand and salaries, benefits and pension on the other hand.

Taxes are a major financial consideration. ***Any decision to convert Town Counsel from an independent contractor to an employee is a permanent decision.*** It can never be reversed. Since 1976 (the Bicentennial year) it has been illegal under the Internal Revenue Code (the “IRC”) to change any position that was an employee into an independent contractor.

Generally, whether a person is an employee or an independent contractor is determined under a common law test involving approximately 20 factors. However, the common law test does not apply if a position has previously been an employee positions.

IRS Publication 15a “Employers Supplemental Tax Guide” for 2019 contains the following provisions on page 7.

“Misclassification of Employees

Consequences of treating an employee as an independent contractor.

If you classify an employee as an independent contractor and you have no reasonable basis for doing so, you're liable for employment taxes for that worker and the relief provision, discussed next, won't apply. See section 2 in Pub. 15 for more information.

Relief provision.

If you have a reasonable basis for not treating a worker as an employee, you may be relieved from having to pay employment taxes for that worker. To get this relief, you must file all required federal information returns on a basis consistent with your treatment of the worker. *You (or your predecessor) must not have treated any worker holding a substantially similar position as an employee for any periods beginning after 1977.* (Emphasis added.)

If the Town were to covert the office of Town Counsel from its long standing status of independent contractor to employee, it can never go back. After changing back from employee to independent contractor, the Town would be held responsible for paying income tax withholding amounts, the employee portions of Social Security, Medicare and FUTA taxes and in some instances the employee portion of these taxes without the ability to get reimbursed by the "independent contractor" who should have been an employee. Civil and criminal fraud penalties and interest could accrue on any unpaid amounts.

IRS Publication 15 (Circular E) Employers Tax Guide 2019 specifies the employers responsibilities on page 11 and also repeats the misclassification language on page 12.

"Treating employees as nonemployees.

You'll generally be liable for social security and Medicare taxes and withheld income tax if you don't deduct and withhold these taxes because you treated an employee as a nonemployee. You may be able to figure your liability using special section 3509 rates for the employee share of social security and Medicare taxes and federal income tax withholding. The applicable rates depend on whether you filed required Forms 1099. You can't recover the employee share of social security tax, Medicare tax, or

income tax withholding from the employee if the tax is paid under section 3509. You're liable for the income tax withholding regardless of whether the employee paid income tax on the wages." (Emphasis added.)

There are also numerous technical matters that would need to be addressed in both the Charter and in the ByLaws in order to make Town Counsel an employee. These are discussed later.

II. Importance of the Office of Town Counsel

The role of Town Counsel is very important. Appropriate legal opinions and advice are needed for a wide variety of Town government by functions and by a diverse array of Town agencies. (Note: Town agencies are defined in the charter to include every office, board, committee and multiple member body of the Town except Representative Town Meeting.) Even Representative Town Meeting periodically requires legal advice and clarification. Moreover, under Article 2-9 of the Charter, Town Meeting is the holder of all Town government power not specifically given to a Town agency. That section of the Charter states:

"Section 2-9 General Powers All powers of the town shall be vested in the representative town meeting, except as otherwise provided by law or the charter. The town meeting shall provide for the exercise of all powers of the town and for the performance of all duties and obligations imposed upon the town."

Legal advice, opinions and services provided by Town Counsel to a wide variety of town agencies and Town Meeting. Subject matter involving need for legal counsel range from review of contracts, wording of motions, wording of decisions, legality of decisions, law vending, open meeting law matters, public records requests, validity or legality of appropriations, existence of departments and Town agencies, what proposals are legal vs not legal, etc. Answers to questions at Town Meeting need to be clear and complete and not partial whether partial be incomplete or preferential to one set of interests.

It is very important that Town Counsel be the town's lawyer not the lawyer for any particular board or Town agency. It is also important for the Town that those town agencies which need the advice and/or services of Town Counsel can get it when they need it and when there are competing interests within the Town.

III. Certain Potentially Problematic Experiences

Generally, the Town has been well served legally. However, competing interests sometimes (and perhaps often) arise between various boards and also between boards on one hand and Town Meeting (including the Finance Committee acting on Town Meetings behalf) on the other hand.

In these situations, legal advice needs to be complete, balanced and consider all legitimate interests of the Town and not just those of a particular Board or town official. It should also not prefer or favor a particular board or official. The office of Town Counsel needs to be independent enough to stand always for the needs and rights of the Town as a whole and its citizens. Fundamentally there should be checks and balances. These checks and balances are the province of Town Meeting as indicated by the fact that they are covered in a ByLaw which can only be voted by Town Meeting. The ByLaw governing use, appointment, of Town Counsel is a decision of TM. That makes it TM's business.

Certain boards, such as the Planning Board, Zoning Board of Appeals and Conservation Commission have enforcement powers and/or legal standing under state statute with regard to particular matters. However, these boards do not have the ability under our bylaws to use town counsel for legal services. Under Rule 4 of Civil Procedure in Massachusetts, lawsuits against the Town can be served upon the Town Treasurer or Town Clerk who have no authority under our ByLaw to respond. Town agencies, other than the Board of Selectmen and Town Administrator, have no direct

ability under our ByLaw to get Town Counsel to defend them if they are sued in performance of their duties.

Experience over the past 15 years has shown some rather important instances where these objective might not clearly have been met. In an attempt to balance the need to be clear with the desire to be diplomatic, these include the following. Other and potentially much more sensitive matters have been omitted.

1) Water and Sewer Enterprise

Unauthorized administrative transfer of \$5 - \$7 million of general fund cash, billed and uncollected accounts receivable, unbilled accounts receivable and work in progress to water and sewer enterprise fund. The general fund had already paid for the water and sewer costs but did not get the revenue. The legal opinion covering this unauthorized transfer selectively cited a Finance Committee write-up on the creation of the enterprise fund and ignored the clear recommendation book statement that no monies would be moved, transferred or appropriated under the creation of the enterprise fund. Town Meeting never voted to move the money.

2) District Improvement Financing

Creation, proposed by the Board of Selectmen, of District Improvement Financing (DIF) for a new parking garage which would have irrevocably impounded the \$2 million in new growth money from the 2006 Natick Mall expansion. The Finance Committee was advised that the regulations did not exist that would have impounded this money if the DIF had been voted by Town Meeting. Inquiries to the state the next day, indicated that indeed such regulations had been in existence for 14 months before the proposal.

3) FAR Monies

Deposit of \$9 million in FAR monies in 2007/08 into the Conservation Fund by the then administration and Board of Selectmen. Extensive research by a then Finance Committee member, who was also an attorney, provided a compelling argument that all the FAR monies need to be appropriated by Town Meeting and should not have been deposited into the Conservation Fund. This research was categorically and completely rejected by the then Board of Selectmen, Town Administrator and Town Counsel. In 2015, in response to inquiries by the Conservation Fund Study Committee created by Town Meeting, the DOR required that the \$5.0 million remaining FAR balance be appropriated by Town Meeting to a stabilization account or flushed to free cash. The Finance Committee member's rejected legal analysis in 2007/08 turned out to have been 100% correct. The same arguments used by that member and attorney were used 8 years later by the Chief legal counsel of DOR.

4) Framingham Variance

In 2016, the Framingham ZBA issued a variance for a property on the Framingham Natick line that would have created apartments and new growth revenue for Framingham with all of the parking and traffic in Natick using prime Rt. 9 Golden Triangle zoned land for a use with little or no value and potential adverse effects on other Natick properties. The Planning Board, which under statute has legal standing as a party in interest concerning every variance issued with Natick and surrounding Towns, voted 3-2 to bring suit to overturn the variance. (In land court the burden is on the ZBA issuing the variance not the party questioning it.)

Not only was this elected board unable, under our ByLaw, to get legal services of Town Counsel, but this Board's chair who is authorized to "request" the advice of Town Counsel was reportedly prevented by the then administration and board of Selectmen from

getting further legal advice from Town Counsel. The provision of the bylaw that Town agencies such as the Planning Board can simply “request” the advice of Town Counsel was interpreted as not including the ability to “receive” that advice. The then administration and Board of Selectmen did not want to offend Framingham notwithstanding that Framingham did an end run around their own Planning Board and their agreement with Natick to coordinate development within the Golden Triangle area.

The elected Planning Board was prevented in exercising its statutory capacity because the wording in our ByLaw. This occurred notwithstanding the Charter provision which states “The planning board shall have all of the other powers and duties planning boards are given by general laws.” The general laws in Chapter 40A section 11 provide that Planning Board is a legal party in interest for every variance issued in its own town and every variance issued in any abutting town.

5) Police Union Lawsuit and 22 Pleasant Street

In late 2017/early 2018, the police union sued the Town and the Town Clerk regarding some labor matter. Why the lawsuit initially focused on the Town Clerk instead of the Board of Selectmen did not change the fact that the Clerk informed the then administration immediately but was powerless to get Town Counsel to respond. The lawsuit was subsequently corrected by the plaintiff to substitute the Selectmen and drop the suit against the Clerk who wasn’t involved. However, it was reportedly not until the last day before being cited for failure to respond that the then administration got Town Counsel to respond in court. Under our ByLaw, such a legal response is a legal service which can only be authorized by the Board of Selectmen or the Town Administrator. The point is not this particular lawsuit but the principle that town agencies which are sued in connection with or because of their duties should be able to defend themselves and the Town.

A potentially similar example was the 2013 lawsuit brought against the Town by the owner of 22 Pleasant St in which the owner sought to extinguish the town's easement rights over the property. These easement rights concerned the regulation of water flow through the canal and could potentially have been used as negotiating leverage by the Town. The lawsuit was served on the then Treasurer. The Town never responded and was defaulted out of the case for failure to respond. The property owner was able to extinguish the easement without a word from the Town.

6) Rail Trail Eminent Domain Takings

In spring of 2018, Town Meeting was asked to approve \$40,000 to fund various eminent domain takings that were essential to getting the Federal and State money to construct the rail trail on land that Town Meeting had spent \$7.6 million to acquire. The Finance Committee and Town Meeting were prevented understanding how the \$40,000 was derived, from viewing the appraisals upon which the \$40,000 was based and from concluding whether \$40,000 was sufficient to protect an otherwise wasted \$7.6 million. The Town needed to act by August 2018 to take a wide variety of parcels in order to get the Federal and State funds. There was no opportunity for a subsequent appropriation.

A legal opinion was provided that the Board of Selectmen needed to keep these details secret in order to protect their and the town's negotiating position. Nothing in statute requires that negotiating positions be protected. Further, statute requires that no eminent domain taking can occur unless an appraisal has first been prepared and funds set aside. In other words, everyone whose property was being taken knew that there was an appraisal. There is no position to protect negotiating with a party who knows you have an appraisal and that you must ultimately pay at least that appraisal amount – unless they want to make a charitable contribution.

Most importantly requirements do exist in statute and the Town Charter that the Finance Committee consider all such matters in open public session before a Town Meeting vote. MGL chapter 4 section 7 subpart “Fifth” defines charter as Fifth, "Charter", when used in connection with the operation of city and town government shall include a written instrument adopted, amended or revised pursuant to the provisions of chapter forty-three B which establishes and defines the structure of city and town government for a particular community and which may create local offices, and distribute powers, duties and responsibilities among local offices and which may establish and *define certain procedures to be followed by the city or town government.* (Emphasis added.)

Article 5 Fiscal Procedures of the Charter in section 5-5-b establishes that proposed capital expenditures by or of any town agency (of which the Board of Selectmen are one) are part of the budget which according to 5-6-b the Finance Committee must consider in detail in open public session and about which the Finance Committee may require additional information. These charter provisions were ignored by the Board of Selectmen and Town Counsel and the Town forced simply to trust that \$40,000 was sufficient to protect an otherwise lost \$7.6 million investment. The rail trail takings article was a \$40,000 appropriation with a \$7.6 million value.

7) Adams Street Special Permit

In 2017, the ZBA planned to issue a special permit decision for an apartment project in the Downtown area. However, before issuing the special permit, the ZBA and the Community Development office were informed of the fact that ZBA’s authority to issue special permits was removed from the zoning bylaw in 2013/14 and that statute allows special permits to be issued only by Board having specific authority under the local zoning bylaw to issue special permits in a particular district. The then town

administration wanted the project approved and ostensibly coordinated with Town Counsel to allow the unauthorized special permit decision to be issued. The citizen who raised the issue of the lack of authority did so in connection with a warrant article seeking to restore that authority and was told by Town Counsel that no communication could occur about either matter because the citizens might sue the ZBA. Town Counsel should have rather advised the ZBA that issuing the decision would be illegal and that the ZBA should respect the statutes.

8) Zoning ByLaw Re-Write – version 2

In 2015/16 a re-write of the Zoning ByLaw was proposed. The draft bylaw was supposedly reviewed by special outside counsel hired on behalf of the then re write committee and the Planning Board. The proposed new zoning bylaw proposed to change significantly the purpose section of the zoning bylaw and remove wording referring to the protection of inhabitants and existing property values and replace it with a purpose of economic growth and new tax revenue. Special permits and variances must be consistent with the purpose and objectives statement of a zoning bylaw so the proposed change was not inconsequential.

When questioned at a Finance Committee meeting, the special counsel said that the purpose section didn't matter because all good purposes were already included in law. A DHCD summary of the 1975 zoning law was cited in support of this position. However, a review of the actual language of Chapter 808 of the Acts of 1975 (which was the zoning act) indicated that the stated purposes and objectives were suggested. Consultation with veteran zoning attorneys indicated that the list in the DHCD document is not part of law and that the specific purposes stated in a local zoning bylaw matter a great deal and are the controlling language.

9) Sale of Windy Lo Property

In 2016, the Windy Lo property in South Natick was in the process of being sold and was the subject of a proposed rezoning. The property was subject to an agricultural tax abatement which required if such a property were to be sold that it must be first offered to the town. The statute requires that if a sale is involved that Town first get a complete copy of the signed purchase and sale agreement where the price is not based on any rezoning and not based on any subdivision. The statute provides that if the property is to be donated instead of being sold that the town get a letter stating that the Town could appraise the property and buy it if it wanted to. Without a rezoning or a subdivision, the property had the frontage for one or two single family lots.

The Town never received the required documents and price associated with an outright sale. The Finance Committee was never able to obtain an answer as to why the Board of Selectmen accepted a notice consistent a gifting vs. sale. Town Meeting was not only never given the opportunity to acquire this property at a price consistent with the statute but was also unable to get the question answered.

10) Written Opinions for Town Administration

Requests were made last fall by the Town Administrator for written opinions from Town Counsel. Three of these written opinions answered questions on i) whether a motion of referral to the Board of Selectmen could be made for an article, ii) whether Town Meeting had the authority to create a study committee and iii) whether Town Meeting could vote an article to amend the Town Charter. All three articles involved citizen petitions and did not involve the Town Administrator's duties. Written opinions cost more money than verbal advice. All three questions could have been answered for free in a 30 second call to the Moderator. These basic, routine matters were not of significant legal implication to

the Town and did not require written legal opinions. Yet Town funds were spent.

IV. Numerous Technical Issues Involved With Making Town Counsel a Town Employee

There are at least a dozen technical issues involved in an effort to make Town Counsel an employee vs. an independent contractor. This section analyses these issues. In doing so, this section also identifies some of the many problems with Article 21.

Article 21 Fails to Address the Charter/ Several Charter Changes Would Need to Be Addressed.

Section 3-2-c of the Charter specifies the appointment of **“a”** Town Counsel for a one year term. If the ByLaw were changed to allow Town Counsel to be an employee, the Town would still be restricted to a one year term for hiring an employee. The one year limitation would be a barrier from a potential employee’s perspective.

The **one year limitation** would make it impossible to change Town Counsel without a disruptive transition. No sooner would someone be appointed than a search would need to begin for their replacement. Such search would signal to the employee that the need to get another job. The incentive to anticipate, involve and transition to other attorneys which exists when you use an outside firm would not be present.

The Charter wording of **“a” Town Counsel prevents a combination of internal employee and external firm.** It would be either/or and not both unless the wording were changed in the Charter and further wording created in the ByLaws.

Section 4-2-14 of the Charter would make the Town Administrator, not the Board of Selectmen, responsible for the negotiation of the contract with an employee who served as Town Counsel. Section 4-2-14 under the Powers and Duties of the Town Administrator states:

“He shall be responsible for the negotiation of all contracts and collective bargaining agreements with town employees over wages, hours, and other terms and conditions of employment, except those under the jurisdiction of the school committee.”

All employee contracts including pay, benefits, terms and conditions would negotiated by TA not the BOS. The BOS could only name the Town Counsel. The Charter language in 4-2-14 would supersede the ByLaw.

Selectmen Statutory Authority to Negotiate Employee Contracts Does Not Appear to Include Town Counsel

The BOS have statutory authority in MGL Chapter 41 s. 108N, 108 N 1/2, 108 O to appoint certain town employees. These statutes specifically supersedes Charters and bylaws. However, these statutes apply only to certain positions and do not appear include Town Counsel.

These statutes cover town administrators, town managers, treasurers, assessors, collectors, police chiefs and fire chiefs.

Other Sections of the ByLaw Would Need to Be Addressed

Article 21 fails to address Section 3 Appointment and Term of Article 22 of the ByLaws. This section states:

“Town Counsel shall be appointed by a majority of the Board of Selectmen for a term not to exceed one year expiring in each case, **on June 30th**. Town Counsel shall, in any case, serve at the pleasure of the Board of Selectmen and all contracts shall so state.”

The appointment could only occur on June 30th. The Board of Selectmen could dismiss an employee serving as Town Counsel under the existing ByLaw but would be held, notwithstanding any contract, to the provisions of Article 7-11 Removals and Suspensions of the Town Charter would apply.

A screening committee would be needed to fill any vacancy.

Section 4 Screening Committee of Article 22 of the ByLaws states:

“In the event of a vacancy in the Office of Town Counsel, the Selectmen shall, from time to time, establish a Town Counsel Screening Committee consisting of five members, who are residents of the Town, with at least three being members of the Massachusetts Bar and preferably senior attorneys who hire or supervise other attorneys' work. Said Committee will be responsible for nominating candidates who are members in good standing of the Massachusetts Bar for the position of Town Counsel. The Selectmen shall, on or before the first day of July, or whenever a vacancy shall exist, appoint a candidate from among those recommended as qualified by said Committee to serve as Town Counsel. The Selectmen shall have the right to request additional candidates from said Committee.”

Interim Counsel could be appointed under section 8 but any full time hire would need a screening committee which would take several weeks to advertise, interview and then select.

“Article 24: Town Employees and Personnel Board” would need to be reviewed. Otherwise the annual review of Town Counsel would be performed by TA not BOS. Article 24 of Bylaws would give certain recruitment and complete annual employee evaluation power over Town Counsel to the Town Administrator or Personnel Director. Article 24 Section 2.2 states:

“The Town Administrator or his or her designee shall serve as Personnel Director of the Town, and in this role make recommendations to the Personnel Board on policy matters and

administer the day to day personnel practices, procedures and systems of the Town, including, but not limited to:

a.

Employee recruitment/testing/selection appraisal/evaluation;"

Article 24 Section 3.5 The Personnel By-law shall govern Town Employees excepting those employees appointed by the School Committee and excepting elected officials and excepting those employees in recognized exclusive bargaining units".

Article 24 Personnel Pay Plan would also need to be changed to add Town Counsel. Any such effort should be preceded by the development of a carefully studied job description and research in the market which demonstrates that such a position could reasonably be filled on a recurring basis and which demonstrates the likely salary cost for filling that position.

The Policy Authority of the Personnel Board under Article 24 might need to be reviewed. Article 24 Section 2 Policy and Administration states:

“The Personnel Board shall serve as the policy making authority of the Town in personnel matters and shall perform the following functions:

- a. Approve and recommend Classification and Pay Plan to Finance Committee and Town Meeting;
- b. Review and recommend employee benefit programs and conditions of employment;
- c. *Advise and review personnel procedures and administrative practices as carried out under Article 4-2, Sections 4 and 14 of the Natick Town Charter.”*

The ability of the Personnel Board to influence contract negotiations under 4-2-4 and 4-2-14 regarding Town Counsel deserves analysis. Article 4-2-14 of the charter has been discussed

above. Article 4-2-4 is equally important regarding the Town Administrator's Powers and Duties. This section states:

“He shall, in conjunction with a personnel board established by by-law, be entrusted with the administration of a town personnel system, including, but not limited to personnel policies and practices, rules and regulations, including provisions for an annual employee performance review, and amendments to the personnel by-law as warranted. He shall prepare, maintain and keep current a plan establishing the personnel staffing requirements of each town agency, except those under the jurisdiction of the school committee.”

Article 22 Section 5 of the ByLaws would need to be changed to allow Town Counsel (as an employee) to access any outside, independent contractor law firm serving as part of Town Counsel. This could be for added expertise, matters outside the employee's competence, complex matters or difficult matters of interpretation. Under the present ByLaw, Town Counsel as an employee could not contact outside counsel without permission of the Town Administrator or Board of Selectmen.

Article 22 Section 5-c should be revisited. This is the section that allows only certain town agencies to request advice from Town Counsel. Access to external counsel is one matter. Access to an internal colleague, especially on an informal basis, is another.