

**Board of Selectmen
Minutes of Tuesday, January 16, 2018
Bourne Community Building
Bourne, MA 02532**

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TA Tom Guerino

Selectmen

George Slade, Chairman
Peter Meier, Vice-Chairman
Judith Froman, Clerk
Don Pickard
Michael Blanton

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TOWN CLERK BOURNE

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Documents

6:45 p.m. Chairman call public session to order in open session

Meeting Called to Order

Chm. Slade called the meeting to order.

Moment of Silence for our Troops and our public safety personnel /Salute the Flag

Public Comment – Non-Agenda Items

4) License/Permits

- a. **One-day Wine and Malt Beverage License for the National MS Society at the MMA on June 30, 2018 from 12 noon - 5:00 p.m. at the Softball Field and Deck of Mass Hall**
- b. **Common Victualer License - transfer from Corner Café to Wurtzburger, LLC, d/b/a Corner Cafe**

5) Enter into Joint Session with Bourne Finance Committee

Motion to enter into executive session with Bourne Finance Committee to discuss strategy with respect to pending litigation pursuant to MGL Chapter 30A, Section 21 (a) (3): The Chair has declared that an open meeting may have a detrimental effect on the litigation position of the Town.

Roll call vote to convene in executive session for the purposes stated. The Board will reconvene in open session following the conclusion of the executive session. Roll call vote to reconvene in open session.

6) Adjourn Joint session with Finance Committee

7) Selectmen's Business -

a. Use of Town Counsel - Town Administrator Policy Discussion

**POLICY FOR CONSULTATION WITH
TOWN COUNSEL**

This Policy is issued in accordance with the provisions of the Town of Bourne Home Rule Charter.

Pursuant to Sections 3-3 and 4-2, the Town Administrator is responsible for the day to day administration of the affairs of the Town. Accordingly, the following Rules and Regulations shall be observed with respect to the utilization of legal services from Town Counsel or Special Counsel.

1) Request for Legal Opinions or Legal Services

Any and all inquiries to any elected or appointed Town Official that pertain to legal issues relating to the Town shall be referred to the Town Administrator, immediately upon receipt.

Any such request shall be in writing, unless the requirement of a written submission of the request is waived by the Town Administrator.

The Town Administrator shall maintain a record of any requests in the Town Administrator's Office.

After reviewing a request for Legal Opinion or a request for Legal Services, the Town Administrator shall approve or deny the request. The Town Administrator's decision shall be in writing. For purposes of this requirement, an email transmission shall satisfy the requirement of writing.

The Town Administrator shall communicate his decision, in writing, to Town Counsel.

Town Counsel may request a review of the Town Administrator's decision and any communications relating to this review shall be in writing and maintained as a record in the Office of Town Counsel.

The Town Administrator shall issue a form for Request for Legal Opinions or Legal Services.

Utilization of the form for Request for Legal Opinions or Legal Services is mandatory, unless waived by the Town Administrator.

Any request for Legal Opinions or Legal Services shall include all relevant documents and they shall be attached to the Request forwarded to Town Counsel.

2) Eligibility to Request Legal Opinions or Legal Services

It is critical to the administration of the day to day affairs of the Town that all individuals who provide services to the Town be eligible to request Legal Opinions or Legal Services in the course of providing services to the Town.

The Town Administrator shall be responsible for reviewing any such requests and determining whether to provide access to Town Counsel for an individual who seeks legal guidance about the appropriate course of action to take.

Additionally, any Town Official who is elected to a position in the Town may seek a Legal Opinion or Legal Services from Town Counsel after notifying the Town Administrator that he or she needs consultation with Town Counsel.

The Town Administrator, may, by a written directive, authorize any appointed Town Officer, regardless of method of appointment, to seek a Legal Opinion or Legal Services from Town Counsel, without prior authorization of the Town Administrator, subject to that Town Officer notifying the Town Administrator that he or she has sought the

services of Town Counsel. Said notification shall be in writing. For purposes of this requirement, an email transmission shall satisfy the requirement of writing.

3) Response of Town Counsel

Town Counsel shall respond to any request for Legal Opinions, in writing, to the individual making the request, to the Town Administrator, the Town Clerk and the Board of Selectmen. The Town Administrator and the Town Clerk shall maintain records of Opinions of Town Counsel. Beginning on January 1, 2018, the Town Administrator and Town Clerk shall maintain an Index of all Opinions received from Town Counsel and create a data base for such Opinions. The data base shall be protected by the Doctrine of Attorney-Client Privilege and the Doctrine of Attorney Work Product. Any request for information in the data base shall be processed in accordance with the Massachusetts Public Records Law. Town Counsel may advise that a document is confidential until the document is reviewed by the Record Access Officer of the Town.

Town Counsel shall provide an itemized list of any requests for Legal Opinions on a monthly basis.

4) Statutory Right to Notify Town Counsel

The Town recognizes that certain provisions of state and federal law authorize a municipal employee to seek legal advice from government counsel with certain issues, including Requests for Opinions as to Conflict of Interest; Whistleblower claims; discrimination claims; and Public Records Request to the Records Access Officer. These requests shall be documented in accordance with this Policy but do not require approval from the Town Administrator.

5) Limitation of Policy

This policy shall apply to all requests for legal opinions and legal services, and all responses from Town Counsel, unless Town Counsel determines that a deviation from the policy is required by the Town Charter, the General or Special Laws of the Commonwealth, or the Rules of Professional Conduct.

DATED: December 12, 2017

By: 

Thomas M. Guerino,

Town Administrator

Attorney Troy spoke briefly about the Use of Town Counsel Policy and how he came up with the draft policy. You want to have a policy that is consistent with State and Federal Law. You also want to have accountability. I believe the policy is a fair balance. To clarify the Board of Selectmen's policy role; the Charter intended to create the day-to-day administration of Town Hall is the responsibility of the Administrator. The idea was that professional administration should be running Town Hall. Legislation that has been adopted by the House, the Senate requested a copy that is concerning the Charter changes of 2016, which has still not been adopted by the town. Atty. Troy read from the charter Section 8: "An individual Selectmen shall have no independent authority unless specifically voted by the Board of Selectmen. Selectmen shall deal with administrative agencies and departments only through the Town Administrator. Selectmen individually or as a Board shall not become involved in the day-to-day administration of a town department". The Administrator is charged with making sure the policy that he has promulgated is consistent with the best interest of the town and that it is followed.

Don Pickard stated the Town Administrator and the Town Counsel are hired by the Board of Selectmen. In my opinion we are subordinating ourselves to the Town Administrator if we are going by his policy for how to get legal counsel, and I don't believe the Town Administrator has the authority to tell any other elected Board how to retain legal counsel. This should be a policy of the Selectmen.

Mr. Guerino said this is no different than what we are doing now or have been doing in the past; it is for tracking.

Michael Blanton said the conversation came up as a result of an effort to try to retain costs. We do not want to limit access to those folks that are appropriately seeking legal counsel. I don't see this policy as subordinating our Board; I see it as actually empowering every Board and their access to the proper legal opinions.

Judy Froman said this is the first written policy we have had in terms of legal counsel. Mr. Pickard put forward a policy for discussion. Why that was put forward if that was not appropriated to put forward by the Board of Selectmen. I don't recall a lot of discussion about the policy, and now there is a policy that is already signed.

Mr. Pickard spoke about why he brought forward the policy, in regards to cost savings, to make sure we are watching our costs. The Board voted down to move that policy forward.

Mr. Guerino stated that after the vote of 3-2 to not to move forward with the policy that Mr. Pickard had put forward, there were statements in that policy that made sense. So we tried to put together how we currently do business and tried to incorporate some of the good ideas that Mr. Pickard put in his draft. The Chair, Atty. Troy, and myself went over it together. Then we implemented it. The idea was to get a policy in writing.

Peter Meier said the person seeking Town Counsel opinion should go through their Board before approaching the Town Administrator to request Town Counsel's opinion.

Atty. Troy stated he wants anything that is coming to him be in writing, and he will respond in writing. There will always be a written record. A copy will go to the Town Administrator and the Chair.

Michael Blanton clarified that when Town counsel is hired he becomes a town employee, which falls under the Town Administrator's management. Tom Guerino stated the legal budget falls under the administrative purview. Legal cases, if they have to move forward, fall under the Selectmen's purview.

George Slade reported that no votes were taken during the executive session.

8) Adjourn

Voted Peter Meier moved and seconded by Michael Blanton to adjourn. Meeting adjourned. **Vote 5-0.**

Respectfully submitted – Carole Ellis, secretary.