

**ANNOTATED AGENDA**  
**CITY COUNCIL OF THE CITY OF YONKERS**  
**SPECIAL MEETING**  
**MONDAY, MAY 19, 2014**

TIME: 7:49 P.M.

PRESENT:                   PRESIDENT OF THE COUNCIL  
                                  LIAM MCLAUGHLIN

DISTRICT  
6                            MAJORITY JOHN J. LARKIN  
3                            MINORITY LEADER MICHAEL SABATINO (ABSENT)

COUNCIL MEMBERS:  
DISTRICT:  
1                            CHRISTOPHER A. JOHNSON (ABSENT)  
2                            CORAZON PINEDA  
4                            DENNIS E. SHEPHERD  
5                            MICHAEL B. BREEN

WE, THE UNDERSIGNED MEMBERS OF THE CITY COUNCIL, PURSUANT TO RULE 1.2 OF THE CITY COUNCIL RULES, DO HEREBY CALL A SPECIAL MEETING OF THE CITY COUNCIL, TO BE HELD ON MONDAY, MAY 19, 2014 IN THE CITY COUNCIL CHAMBERS, FOURTH FLOOR, CITY HALL, YONKERS, NEW YORK AT 7:30 P.M, FOR THE FOLLOWING PURPOSE:

TO DISCUSS AND TAKE ACTION ON:

1. RESOLUTION OF THE COUNCIL OF THE CITY OF YONKERS EMPLOYING OUTSIDE COUNSEL IN LITIGATION REGARDING THE DEFICIT ACT
  
2. ALL OTHER BUSINESS PROPERLY COMING BEFORE THE COUNCIL

COUNCIL PRESIDENT MCLAUGHLIN  
MAJORITY LEADER LARKIN

COUNCILMEMBER SHEPHERD  
COUNCILMEMBER BREEN

**A COMMITTEE OF THE WHOLE MEETING WILL BE HELD PRIOR TO THIS SPECIAL COUNCIL MEETING AT 7:00 P.M.**

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**COMMITTEE OF THE WHOLE**

**SPEAKERS**

	<u>NAME</u>	<u>ADDRESS</u>	<u>ITEM NO.</u>
1.	BARRY MCGOEY	LOCAL 628	1



**ANNOTATED AGENDA**  
**CITY COUNCIL OF THE CITY OF YONKERS**  
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**RESOLUTION NO.54-2014**

1. BY COUNCIL PRESIDENT MCLAUGHLIN, MAJORITY LEADER LARKIN, COUNCILMEMBERS SHEPHERD AND BREEN:

RESOLUTION OF THE COUNCIL OF THE CITY OF YONKERS  
EMPLOYING OUTSIDE COUNSEL IN LITIGATION REGARDING THE  
DEFICIT ACT

WHEREAS, there are various matters regarding implementation of Subpart A of Part V of Chapter 55 of the New York State laws of 2014, the Yonkers Deficit Financing Act, hereinafter known as the Deficit Act, that are of concern to the City of Yonkers and its duly elected City Council; and

WHEREAS, Section 4 of the Deficit Act has been interpreted to curtail the budget review powers of the Council of the City of Yonkers by the Office of the State Comptroller, who has issued an opinion stating the budget review provisions of the Deficit Act are in effect, are mandatory, and supersede Section 10.10(d) of the New York State local finance law; and

WHEREAS, the Office of the State Attorney General has declined to issue an opinion on the Deficit Act; and

WHEREAS, because of these extraordinary circumstances, it is the sense of the City Council that litigation should be commenced to protect home rule of the City of Yonkers budget process; and

WHEREAS, because the City Council wishes to avoid any conflict of interest, it is necessary to retain outside legal counsel to advise the City Council in these matters; and

WHEREAS, the law firm Bank, Sheer, Seymour and Hashmall possesses the necessary legal knowledge, skills and expertise to advise the City Council on these issues and has agreed to represent the City Council;

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**RESOLUTION NO.54-2014 (CONTINUED)**

NOW, THEREFORE, BE IT RESOLVED, that effective immediately, the law firm of Bank, Sheer, Seymour and Hashmall is hereby retained to represent the City of Yonkers and the City Council in litigation regarding the Deficit Act and to advise the City Council in matters relating thereto;

AND BE IT FURTHER RESOLVED, that the law firm of Bank, Sheer, Seymour and Hashmall is authorized to commence legal proceedings to challenge the Constitutionality of the Deficit Act;

AND BE IT FURTHER RESOLVED, that the compensation for the legal services provided to effectuate this resolution shall be paid from the litigation expenses account;

AND BE IT FURTHER RESOLVED, that copies of this resolution, suitably engrossed, be transmitted to the law firm of Bank, Sheer, Seymour and Hashmall and the Finance Department of the City of Yonkers.

THIS RESOLUTION WAS ADOPTED BY THE CITY COUNCIL AT A SPECIAL MEETING HELD ON MONDAY, MAY 19, 2014 BY A VOTE OF 4-1. COUNCILMEMBER PINEDA VOTING "NAY". MINORITY LEADER SABATINO & JOHNSON ABSENT.

THE ABOVE LEGIALTION WAS VETOED BY THE MAYOR ON JUNE 3, 2014.



## VETO MESSAGE

On May 19, 2014, the City Council adopted Resolution No. 54-2014 (hereinafter referred to as "the Resolution"). As discussed below, I hereby veto so much of the Resolution as purports to authorize the hiring of a law firm as outside counsel.

### The Resolution

The Resolution discusses the recently passed Yonkers Deficit Financing Act (Subpart A of Part V of Chapter 55 of the New York State Laws of 2014, hereinafter referred to as the "Deficit Act"), and an unfavorable interpretation of the Deficit Act contained in an Opinion from the Office of the State Comptroller.

The Resolution: (1) states the City Council's disagreement with the Deficit Act and with the Comptroller's Opinion interpreting the Deficit Act; (2) purports to approve the employment of the law firm Bank, Sheer, Seymour and Hashmall (hereinafter referred to as "law firm") as outside counsel to commence litigation to "challenge the constitutionality of the Deficit Act" and to "advise the City Council in matters relating thereto." I veto the Resolution only as to the second aspect, regarding the hiring of the law firm as outside counsel.

### Reasons for the Veto

First, the Resolution disregards Section C13-2 of the Yonkers City Charter, and Section 201 of the Second Class Cities Law, both of which explicitly grant to the City's Corporation Counsel exclusive duty to serve as legal counsel for the City Council, as well as all officers, boards and departments of the City.

Section C13-2 (A) of the City Charter provides that the "corporation counsel shall be and act as the legal adviser of the City of Yonkers and all of its elected and appointed officers, board, agencies and departments." In any litigation, "the corporation counsel shall appear for ... any city officer ... and such officer shall not employ other counsel." Charter, C13-2 [emphasis added]. The Resolution advances no grounds for exceptions to these sections.

Further, Second Class Cities Law § 201 states that the "corporation counsel shall be and act as the legal adviser...of the several officers, boards and departments of the city." The City Council falls squarely within these definitions and therefore the City Council lacks the authority to employ outside counsel.

The "only judicially created exceptions to the rule that the Corporation Counsel has exclusive authority to conduct all law business of the City and its officers are where there is a void in representation created by the Corporation Counsel's disqualification from representation because of, for example, conflict of interest, fraud, collusion, corruption or incompetence" (*Lamberti v Metropolitan Transp. Authority*, 170 AD2d 224 [1st Dep't 1991]; *Matter of Kay v Bd. Of Higher Education*, 260 App. Div. 9, 12 [1<sup>st</sup> Dept 1940]; *Matter of Kingsport Press, Inc. v Board of Education*, 52 Misc.2d 276, 278 [Sup. Ct. New York County 1966]; see also *Abrams v Ronan*, 36 NY2d 714 [1975] [holding that the Charter of the City of New York vests in the Corporation Counsel the "charge and conduct of all the law and business of the city and its agencies"]]). The Resolution refers to no such circumstances.

Second, power conferred by the legislature or the city charter cannot be delegated without express authority (*see generally Hartford Ins. Group v Town of North Hempstead*, 118 AD2d 542 [2d Dep't 1986]). The Law Department is the legal advisor to the City Council. Only the legal advisor of the Yonkers City Council, the Corporation Counsel, can determine whether a conflict exists and whether outside counsel should be employed (*see Matter of Massar*, 17 Misc3d 531, 535-536 [Sup Ct. Broome County 2007]). The Resolution does not state that the City Council's interest in the litigation differs in any respect from the administration's interest, nor that the City Council's interest is not already being fully represented. As the Corporation Counsel wrote to the City Council leadership by letter with yesterday's date, no one from the City Council ever contacted the Corporation Counsel's office with any such concerns. Even a difference of opinion between the Corporation Counsel and the City Council were exists, such an event does not constitute a conflict of interest sufficient to warrant separate counsel.

Third, the Resolution purports to retain the law firm without any of the many required formal approvals needed for such a contract -- such as that of the City's Board of Contract and Supply, nor approval as to form by the Corporation Counsel -- and indeed without any contract whatsoever, let alone any statement of the billing rate(s), of such a contract, contract cap, and other requirements. An attorney may not be compensated for services rendered to a municipality unless been retained in accordance with statutory requirements (*see, e.g., Cahn v Town of Huntington*, 29 NY2d 451, 454-455 [1972]).

Fourth, commencing such proposed litigation would go beyond the scope of services approved for existing City Council attorneys. The City Council has authority to retain its own counsel, and both the Council majority and minority have an attorney under contract. But the intended function of such counsel are essentially serving as parliamentarian and/or providing legal advice, as provided under the terms of their respective contracts. Such contracts are limited in scope under their respective approvals by the Board of Contract and Supply, and none permit conducting litigation.

### Conclusion

For the reasons stated above, the portions of the Resolution that purport to authorize the hiring of the law firm as outside counsel are inappropriate, unlawful, ultra vires and therefore must be vetoed. Please be aware that I will, upon your request, direct the Law Department to meet with you to discuss pursuing litigation and/or reviewing any other appropriate options to address the very real fiscal problems that the Deficit Act creates.



**ANNOTATED AGENDA**

**CITY COUNCIL OF THE CITY OF YONKERS**

**SPECIAL MEETING**

**MONDAY, MAY 19, 2014**

**COMMITTEE REPORTS**

THIS MEETING WAS ADJOURNED AT 8:20PM