



## MEMORANDUM

**TO:** Representative John Nygren

**FROM:** Richard A. Champagne, Chief

**DATE:** August 29, 2019

**SUBJECT:** Retention of Legal Counsel by the Joint Committee on Finance

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### Question

You have asked whether the Cochairpersons of the Joint Committee on Finance may retain outside legal counsel to assist the committee in performing its statutory duties under ss. 165.08 (1) and 165.25 (6) (a). For the reasons I discuss in this memorandum, I believe the Cochairpersons of the Joint Committee on Finance may retain outside counsel for this purpose and may establish the objectives of representation.

### Discussion

The powers and duties of legislative committee chairpersons are established in the state constitution and judicial decisions; assembly, senate, and joint rules; custom, usage, and precedent; statutes; and parliamentary law.<sup>1</sup> In the case of most legislative committees, the powers and duties of committee chairpersons are not presented in elaborate detail, but are defined by several rules on point, by past practices of the chairpersons, and by the legislative tasks assigned the committees. In the case of the Joint Committee on Finance, however, there is a statutory provision directly on point on the power of the committee to employ or retain committee staff.

Section 13.10 (2) provides that “[t]he committee may employ such assistants as it deems necessary and fix their compensation.” Under this authority, for example, the Joint Committee on Finance has in the past hired and retained a full-time committee clerk. In 2009, Cochairpersons Pocan and Miller appointed the current committee clerk to his position. This appointment was made without a vote of the full committee. Section 13.10 (2) does not limit the categories of staff that the committee may employ or retain other than to say that the committee has the power to employ staff that “it deems necessary.”

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<sup>1</sup> *Mason’s Manual of Legislative Procedure*, sec. 4 (Denver: NCSL, 2010). Also, for example, see Assembly Rule 91.

If the Cochairpersons deem it necessary for the Joint Committee on Finance to retain counsel to assist the committee in performing its statutory duties under ss. 165.08 (1) and 165.25 (6) (a), s. 13.10 (2) provides the Cochairpersons with the authority to hire or retain committee counsel. This statutory provision, however, does not provide funding for such a position.

To pay the costs of counsel for the Joint Committee on Finance, the Committee on Assembly Organization and the Committee on Senate Organization may authorize payment pursuant to motions adopted by the committees earlier this year. The Assembly Committee on Organization on January 11, 2019, adopted a motion that authorized “the legislature to hire any law firms, entities or counsel deemed necessary for services related to the matter of the December 2018 Extraordinary session of the legislature.” Similarly, the Senate Committee on Organization on March 22, 2019, adopted a motion that authorized “the legislature to hire any law firms, entities or counsel deemed necessary for services related to any action or matter involving or affecting the state senate.”

The actions of the Joint Committee on Finance, which consists of senators and representatives to the assembly,<sup>2</sup> under ss. 165.08 (1) and 165.25 (6) (a), are matters relating to statutes enacted during the extraordinary session and clearly involve and affect the senate and the assembly. Hence, the payment of legal costs for Joint Committee on Finance counsel may separately or jointly be paid by each house’s organization committee pursuant to the January 11, 2019, and March 22, 2019, organization committee actions.

The Cochairpersons of the Joint Committee on Finance have authority under s. 13.10 (2) to retain counsel for the committee. There does not seem to be any authority under s. 13.10 (2) for the Cochairpersons to retain counsel for an individual member of the committee; instead the staff that may be employed or retained under s. 13.10 (2) is for the committee. In terms of employing or retaining legal counsel, this means that the attorney retained by the Cochairpersons will represent the Joint Committee on Finance as an organizational client.

As the contracting agents for the Joint Committee on Finance for employing or retaining counsel, the Cochairpersons may establish the objectives of representation and, unless otherwise provided by committee action or internal committee procedures, will serve as “its duly authorized constituents.”<sup>3</sup> This means that the attorney must abide by the Cochairpersons decisions concerning the scope or objectives of representation<sup>4</sup> and that the committee as an organizational client will act through its Cochairpersons.

## **Conclusion**

The Cochairpersons of the Joint Committee on Finance may retain outside legal counsel to assist the committee in performing its statutory duties under ss. 165.08 (1) and 165.25 (6) (a), with costs to be paid by the Committee on Assembly Organization and the Committee on Senate

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<sup>2</sup> Section 13.09 (1).

<sup>3</sup> See Rules of Professional Conduct for Attorneys, SCR 20:1.13 (a). This rule covers attorney conduct when the client is an organization, as compared to an individual.

<sup>4</sup> See Rules of Professional Conduct for Attorneys, SCR 20:1.2 (a). This rule covers how the scope of representation is established for a client.

Organization. The Cochairpersons of the Joint Committee on Finance may establish the objectives of representation and serve as the committee's duly authorized constituents for decision-making purposes relating to legal services provided the committee.

I hope this memorandum is helpful. Please contact me if you will like additional information or further assistance.