

C O N F I D E N T I A L

MEMORANDUM

August 31, 1981

TO: Councilmembers Fosler and Scull
FROM: David Jay Frankel, ~~Legislative~~ Counsel
SUBJECT: Collective Bargaining Legislation

One aspect of the proposed collective bargaining law for police officers which specifically concerns me is whether the Council has authority to enact this kind of legislation. As you know, the recently approved Charter provision provides that the County shall enact a law to provide for collective bargaining and binding arbitration with a representative of police officers. This, to me, does something other than simply authorize the County to enact such a law. It actually mandates its enactment.

The reason for my concern arises from the recent decision by Judge Fairbanks in the "Ficker" amendment case. In that case, Judge Fairbanks cited Cheeks v. Cedlair Corp., 287 Md. 595, (1980), where the Court of Appeals stated:

"A charter amendment, therefore, differs in its fundamental character from a simple legislative enactment. Its content cannot transcend its limited office and be made to serve or function as a vehicle through which to adopt local legislation." (emphasis supplied)

In his opinion, Judge Fairbanks went on to say that "the citizens of Montgomery County are not empowered directly or indirectly to exercise any of the police or general welfare powers exclusively granted to the County Council. Nor can they seek to accomplish by Charter initiative what they have no power to accomplish by referendum or otherwise."

It appears that the Cheeks case may be applicable to the Collective Bargaining Charter Amendment, since the thrust of the Amendment is to compel (as opposed to authorize) the Council to enact specific legislation. If, in fact, the purpose of the Amendment is to compel the enactment of specific legislation, it would seem to follow that proponents of the Amendment will accomplish by Charter initiative what they clearly have no power to accomplish by referendum or otherwise.

I would suggest that we meet to discuss this issue and its ramifications and that Bob McDonell be included in the discussions. Please let me know whether you wish to proceed in this manner.

DJF/nn

cc: Council Staff Dir. McDonell