

The Once and Future Wicomico County Department of Law

On Friday we ran a [post regarding the establishment of a full time legal department](#) in the FY 2009 Wicomico County budget. What we reported then was accurate, but more details have arrived since then.

Note: This is a long post covering a somewhat complicated topic; so please bear with me.

The county budget calls for the establishment of a Department of Law. Current County Attorney Ed Baker is to remain as County Attorney, but will become a full time employee of Wicomico County.

Baker has the option of buying in to the county's pension system back to 1989. In [Friday's post](#) we questioned whether this was proper, by questioning Baker's status as a current county employee.

We have since learned that there should be no question that Baker qualifies as a county employee. Under his current arrangement with the county (which was continued from Baker's predecessor) Baker receives payment from the county in two different ways. The taxpayers, through Wicomico County, pay Baker an hourly rate for litigation, research, etc. The county also pays Baker \$5,000 per year to attend meetings and other regular tasks.

Every two weeks Baker receives a check (which should be for a gross pay of \$192.30) with taxes taken out. In addition, Baker is receiving his healthcare coverage through the county and pays his portion of that. To the best of my knowledge, this should reinforce the claim of County Executive Rick Pollitt that Baker was a county employee going back to 1989.

Upon becoming a full time county employee, Baker can choose to buy in to the pension plan. He may buy in going back to any year from now back to the beginning of his service as County Attorney. According to Baker (through the office of the County Executive):

“The retroactive time must be purchased, in accordance with current policy. In other words, I (Baker) pay the employee contribution, the interest it would have earned and the county's contribution for those years.”

I had a nice conversation with Baker and he was totally forthcoming. Since these are the rules of the current game, I would never make an argument that Baker should not be able to benefit from those rules.

Others will, however, argue that this proposal is not fair. There was a time when the Sheriff's deputies were brought into this plan (I believe this was when the current plan was established). Deputies with long years of service were given the same option to retroactively buy into the plan. However, for most (if not all) of those deputies this was not financially feasible. Baker, on the other hand, has the option to buy into the pension

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plan based on his annual pay of only \$5,000 per year. Yet, his pension benefit will be based on his last three years of service. This pay will be SUBSTANTIALLY more than \$5,000, as it should be.

I do not accept the fairness argument. The rules are what they are. Retroactively changing the rules so that Baker cannot reap a potential windfall amounts to some perverse bill of attainder. Even if I did not respect Ed Baker (and I most certainly DO), or thought that his service had a negative impact on the taxpayer (which I certainly DO NOT) I would never argue that he cannot join the pension plan because "it isn't fair".

I do believe that the county should look at revising those rules so that this cannot happen in the future. In all fairness to the council that approved this plan, they could have not foreseen such a circumstance. Now it has arisen and the rules should be changed for the future.

The issue IS NOT whether Ed Baker should be able to participate in the pension under the current rules. Barring additional evidence to the contrary, he appears to have that right.

The ISSUE is whether appointing Ed Baker as the first full time County Attorney in Wicomico is in the best interest of the men and women who pay taxes in this county. There is no question that Ed Baker has performed admirably as County Attorney. The question of whether the county can afford his continued service under Pollitt's proposed arrangement is the core of the matter.

Let's look at a **hypothetical** situation:

- ◆ Baker buys into the pension plan going back to 1989 (based on his annual salary of \$5,000). The cost of this retroactive purchase is \$25,000 (note that these are **hypothetical** numbers).
- ◆ Baker is paid an annual salary of \$150,000. He pays his portion of the pension contribution for the time he remains the County Attorney.
- ◆ Baker decides to retire after three years of service under the new Department of Law. He receives an annual pension benefit of \$75,000. He lives to a ripe old age, receiving 25 years of pension benefit.
- ◆ Under this hypothetical, he would receive a total pension benefit of \$1.875 million (plus a medical benefit). He will have contributed less than \$50,000 into the plan (including his retroactive buy-in). The balance of the cost of this pension benefit will come from investment earnings AND a subsidy from the Wicomico County taxpayer. Unless interest rates reach 20%, this taxpayer subsidy would be HUGE.

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Does this mean that Baker should not be appointed to the new full time position? Not necessarily. His service to date has been exemplary. We elect people like Pollitt and the seven members of the Wicomico County to decide IF this is really in the best interest of the county and its residents.

However, such a decision MUST NOT be made in a vacuum and this decision's fiscal impact is such that such a decision MUST be PUBLICLY DEBATED with ALL possible information at hand.

Before we attack Pollitt, for proposing this plan, or any member of council, for supporting it, we need to hear their reasoning in an open forum. While many people, including myself, have been calling for an in-house City Attorney in Salisbury, we have all ignored the advisability of doing the same for the county (primarily because of Baker's admirable service).

If such a plan is advisable for Salisbury, doesn't logic dictate that it would also be prudent to do the same in the county's government? Remember, Ed Baker WILL want to retire someday. Therefore, the merit of a Department of Law should not be decided on whether or not Ed Baker is the current County Attorney or whether Ed Baker will serve as the county's first in-house counsel.

I also understand that the county's charter calls for an in-house counsel. I do not know whether this is a charter provision of some standing or part of the revision that brought a County Executive form of government to Wicomico County.

Once that decision has been made, the decision of who to appoint falls on Pollitt and the council. Pollitt has erred in this process. His error was in not bringing this matter openly before the public earlier.

It appears that Pollitt failed to learn a lesson from the "[Great Wicomico Pay Raise Scandal of 2007](#)". While I defended Pollitt's actions then as being completely within his authority, I also stated that Pollitt erred in not making this information more public prior to the discovery of the raises by one council member. The current broo-ha over Baker is similar in many ways.

On April 15th, the counsel discussed this matter in a closed session (due to it being a personnel matter). Baker should be asked to waive such a privilege. Pollitt should provide council AND the public with the following information:

- ◆ The schedule showing how much it will cost Baker to buy-in to the pension plan for each year going back to 1989.
- ◆ Baker's proposed salary and what his pension contribution will be for each year going forward at least 10 years (assuming that Baker receives a 2% - 3% raise each year going forward).

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- ◆ Baker's potential annual pension benefit assuming that he buys in to the plan back to 1989, based on the assumption that Baker receives a 2% - 3% raise each year going forward. The potential pension benefit schedule should show what it would be if he stayed in his post for 3, 4, 5, - 10 years.
- ◆ What is the estimated cost to the taxpayer IF Baker buys in back to 1989, retires in three years AND receives a pension benefit for 15, 20, and 25 years.

With this information, it will now be up to council (and the public) to agree or disagree with Pollitt as to whether this is in the best interest of the taxpayers.

To allow Pollitt's office adequate time to provide the information, and for council to fully debate this plan (and possibly examine alternatives) the council will need to postpone voting on the budget. The charter mandates that the budget be adopted by June 15th. If this means that a special session will have to be held later in the week, or even next week, SO BE IT!

There are also potential alternatives to this plan. One suggested by a reader of [Salisbury News](#) is to keep Baker in his present capacity, while establishing the Department of Law with a younger attorney as a full time employee. This would allow the younger attorney to be brought up to speed over a protracted period of time AND learn from a first rate municipal attorney.

Such a proposal MAY cost more up front, but be far cheaper over the long run. It may be fiscally more prudent to go forward with Pollitt's proposal. It may be far costlier to go forward with Pollitt's proposal AND still be in the best interest of Wicomico County and her residents. **The problem is WE DON'T KNOW!** Without adequate information and an open debate we will never know.

To ask the voters of Wicomico County to subsidize a pension that could potentially run into the millions of dollars without a FULL EXPLANATION of the facts and a FULL AND OPEN DEBATE of the plan's merits is a betrayal of the oaths taken by our elected officials.