

ORDINANCE NO. 3391

AN ORDINANCE to authorize the City Attorney's Office to provide legal services to the Alexandria School Board.

WHEREAS, § 11.02(a) of the Alexandria City Charter provides that the Alexandria City Attorney shall be the legal advisor of the city council, the city manager and all departments, boards, commissions and agencies of the city, with the exception of the school board;

WHEREAS, § 11.02(h) of the charter provides that the city attorney shall have such other powers and duties as may be assigned to him by an ordinance duly enacted by the city council;

WHEREAS, the Alexandria School Board has determined that, for fiscal and other reasons, it is advantageous for it to obtain legal services from the city attorney's office rather than contracting with private legal counsel;

WHEREAS, the city attorney has determined that the provision of legal services to the school board by his office will not interfere with his carrying out the powers and duties imposed upon him and his office by § 11.02 of the city charter, and will not create any impermissible conflicts of interest;

WHEREAS, the city attorney and the Alexandria School Board have negotiated an agreement (attached hereto) pursuant to which the city attorney's office will provide legal services and representation to the school board in return for the payment of fees which both the city attorney and the school board deem appropriate; and

WHEREAS, the city council has determined that it is in the interest of the city for the city attorney to provide legal services to the Alexandria School Board; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That, pursuant to § 11.02 of the Alexandria City Charter, the city council hereby authorizes the city attorney to enter into an agreement with the Alexandria School Board pursuant to which his office will provide legal services to the school board.

Section 2. That the city council hereby approves the attached agreement, executed by the city attorney and the chairperson of the Alexandria School Board, and further authorizes the city attorney to enter into any renewal of said agreement; provided, that any renewal of the agreement shall be presented to council for its review and approval.

Section 3. That this ordinance shall become effective upon the date and at the time of its final passage.

JAMES P. MORAN, JR.
Mayor

Final Passage: June 17, 1989

RETAINER AGREEMENT

The Alexandria School Board ("Board") hereby retains the Alexandria City Attorney's Office ("Office") to provide legal services to it pursuant to the following terms and conditions.

1. During the term of this agreement, the Office will provide all legal services requested by the Board, with the exception of legal representation in significant litigation brought against the Board, members of the Board or members of the school system staff. It is anticipated that the services to be provided by the Office will largely involve the provision of legal advice and recommendations on discrete issues posed by the Board or the superintendent, the provision of advice and recommendations in connection with personnel matters and hearings, representation of the Board in personnel hearings, representation of the Board, Board members or members of the school system staff in non-significant litigation, and the review of regulations and policies adopted or to be adopted by the Board. Whether a particular lawsuit constitutes significant or non-significant litigation will be decided on a case-by-case basis by the Board and the Office. However, any litigation likely to require more than 100 hours of attorney time shall constitute significant litigation. While the Office will not regularly attend meetings of the Board, of its committees or of the superintendent's immediate staff, the Office will attend any such meeting when requested by the Board or the superintendent.

2. The Board desires and agrees that this shall be a

fixed-fee agreement and that a single fee shall be paid for the services provided by the Office, regardless of the actual number of attorney hours spent and the actual expenses incurred by the Office in providing these services. The Board agrees that the fixed fee for these services will be \$91,000, payable in 12 equal monthly installments to be paid on the first day of each month beginning August 1, 1989; provided, that if the Office is not prepared to provide services under this agreement on July 1, 1989, the \$91,000 fee shall be reduced by \$183.50 for July 1 and for each day thereafter during which the Office continues not to be prepared to provide services and, further, the Board's first monthly installment shall not be due until the first day of the month immediately following the month in which the Office is first prepared to provide services under this agreement. The Board and Office recognize that this fee reflects significant start-up costs which the Office must incur in order to begin providing services to the Board, and that these costs will not be included in any future agreement between the parties. An estimate of the start-up costs is shown on the exhibit, entitled "Annual and Start-Up Costs," which, for informational purposes only, is attached hereto. It is the Office's expectation that, in the event this agreement is renewed beginning July 1, 1990, the annual fee to be paid by the Board would be on the order of \$77,000, reflecting the "annual costs" shown on the attached exhibit increased to reflect salary increases and cost-of-living adjustments.

3. The term of this agreement shall run from July 1, 1989, through June 30, 1990, except that either party may terminate the agreement upon the provision of a written 90-day notice with or without cause. In the event that the Board elects to terminate this agreement prior to June 30, 1990, it shall remain liable to the Office for the amount set out in paragraph 2 less the number of months (including any portion of a month) between the effective date of the termination and July 1, 1990, times \$5,000. Thus, for example, if the termination is effective March 15, 1990, the Board would remain liable for the difference between \$95,000 and \$17,500 (3.5 times \$5,000), or \$77,500.

4. The Office agrees to hire a new attorney who will work exclusively, under the general supervision of the city attorney, in the provision of services covered by this agreement. In addition, the Office agrees to hire secretarial personnel necessary to support this attorney and to acquire the furniture and equipment necessary for these staff additions.

5. The Board recognizes that the Office acts as legal counsel for the City of Alexandria and its city council. The Board recognizes the possibility that a conflict of interest may arise for the Office in the course of providing services pursuant to this agreement in that, as to a particular matter, the interests of the Board may be inconsistent with the interest of the city council. If such a conflict of interest situation arises, the Office will notify the Board of the conflict and will not provide any services to or for the Board in connection with the

matter unless both the Board and the council find that the Office's continued involvement in the matter is acceptable.

6. The Board agrees to defend, hold harmless and indemnify the Office, the city attorney and any member of the Office staff from and against any and all claims, demands, causes of action, loss, liability, lawsuits, costs or expenses of any kind whatsoever alleged or brought against the Office, the city attorney or any member of the Office staff arising out of, connected with or incident to the provision of services pursuant to this agreement.

7. The Office recognizes that payment by the Board of any amount due under this agreement is subject to and conditioned upon an appropriation of the necessary funds by the Alexandria City Council and the Virginia General Assembly.

8. No modification of this agreement may be made except in writing executed by the duly authorized representatives of the Board and the Office.

ALEXANDRIA SCHOOL BOARD

CITY ATTORNEY'S OFFICE

By Judith S. Seltz
Judith S. Seltz
Chairperson

By Philip G. Sunderland
Philip G. Sunderland
City Attorney

Date 5/20/89

Date 5/16/89

Annual and Start-Up Costs: 1989-1990*

A. Annual Costs

Attorney (salary and benefits)	\$50,000
Secretary (salary and benefits)	17,000
Routine overhead (supplies, auto, phone, xerox, library, dues ...)	2,000
Special overhead (messenger, overtime, school-related legal materials, conferences ...)	4,200
	<hr/>
Total Annual Costs	\$73,200

B. Start-Up Costs

Attorney furnishings and equipment	\$4,300
Secretary furnishings and equipment	5,000
Alter space in office	<u>8,500</u>
Total Start-Up Costs	\$17,800
 GRAND TOTAL	 \$91,000

* The following costs are not included and would be billed separately as disbursements: litigation expenses (reporters, expert witnesses, transcripts, etc.); outside counsel fees (in "substantial" litigation); and other specially-incurred expenses.