# The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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August 27, 2012

Mr. Eric Kraus, Chairman
Walpole Board of Selectmen
Town Hall
135 School Street
Walpole, Massachusetts 02081

**RE: Town of Walpole and St. 2011, c. 171, § 8A,**
**<u>Change in the Date for the September 2012 State Primary Election</u>**

Dear Chairman Kraus:

This letter is in response to your August 1, 2012 request, on behalf of the Walpole Board of Selectmen, for a determination by the State Auditor's Division of Local Mandates (DLM) regarding the change of date for the September 2012 State Primary Election. Although originally scheduled for September 18, 2012, St. 2011, c. 171, § 8A changed the Primary Election date to September 6, 2012. This new date coincides with the first day of school set by the Walpole School Committee. Because the Town customarily uses the public schools for Election Day polling places, the Board of Selectmen authorized the Town Clerk to request permission from the Secretary of the Commonwealth's Elections Division to relocate eight precincts to non-school facilities. As a result, the Town Clerk initially intended to conduct two mailings: (1) to notify each head of household of the change in location for the September Primary; and (2) to notify each head of household of the return to the customary location for the Final Election in November. For this expense, the Town Clerk requested a transfer of $6,574.00 from the reserve fund. You request a determination as to whether this change in law and additional mailing expenses are an unfunded state mandate subject to the Local Mandate Law, M.G.L. c. 29, § 27C. As explained below, DLM has concluded that St. 2011, c. 171, § 8A does not impose an unfunded state mandate within the meaning of M.G.L. c. 29, § 27C.

In relevant part, the Local Mandate Law provides that any post-1980 law or regulation that imposes more than incidental administration expenses upon any city or town shall be effective only if it is locally accepted or fully funded by the Commonwealth. Even though this establishes the general rule that the state must pay for mandated costs, the State Supreme Judicial Court (SJC) has ruled that the General Court is free to supersede or override the Local Mandate Law. In *Lexington v. Commissioner of Education*, 393 Mass. 693, 696 (1985), the SJC wrote: "Proposition 2 ½ [including the Local Mandate Law] is not a constitutional amendment, and although its genesis was in initiative and referendum, it enjoys a legal status no different from any other statute."

The first sentence of St. 2011, c. 171, § 8A provides: "(a) Notwithstanding section 28 of chapter 53 of the General Laws, or any other general or special law to the contrary, the state primary for the

calendar year 2012 shall be held on Thursday, September 6." This text overrides the Local Mandate Law with respect to the scheduled date for the September Primary Election. As explained in the *Lexington* decision, this is a legitimate exercise of legislative prerogative. In light of this precedent, it is the opinion of DLM that the Local Mandate Law does not apply to local obligations resulting from this change.

Further, we note that the Local Mandate Law applies to post-1980 state laws and regulations that *impose* additional costs at the local level; it does not apply to costs that result from voluntary local actions. We also note that Massachusetts law does not designate the start and end dates for the school year; these are local decisions. In the case at hand, the law changing the date for the Primary Election was signed by the Governor on November 11, 2011, more than two months prior to the local decision that set the opening day of school in Walpole as September 6. According to the Walpole School Department website, the School Committee approved the initial 2012-2013 school calendar on January 26, 2012. Although the School Committee may not have been aware that they were designating the same date as the State Primary, it would appear that this was a voluntary decision made after the change in state law.

At any rate, as I discussed with the Walpole Town Clerk, I met with the Director of the state Elections Division, Attorney Michelle Tassinari, on this matter. During our discussion, Ms. Tassinari explained that the Elections Division would be willing to allow a single mailing in this case, so with one postcard, the Town could give notice of the change of the polling places for the Primary Election, and instruct voters to return to their customary voting locations for the November Final Election. We hope that Walpole officials will take advantage of this option that affords the opportunity to reduce the financial impact by more than $3,200.00.

Thank you for the opportunity to review this matter. Even though we concluded that the Local Mandate Law would not apply in this case, we are pleased that we were able to assist in determining a less costly method of advising the voters of Walpole. Please call with further questions or concerns you may have on this or other matters impacting municipal budgets.

Sincerely,

Vincent P. McCarthy, Esq., Director
Division of Local Mandates

cc: Ms. Michelle Tassinari, Esq., Director, Elections Division
Mr. Ron Fucile, Clerk of the Town of Walpole