



Current Developments in Municipal Law

Legislation and Agency Decisions Book 1

2015

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LEGISLATION

**PLEASE NOTE THIS COMPILATION WAS MADE FROM ELECTRONIC
(NOT OFFICIAL) EDITIONS OF MASSACHUSETTS ACTS AND
RESOLVES (SESSION LAWS) AND BILLS FILED FOR 2015-2016
SESSION**

2014 LEGISLATION

CHAPTER 343 - LEGAL LIST OF INVESTMENTS

Effective January 7, 2015

Amends municipal finance laws regarding investments of trust funds and safe depositing of municipal and district funds, as well as banking laws that authorize the Commissioner of Banks to establish a list of sound investments for banks and local governments.

§§ 1 and 2 City, Town and District Investments. Section 1 amends G.L. c. 44, § 54 to expand the trust companies, cooperative banks and savings banks into which local government trust funds may be deposited by including such out of state entities with a main or branch office in Massachusetts and insured by the Federal Deposit Insurance Corporation (FDIC). Section 2 amends G.L. c. 44, § 55A, which protects a municipal or district treasurer from liability if a listed form of banking institution in which local funds are deposited should fail. The amendment also allows more flexibility in the protected deposits for out of state institutions with a main office or branch in Massachusetts and insured by the FDIC.

§ 3 Legal List of Investments. Section 3 replaces §§ 15A and 15B of G.L. c. 167, which authorize the Commissioner of Banks to establish a legal list of investments for certain banking institutions, and indirectly, for cities, towns and districts, with §§ 15A through 15K. These new sections modernize the kinds of investments considered appropriate for banking institutions by granting the Commissioner the ability to add new kinds of investments to the legal list and by eliminating outdated offerings no longer available. That would also likely result in an expansion of securities considered safe for local government trust fund investments, as authorized by G.L. c. 44, § 54.

The amended § 15A of G.L. c. 167 changes the definition of the term "legal list of investments for savings banks" to "legal list" or "legal investments." Although the reference to the list in G.L. c. 44, § 54 has not been similarly amended, the new legal list applies to savings banks and therefore, to municipal or district trust funds.

§ 4 Credit Unions. Adds § 67B to G.L. c. 171, which regulates credit unions, in order to provide greater investment options for credit unions. However, G.L. c. 44, § 55A was not amended to protect treasurers of cities, towns and districts who deposit funds in a credit union from liability on loss of funds.

CHAPTER 343 OF THE ACTS OF 2014
An Act Relative to the List of Legal Investments Prepared by the Commissioner of Banks.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows

SECTION 1. Section 54 of chapter 44 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- Trust funds, including cemetery perpetual care funds, unless otherwise provided or directed by the donor of the funds, shall be deposited in: a trust company, co-operative bank or savings bank, if the trust company or bank is organized or exists under the laws of the commonwealth or any other state or may transact business in the commonwealth and has its main office or a branch office in the commonwealth; a national bank, federal savings bank or federal savings and loan association, if the bank or association may transact business and has its main office or a branch office in the commonwealth; provided, however, that a state-chartered or federally-chartered bank shall be insured by the Federal Deposit Insurance Corporation or its successor or invested by cities and towns in participation units in a combined investment fund under section 38A of chapter 29 or in bonds or notes which are legal investments for savings banks.

SECTION 2. Said chapter 44 is hereby further amended by striking out section 55A, as so appearing, and inserting in place thereof the following section:-

Section 55A. A city, town, district or regional school district officer receiving public money and lawfully and in good faith and in the exercise of due care depositing the public money in a trust company, co-operative bank or savings bank, if the trust company or bank is organized or exists under the laws of the commonwealth or any other state or may transact business in the commonwealth and has its main office or a branch office in the commonwealth, a national bank, federal savings bank or federal savings and loan association, if the bank or association may transact business and has its main office or branch office in the commonwealth or in participation units in a combined investment fund under section 38A of chapter 29 or, in the city of Boston, in accordance with section 55 in a national bank or trust company in the city of New York; provided, however, that a state-chartered or federally-chartered bank shall be insured by the Federal Deposit Insurance Corporation or its successor, shall not be personally liable to the city, town, district or regional school district for any loss of public money by reason of the closing or liquidation of any depository institution described in this section.

SECTION 3. Chapter 167 of the General Laws is hereby amended by striking out sections 15A and 15B, as so appearing, and inserting in place thereof the following 11 sections:

Section 15A. (a) As used in this section and in sections 15B to 15K, inclusive, “legal list” or “legal investments” shall mean the list of securities approved for investment by the commissioner.

(b) On or before July 1 of each year, the commissioner shall prepare a list of all stocks, bonds, notes and other interest-bearing obligations which are then legal investments under said sections 15B to 15K, inclusive; provided, however, that all privately placed or held issues may in the discretion of the commissioner be omitted. An entity issuing such an instrument shall identify itself directly to the commissioner as being eligible to be included on the list under sections 15E

to 15K, inclusive; provided, however, that the commissioner shall have the discretion to add any entity and instrument to the list. The list shall include the name of any investment fund approved by the commissioner which invests only in such stocks, bonds, notes and other interest bearing obligations. The shares of any such investment fund so approved shall be legal investments pursuant to this section to the same extent as any such stocks, bonds, notes and other interest bearing obligations. The list shall at all times be public. In the preparation of any such list which the commissioner shall prepare or furnish, the commissioner may employ expert assistance as the commissioner believes proper or may rely upon information contained in publications which the commissioner believes authoritative in reference to such matters and the commissioner shall not be held responsible or liable for the omission from the list of the name of any state or political subdivision or authority of the state or of any corporation or association the stocks, bonds, notes or other interest bearing obligations which so conform or any investment fund which conforms to this chapter or for the omission of any investment funds, stocks, bonds, notes or other interest bearing obligations which so conform. The commissioner shall not be held responsible or liable for inclusion in the list of any such names or of nonconforming investment funds, stocks, bonds, notes or other interest-bearing obligations.

(c) Officers and members of a board of a bank or credit union may rely upon the legal list as representing an accurate listing of investment funds, stocks, bonds, notes and other interest bearing obligations eligible for investment by the bank or credit union and no officer or member shall be personally liable for any loss incurred by the bank or credit union arising from the purchase in good faith of any shares in an investment fund or security appearing on the list at the time of the purchase.

(d) Subsequent to the annual preparation of the list, the commissioner may add the name of any investment fund which meets the requirements of this section.

(e) Before making an investment under this section, an entity shall conduct an appropriate level of due diligence to determine if an investment is both permissible and appropriate. This may include both internal and external analysis. For debt instruments, the analysis shall not rely solely on 1 or more credit rating agencies and the entity shall determine that the instrument has both a low risk of default by the obligor and the full and timely repayment is expected over the expected life of the investment.

Section 15B. (a) The legal list prepared pursuant to section 15A may include securities that are approved for investment in accordance with this section.

(b) The securities eligible for approval for investment under this section may include: (i) interest-bearing obligations of any state, county, city, town or district or any subdivision or instrumentality thereof and any authority established under the laws of the United States or any state, county, town or district, including obligations of any of the foregoing payable from specified revenues; (ii) interest-bearing obligations of any corporation organized under the laws of the United States or any state and of any association, the business of which is conducted or transacted by trustees under a written instrument or declaration of trust, having its principal place of business in the commonwealth; and (iii) preferred and common stock of any corporation described in clause (ii). Obligations eligible pursuant to clauses (i) and (ii) shall have an initial offering of at least \$50,000,000 and be rated at least a single A.

(c) Upon application by 3 credit unions which have been chartered pursuant to chapter 171, which have submitted in the form and under the conditions as the commissioner may require, requesting authority to invest their deposits and the income derived from their deposits in any of the interest-bearing obligations or stocks referred to in subsection (b), the credit unions may request that the commissioner, in the form and under the conditions as the commissioner may require, authorize, notwithstanding any general or special law to the contrary, the investment in the interest bearing obligations or stock.

(d) If the commissioner grants the authority, the commissioner shall immediately add the name of the investment to the legal list. At any time after adding the name of the investment to the legal list, the commissioner may on the commissioner's own initiative revoke that authority.

(e) If the commissioner authorized investment in an issue of bonds in accordance with this section and, if after the authorization but before the authorization is revoked the issuer shall issue bonds, the proceeds of which shall be used solely to refund the issue previously authorized for investment or another issue of equal or shorter maturity and of equal or prior security and, if the new bonds shall be of equal security with the previously authorized issue and of equal or shorter maturity, the commissioner may authorize investment in the refunding bonds and after the authorization may revoke the authority on the commissioner's own initiative. If the commissioner authorized investment in an issue of bonds in accordance with this section and, if after the authorization but before the authorization is revoked, the issuer shall issue bonds of which at least 90 per cent of the proceeds shall be used to refund the issue previously authorized for investment or another issue of equal or prior security, the security for the new bonds is not less than that for the previously authorized issue and the commissioner may authorize investment in the new bonds and after the authorization may revoke the authority on the commissioner's own initiative.

(f) In determining that any investments authorized under this section shall be included in the legal list or deleted from the list, the commissioner may employ such expert assistance as the commissioner believes proper or may rely upon information contained in publications which the commissioner believes authoritative.

(g) Not more than 10 per cent of the assets of the entity shall be invested in investments authorized under this section.

Section 15C. An entity that may invest pursuant to section 15A or the legal list may invest in bonds, notes or other interest-bearing obligations of the following classes:

(i) direct obligations of the United States or in obligations that are unconditionally guaranteed as to the payment of principal and interest by the United States;

(ii) legally issued, assumed or unconditionally guaranteed bonds, notes or other interest-bearing obligations of the commonwealth, including legally issued bonds, notes or other indebtedness of an entity established as a public instrumentality by general or special law;

(iii) legally issued, assumed or unconditionally guaranteed bonds, notes or other interest-bearing obligations of any state other than the commonwealth which has, not within the 20 years prior to making the investment, defaulted for a period of more than 120 days in the payment of any part of either principal or interest of any legally issued or assumed obligation; provided, however, that the full faith and credit of the state shall be pledged for the payment of the principal and interest of the obligations;

(iv) bonds, notes or other obligations issued or guaranteed as to both principal and interest by the Dominion of Canada or any of its provinces; provided, however, that (A) the bonds, notes or obligations shall be payable in United States funds either unconditionally or at the option of the holder of the bonds, notes or other obligations; and (B) at the date of investment the Dominion of Canada or the applicable province shall not have been in default in the payment of interest or principal of any of its obligations for a period in excess of 31 days at any time within the 20 years preceding such date of investment. Not more than 5 per cent of the assets of an entity authorized to invest pursuant to section 15A or the legal list may be invested in obligations authorized under this paragraph;

(v) bonds, notes or obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank or the Asian Development Bank containing an unconditional promise to pay or an unconditional guarantee of the payment of the interest on the bonds, notes or obligations regularly and the principal of the

bonds, notes or obligations by a specified date in United States currency; provided, however, that not more than 3 per cent of the assets of an entity authorized to invest pursuant to section 15A or the legal list shall be invested in the bonds, notes or obligations; and provided further, that the commissioner may at any time on the commissioner's own initiative suspend the authorization granted by this clause for periods as the commissioner may determine;

(vi) obligations of or instruments issued by and fully guaranteed as to principal and interest by the Federal National Mortgage Association established under the federal National Housing Act, 12 U.S.C. 1715 et seq.; (vii) debentures, bonds or other obligations issued by any federal home loan bank or consolidated federal home loan bank debentures or bonds issued by the federal home loan bank board under the Federal Home Loan Bank Act, 12 U.S.C. 1421 et seq.;

(viii) debentures issued by the Central Bank for Cooperatives or consolidated debentures issued by the Central Bank for Cooperatives and the 12 Regional Banks for Cooperatives under the federal Farm Credit Act of 1933, 12 U.S.C. 1131 et seq.;

(ix) collateral trust debentures or other similar obligations issued by any federal intermediate credit bank or consolidated debentures or other similar obligations issued by the federal intermediate credit banks under the Federal Farm Loan Act, 12 U.S.C. 742 et seq.;

(x) farm loan bonds issued by any federal land bank under said Federal Farm Loan Act;

(xi) promissory notes representing domestic farm labor housing loans authorized under federal law when the notes are fully guaranteed as to principal and interest by the Farmers Home Administration of the United States Department of Agriculture;

(xii) bonds, notes or obligations issued, assumed or guaranteed by the Export-Import Bank of the United States;

(xiii) obligations of any person, including any form of mortgage-backed security, as to which the payment of principal and interest according to the terms of the obligations shall be guaranteed by the Government National Mortgage Association under said federal National Housing Act;

(xiv) certificates issued by the Federal Home Loan Mortgage Corporation representing interests in mortgage loans made, acquired or participated in by the Federal Home Loan Mortgage Corporation; and

(xv) system-wide obligations issued under the Farm Credit Act of 1971, 12 U.S.C. 2001 et seq., by institutions included in the federal farm credit system.

Section 15D. An entity authorized to invest pursuant to section 15A or the legal list may invest in bond, notes or other interest-bearing obligations of the following classes:

(i) legally issued or assumed bonds, notes or other interest-bearing obligations of a county, city, town or legally established district of the commonwealth; and

(ii) legally issued or assumed bonds, notes or other interest-bearing obligations of a county, city, town or legally established district outside of the commonwealth; provided, however, that this clause shall not authorize investments in obligations of any city or town outside of the commonwealth which have been in default for more than 120 days in the payment of any part of principal and interest of all bonds, notes or other interest-bearing obligations legal for investment under this section.

The full faith and credit of the county, city, town or district shall be pledged for the full payment of principal and interest of all bonds, notes or other interest bearing obligations legal for investment under this section.

Section 15E. (a) An entity that may invest pursuant to section 15A or the legal list may invest in bonds, notes or other interest-bearing obligations of railroad corporations subject to the conditions, limitations and requirements of this section.

(b) With respect to bonds, the obligations shall be those of a railroad incorporated in the United States or any state doing business principally within the United States and shall contain an unconditional promise to pay the interest on the bonds regularly and to pay the principal at a specified date. This promise may be modified, if at all, only by a vote of holders of at least 75 per cent in amount of the bonds.

Not more than 20 per cent of the assets of the entity shall be invested in the railroad obligations.

(c) Investments in railroad equipment obligations shall be those of, or guaranteed by, a railroad incorporated in the United States or any state and which is doing business principally within the United States.

Section 15F. (a) As used in sections 15F and 15G, "bond" shall include a note or debenture.

(b) An entity that may invest pursuant to section 15A or the legal list may invest in the bonds of any company which at the time of the investment is incorporated under the laws of the United States or any state and may engage and is engaging in the business of furnishing telephone service in the United States, subject to the following: (i) the bonds shall be part of an original issue of not less than \$25,000,000 in principal amount when the company is not incorporated in the commonwealth; and (ii) not more than 20 per cent of the assets of the entity shall be invested in the bonds of telephone companies.

Section 15G. (a) An entity that may invest pursuant to section 15A or the legal list may invest in bonds, notes or other interest-bearing obligations of a gas, electric light or water company incorporated or doing business in the commonwealth and subject to the control and supervision of the commonwealth.

(b) An entity that may invest pursuant to section 15A or the legal list may invest in the bonds of any company which at the time of the investment is incorporated under the laws of the United States or any state and transacting the business of supplying electrical energy or artificial gas or natural gas purchased from another company and supplied in substitution for or in mixture with artificial gas for light, heat, power and other purposes or transacting any or all of the business. The bonds shall be part of an original issue of not less than \$25,000,000 in principal amount.

(c) Not more than 25 per cent of the assets of the entity shall be invested in obligations under this section and no more than 4 per cent shall be invested in the obligations of any 1 company.

Section 15H. An entity that may invest pursuant to section 15A or the legal list may invest in the common stock of banking corporations and bank holding companies subject to the following conditions, limitations and requirements:

(i) in the common stock of a bank in stock form incorporated under the laws of and doing business within the commonwealth; provided, however, that there shall be no preferred stock outstanding; or, in the common stock of a federally chartered bank in stock form doing business within the commonwealth; provided, however, that there shall be no preferred stock outstanding; provided further, that state-chartered or federally-chartered bank shall be well capitalized under bank regulatory criteria;

(ii) in the common stock of a state-chartered bank or federally chartered bank doing business anywhere within the United States, which is a member of the federal reserve system and is well capitalized under bank regulatory criteria;

(iii) in the common stock of a bank holding company as defined in chapter 167A; provided, however, that the stock shall be received pursuant to an offer made by the bank holding company to exchange shares of its common stock for shares of a bank in stock form incorporated under the laws of the commonwealth or for shares of a federally-chartered bank doing business in the commonwealth; or provided, however, that the stock shall be received pursuant to a plan for the merger or consolidation of the bank with or into or the transfer, sale or exchange of property or of assets of the bank or with a bank in stock form incorporated under the laws of the commonwealth or a federally-chartered bank doing business in the commonwealth the stock of the bank, as the case may be, shall be at the time owned by the bank holding company;

(iv) in the common stock of a bank holding company as defined in said chapter 167A acquired otherwise than as set forth in the first paragraph or in the common stock of a bank holding company as defined in the federal Bank Holding Company Act of 1956, 12 U.S.C. 1841 et seq.; provided, however, that the holding company shall own 80 per cent or more of the voting stock of the qualifying bank; provided further, that if at any time after an investment in the common stock of the bank holding company, no bank of the holding company shall meet the requirements of clauses (iii) or (iv), the holding company's stock shall be disposed of within the reasonable time as the commissioner shall determine; and

(v) in the common stock of a company as defined in chapter 167A or in said federal Bank Holding Company Act of 1956; provided, however, that the banking institution or bank shall be the kind referred to in clauses (iii) or (iv) and the stock of the banking institution or bank represents at least 50 per cent of the company's assets at book value at the end of its fiscal year immediately preceding the date of investment or at the date of investment in the case of a newly formed company.

Section 15I. Subject to applicable banking laws, an entity that may invest pursuant to section 15A or the legal list may purchase the whole or any part of the stock of a savings bank, co-operative bank, federal savings and loan association or federal savings bank; provided, however, that the bank or association shall be well capitalized under bank regulatory criteria.

Section 15J. An entity that may invest pursuant to section 15A or the legal list may invest in the capital stock of any insurance company that may conduct a fire and casualty insurance business; provided, however, that no insurance stock shall be purchased if the cost of the insurance stock added to the cost of insurance stocks and bank stocks already owned shall exceed $66 \frac{2}{3}$ per cent of the total of the assets of the entity.

Section 15K. An entity that may invest pursuant to section 15A or the legal list may invest in securities of any of the following classes: debentures, convertible debentures, notes or other evidences of indebtedness of: (i) a banking corporation in the common stock of which the corporation may invest pursuant to paragraph 1 of section 15H; provided, however, that the entity that may invest pursuant to said section 15A or the legal list shall be well capitalized under regulatory criteria; or (ii) a banking corporation in the common stock of which the corporation may invest pursuant to paragraph 2 of said section 15H shall be well capitalized under regulatory criteria.

SECTION 4. Chapter 171 of the General Laws is hereby amended by inserting after section 67A the following section:

Section 67B. Upon a 2/3 vote of its board of directors, a credit union which has strong management, is well-capitalized and has at least a satisfactory rating at the most recent community reinvestment examination conducted by the commissioner pursuant to section 14 of chapter 167 may apply to the commissioner to invest in shares of stock registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. 78a, or for which quotations are available through the Financial Industry Regulatory Authority, Inc. or any comparable service designated by the commissioner; provided, however, that the investment shall be made in the exercise of the judgment and care consistent with the prudent person rule as provided in this section. In making the application to the commissioner for prudent person authority, the credit union shall also have adequate policies and procedures governing the performance of the activity by the credit union and its employees to minimize any credit, market, liquidity, operational, legal and reputational risks to the credit union. A credit union shall submit other information the commissioner may consider necessary to properly evaluate an application. The commissioner may consider any other information available to the division of banks in determining whether to approve or reject an application. Approval granted by the commissioner shall be subject to conditions and limitations as the commissioner may impose.

A credit union may apply to invest up to 20 per cent of its assets under this section. The percentage of assets authorized shall be determined by the commissioner. The commissioner may increase, modify, curtail, rescind or otherwise limit a credit union's authority to make the investments.

Before making any investment under this section, a credit union shall conduct an appropriate level of due diligence to determine if an investment shall be both permissible and appropriate and may include both internal and external analysis. For debt instruments, the analysis shall not rely solely on 1 or more credit rating agencies and the credit union shall determine that the instrument has both a low risk of default by the obligor and that the full and timely repayment shall be expected over the expected life of the investment.

A credit union shall take into consideration the following:

(i) when considering the purposes, terms and other circumstances of the credit union, including those set forth in this section, whether the investment would meet the prudent person rule where the credit union shall exercise reasonable care, skill and caution in making its investments and management decisions;

(ii) whether the investment or management decision shall be consistent with an overall investment strategy reasonably suited to the credit union;

(iii) consideration of circumstances relevant to the credit union in investing and managing its assets, including: general economic conditions; the possible effect of inflation or deflation; the role that each investment or course of action plays within the overall credit union investment philosophy; the expected total return from income and the appreciation of capital; other resources of the credit union; needs for liquidity, regularity of income and preservation or appreciation of capital; and an asset's special relationship or special value, if any, to the purposes of the credit union;

(iv) whether facts relevant to the investment and management of its assets may be reasonably verified;

(v) whether the investment or management decision shall reasonably diversify the investments of the credit union to bring the credit union's portfolio into compliance with the purposes, terms and the other circumstances of the credit union and the requirements of this section; and

(vi) the costs of any decision in investing and managing credit union assets and whether the costs shall be appropriate and reasonable in relation to its assets.

The investments pursuant to this section shall not exceed 20 per cent of the credit union's assets.

The investments shall be subject to annual review by the board of directors of the credit union and shall be subject to periodic review by the division of banks during the course of examinations pursuant to section 2 of chapter 167.

Approved April 3, 2014.

CHAPTER 352 - CABLE FRANCHISE FEE ACCOUNTING

Effective January 15, 2015

Provides cities and towns with options for separately accounting for cable franchise fees collected from customers by cable companies and other cable related monies and paid over to and received by the municipalities under their cable franchise agreements. Those monies are general fund revenues under G.L. c. 44, § 53.

Section 1 amends the enterprise fund statute, G.L. c. 44, § 53F¹/₂, to allow a community that operates its own cable public, educational and governmental (PEG) access facility to adopt an enterprise fund for that facility and separately account for the franchise fees and other facility revenues and expenditures.

Section 2 adds a new local acceptance statute, G.L. c. 44, § 53F³/₄, that if accepted allows a city or town to establish a special revenue fund to reserve the franchise fees and other cable related revenues for appropriation to support PEG access services from non-profit organizations or others, monitor compliance with the franchise agreement or prepare for license renewal.

CHAPTER 352 OF THE ACTS OF 2014 An Act Relative to Cable PEG Access Enterprise Fund.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows

SECTION 1. Section 53F¹/₂ of chapter 44 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by inserting after the word "utility", in line 4, the following words: - , cable television public access.

SECTION 2. Said chapter 44 is hereby further amended by inserting after section 53F¹/₂ the following section:

Section 53F³/₄. Notwithstanding section 53 or any other general or special law to the contrary, a municipality that accepts this section may establish in the treasury a separate revenue account to be known as the PEG Access and Cable Related Fund, into which may be deposited funds received in connection with a franchise agreement between a cable operator and the municipality. Monies in the fund shall only be appropriated for cable-related purposes consistent with the franchise agreement, including, but not limited to: (i) support of public, educational or

governmental access cable television services; (ii) monitor compliance of the cable operator with the franchise agreement; or (iii) prepare for renewal of the franchise license.

Approved October 17, 2014.

CHAPTER 359 - FISCAL YEAR 2014 SUPPLEMENTAL BUDGET

Effective October 31, 2014

§ 15 Uniform Procurement Act. Makes a technical conforming amendment in G.L. c. 30B, § 4 regarding increase in threshold competitive procurement procedures from \$25,000 to \$35,000 made in § 61 of Chapter 165, the FY2015 state budget.

Approved October 31, 2014.

**CHAPTER 359 OF THE ACTS OF 2014 (EXCERPTS)
An Act Making Appropriations for the Fiscal Year 2014 to Provide for
Supplementing Certain Existing Appropriations and For Certain Other Activities
and Projects.**

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to make forthwith supplemental appropriations for fiscal year 2014, and to make other changes in law, each of which is immediately needed for important public purposes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 15. Section 4 of chapter 30B of the General Laws, as amended by section 61 of chapter 165 of the acts of 2014, is hereby further amended by striking out, in line 9, the figure “\$25,000” and inserting in place thereof the following figure:- \$35,000.

Approved October 31, 2014.

CHAPTER 390 - TAX TITLE REVOLVING FUND

Effective December 16, 2014

Adds a new local acceptance section 15B to G.L. c. 60, which governs the collection of local taxes. If accepted, cities and towns will be able to establish one or more tax title revolving funds for the tax collector, treasurer or treasurer-collector. The funds can be established by bylaw, ordinance or vote of annual town meeting or other legislative body, upon recommendation of the selectboard, mayor, manager or other chief executive officer.

The funds will be credited with certain collection fees, charges and costs incurred by the collector or treasurer and collected upon redemption of tax titles and sales of real property acquired through foreclosures of tax titles. Monies in the fund may then be spent, without

appropriation, by the collector to pay out of pocket expenses associated with making a tax taking and by the treasurer to pay tax title foreclosure out of pocket expenses. The purpose is to assist collectors and treasurers who often lack adequate expense budgets to secure the municipality's liens for delinquent real estate tax receivables and foreclose tax titles after reasonable efforts to work with taxpayers on payment of amounts outstanding.

CHAPTER 390 OF THE ACTS OF 2014
An Act Relative to the Establishment of Tax Title Collection Revolving Funds.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith for a tax title collection revolving funds in cities and towns, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows

Chapter 60 of the General Laws is hereby amended by inserting after section 15 the following section:

Section 15B. (a) Notwithstanding sections 53 and 55 of chapter 44, a city or town that accepts this section may establish a tax title collection revolving fund pursuant to subsection (c) for 1 or more of the following officers: tax collector, treasurer and treasurer-collector. Such tax title collection revolving fund shall be accounted for separately from all other monies in the city or town and to which shall be credited any fees, charges and costs incurred by such officer under sections 15, 55, 62, 65, 68 or 79 and collected upon the redemption of tax titles and sales of real property acquired through foreclosures of tax titles. Expenditures may be made from such revolving fund without further appropriation, subject to this section; provided, however, that expenditures shall not be made or liabilities incurred from this revolving fund in excess of the balance of the fund nor in excess of the total authorized expenditures from this fund, nor shall any expenditures be made unless approved in accordance with sections 52 and 56 of chapter 41.

b) Interest earned on a tax title collection revolving fund balance shall be treated as general fund revenue of the city or town. Expenditures from a tax title collection revolving fund authorized for the tax collector, treasurer or treasurer-collector shall be spent to pay expenses incurred by such officer under this chapter in connection with a tax taking or tax title foreclosure, including, but not limited to, fees and costs of recording or filing documents and instruments, searching and examining titles, mailing, publishing or advertising notices or documents, petitioning the land court, serving court filings and documents and paying legal fees

(c) A city or town that accepts this section may establish a tax title collection revolving fund by: (i) by-law; (ii) ordinance; or (iii) a vote of the legislative body of a city or town taken upon the recommendation of the chief executive officer of a city or town or, in the case of a city with a Plan E form of government, the recommendation of the mayor or city manager. The establishment of such a fund shall be made not later than the beginning of the fiscal year in which the fund shall begin.

(d) The officer having charge of such tax title collection revolving fund shall annually report to the board of selectmen, the mayor of a city or city manager in a Plan E city or in any other city or town to the chief administrative or executive officer, the total amount of receipts and expenditures for the tax title collection revolving fund under its control for the prior fiscal

year, by the date the by-law, ordinance or vote prescribes, together with other information as such by-law, ordinance or vote requires.

(e) Upon revocation of this section, or termination of any fund, the balance in the fund at the end of that fiscal year shall revert to surplus revenue.

(f) This section shall take effect in any municipality that accepts it by vote of the legislative body, subject to the charter of the municipality; provided, however, at any time after the expiration of 3 years from the date on which a municipality accepts this section, the municipality may revoke its acceptance in the same manner required for acceptance.

The director of accounts in the department of revenue may issue guidelines further regulating a tax title collection revolving fund established pursuant to this section.

Approved December 16, 2014.

CHAPTER 455 - WATER AND FIRE DISTRICTS

Effective April 6, 2015

§§ 1 and 2 Call Firefighter Retirements. Amend G.L. c. 32, §§ 57B and 85H, regarding creditable service and disability for retirement purposes, to apply to call firefighters of fire and water districts.

§ 3 Funeral and Burial Expenses. Amends G.L. c. 41, § 100G¼, which provides for payment of up to \$15,000 in funeral and burial expenses for police officers and firefighters killed in the line of duty, to allow fire and water districts to accept the statute and pay those expenses.

§§ 4 and 5 Personal Property Gifts. Amend G.L. 44, § 53A½, which sets out a procedure for a city or town to accept gifts of personal property, to include districts. Districts may now accept gifts of personal property by vote of the prudential committee. For purposes of G.L. c. 44, districts are fire, water, sewer, water pollution abatement, refuse disposal, light, or other improvement district performing those functions. G.L. c. 44, § 1.

CHAPTER 455 OF THE ACTS OF 2014

An Act Relative to the Indemnification of Certain Fire Districts.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows

SECTION 1. Chapter 32 of the General Laws is hereby amended by striking out section 57B, as appearing in the 2012 Official Edition, and inserting in place thereof the following section:-

Section 57B. A member of a police or fire department of a city, town or a fire or water district who retires under sections 56 to 60, inclusive and who was appointed a reserve police officer or call fire fighter shall, for the purpose of retirement, be entitled to count as creditable service the person's service as a reserve police officer or call fire fighter as the retiring authority shall determine.

This section shall take effect: (i) in a city having a Plan E charter, when accepted by an affirmative vote of 2/3 of the city council and approved by the city manager; (ii) in the case of

other cities, by a 2/3 vote of the city council and approved by the mayor; and (iii) in a town, or district by a majority vote at the annual town meeting or district meeting.

SECTION 2. Said chapter 32 is hereby further amended by striking out section 85H, as so appearing, and inserting in place thereof the following section:-

Section 85H. The selectmen of a town and the prudential committee of a fire or water district may retire from active service any call fire fighter or reserve, special or intermittent police officer who becomes permanently disabled mentally or physically by injuries sustained through no fault of the person in the actual performance of duty as a fire fighter or police officer. A person so retired shall receive an annual pension equal to 2/3 of the annual rate of compensation payable to a regular or permanent member of the police or fire force, as the case may be, thereof for the first year of service therein and, if there are no permanent members of the police or fire force, an annual pension of \$3000. If a call fire fighter or a member of a volunteer fire company in a town or a fire or water district whose service as such has been approved by the board of selectmen of the town or the prudential committee of a fire or water district or reserve or special or intermittent police officer of a town or a reserve police officer or reserve or call fire fighter of a city is disabled because of injury or incapacity sustained in the performance of the person's duty through no fault of the person and is thereby unable to perform the usual duties of the person's regular occupation at the time the injury or incapacity was incurred, the person shall receive from the city or town for the period of the injury or incapacity the amount of compensation payable to a permanent member of the police or fire force thereof, as the case may be, for the first year of service therein or, if there are no regular or permanent members of the police or fire force thereof, at the rate of \$3000 per annum; provided, however, that no compensation shall be payable for any period after the police officer or fire fighter has been retired or pensioned in accordance with law or for any period after a physician designated by the board or officer authorized to appoint police officers or fire fighters in the city or town determines that the injury or incapacity no longer exists. All amounts payable under this section shall be paid at the same time and in the same manner as, and for all purposes shall be considered to be, the regular compensation of the police officer or fire fighter. No city, town or fire or water district shall pay compensation under this section if insurance providing coverage for the compensation is in effect therefor under any general or special law, unless and until all rights under the insurance in favor of the city, town or fire or water district shall have been exercised, determined and satisfied.

SECTION 3. Chapter 41 of the General Laws is hereby amended by striking out section 100G1/4, as so appearing, and inserting in place thereof the following section:

Section 100G1/4. A city operating under a Plan D or Plan E charter, by the affirmative vote of a majority of its city council or any other city, by a majority vote of its city council with the approval of its mayor and a town or a fire or water district, by a majority vote at an annual or special town meeting or a fire or water district meeting, shall pay the reasonable expenses, not exceeding \$15,000, of the funeral and burial of: (i) a firefighter who, while in the performance of the firefighter's duty and as a result of an accident while responding to or returning from an alarm or fire or any emergency or as the result of an accident involving a fire department vehicle, which the firefighter is operating or in which the firefighter is riding or while at the scene of a fire or any emergency, is killed or sustains injuries which result in the firefighter's death; or (ii) a police officer who while in the performance of the police officer's duty and as the result of an assault on the police officer's person or a result of an accident while responding to an emergency while in the performance of the police officer's official duty or as result of an accident involving a police department vehicle which the police officer is operating or in which the police officer is

riding, is killed or sustains injuries which result in the police officer's death. No payment shall be made under this section in the absence of adequate documentation that the expense has actually been incurred. This section shall become effective in a city, town or a fire or water district when accepted by the city, town or the fire or water district.

In those cities or towns which accept this section, section 100G shall not be applicable.

SECTION 4. Section 53A1/2 of chapter 44 of the General Laws, as so appearing, is hereby amended by inserting after the word "selectmen", in line 2, the following words:- , or prudential committee.

SECTION 5. Said section 53A1/2 of said chapter 44, as so appearing, is hereby further amended by striking out, in line 4, the words "or town" and inserting in place thereof the following words:- town or district.

Approved January 6, 2015.

CHAPTER 487 - TOWN MEETINGS

Effective January 8, 2015

Adds a new section 10A to G.L. c. 39 that allows town moderators, in consultation with local public safety officials and the selectboard, to recess and continue a scheduled town meeting to a time, date and location certain upon declaration of a weather-related or other public safety emergency. Previously, the town moderator and town clerk had to be physically present at the scheduled meeting location in order to open, recess and continue the town meeting.

CHAPTER 487 OF THE ACTS OF 2014 An Act Further Regulating Town Meeting Notices.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows

Chapter 39 of the General Laws is hereby amended by inserting after section 10 the following section:-

Section 10A. (a) Whenever the moderator determines that voters, or in a town having a representative town meeting form of government, the town meeting members, may be unable to attend a town meeting, called pursuant to a warrant issued pursuant to section 10, because of a weather-related or public safety emergency, the moderator shall consult with local public safety officials and members of the board of selectmen and then, upon the moderator's own declaration, the moderator shall recess and continue the town meeting to a time, date and place certain. A discussion to recess and continue a town meeting under this section shall not constitute a "deliberation", as defined by section 18 of chapter 30A, if the only subject of that discussion is the recess and continuance. If due to the emergency, a new meeting place may be required but cannot be then identified, the moderator may recess and continue the town meeting and the board of selectmen shall within 3 days of the declaration of recess and continuance select a meeting place and the moderator shall declare the meeting location. If due to the emergency no suitable town facility is available for a meeting place in a town that typically holds such meetings within

the town limits, the board of selectmen may move the meeting location to a suitable meeting place in a contiguous municipality.

The moderator need not appear at the place of the town meeting to announce a declaration of recess and continuance. The moderator shall announce the declaration of recess and continuance as far in advance of the town meeting being continued as is practicable.

(b) A notice of the declaration of recess and continuance shall be prepared by the moderator and printed in a legible, easily understandable format and shall contain the date, time and place of the continued meeting, state the reason for the declaration and identify the date and time that the moderator announced the recess and continuance. If the moderator does not identify the location of the continued meeting in the notice, within 3 days of the announcement of the declaration of recess and continuance the moderator shall issue an amended notice which identifies the meeting place. Notice shall be filed with the municipal clerk as soon as practicable and then posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located. As soon as practicable, the notice of declaration of recess and continuance and the amended notice shall be directed to the constables or to some other persons, who shall post the notice in the manner otherwise prescribed by general law, charter or by-laws for the posting of notice of town meetings. One copy of the notice of declaration of recess and continuance or the amended notice shall be posted at the main entrance of the place of the town meeting as soon as is practicable. In addition, the moderator may use any electronic, broadcast or print media convenient to circulate the notice of recess and continuance and any amended notice. Those towns that have a municipal website shall post a copy of the notice of declaration of recess and continuance or amended notice on the town's municipal website as soon as practicable. Towns having a representative town meeting form of government may by by-law establish additional requirements for providing notice to representative town meeting members.

(c) A town meeting session recessed by the declaration of recess and continuance pursuant to this act shall be convened by the moderator not later than 30 days following the date and time of the moderator's original announcement of the declaration of recess and continuance.

(d) Within 10 days after a declaration to recess and continue a town meeting pursuant to this section, a local public safety official designated by the board of selectmen of the town in which the declaration was made shall submit a report to the attorney general that sets forth the reasons why the declaration was made.

Approved January 7, 2015.

CHAPTER 503 - COMMUNITY PRESERVATION SURCHARGE AND PROPERTY TAX EXEMPTIONS

Effective April 7, 2015 unless otherwise noted

§§ 1 and 3 Community Preservation Surcharge Exemptions. *Applies to surcharges assessed on or after January 1, 2015.* Amends G.L. c. 44B, § 3(c) to clarify that the exemption from the local community preservation act (CPA) surcharge available to taxpayers receiving a partial property tax exemption is limited to a proportional reduction in the surcharge, i.e., the taxpayers will pay a surcharge based on their property tax, as exempted. These taxpayers are not totally exempt from the surcharge.

§ 2 Property Tax Exemption Report. Requires DLS to develop a report to be submitted by local assessors that identifies all property tax exemptions, deferrals or reductions available to

individuals in their communities due to their personal circumstances, e.g., their age, financial condition or military status under a local acceptance provision or a special act. DLS is to report its findings by January 31, 2016 to the Secretary of Administration and Finance, chairs of House and Senate Ways & Means Committees and chairs of the Joint Committee on Revenue.

CHAPTER 503 OF THE ACTS OF 2014 (EXCERPTS)
An Act Relative to Local Tax Transparency.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows

SECTION 1. Section 3 of chapter 44B of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out subsection (c) and inserting in place thereof the following subsection:-

(c) All exemptions and abatements of real property authorized by said chapter 59 or any other law for which a taxpayer qualifies as eligible shall not be affected by this chapter. The surcharge to be paid by a taxpayer receiving an exemption or abatement of real property authorized by said chapter 59 or any other law shall be reduced in proportion to the amount of such exemption or abatement.

...

SECTION 2. (a) Notwithstanding any general law to the contrary, the division of local services of the department of revenue shall develop, not later than March 31, 2015, a reporting form to be submitted by boards of assessors regarding the exemptions, deferrals or other reductions from locally assessed property taxes for which taxpayers within the city or town are eligible as a result of the taxpayer's age, disability, filing status, financial condition, military service or other factor within the city or town by special act or acceptance of a local option. The division of local services of the department of revenue shall review the reports submitted by boards of assessors and report findings by not later than January 31, 2016, to the secretary of administration and finance, the chairs of house and senate committees on ways and means and the chairs of the joint committee on revenue.

(b) The report to be submitted by the boards of assessors under subsection (a) shall not require the disclosure of a taxpayer's confidential financial, personal or business information.

SECTION 3. Section 1 shall take effect as of January 1, 2015.

Approved January 8, 2015.

2015 LEGISLATION

CHAPTER 10 - FISCAL YEAR 2015 SUPPLEMENTAL BUDGET

Effective March 31, 2015 unless otherwise noted

§§ 9-11 and 69 Property Tax Due Dates on Non-business Days. *Effective January 26, 2015.* Amend G.L. c. 59, §§ 57 and 57C, which set due dates for property tax payments, and G.L. c. 59, § 59, which fixes the due date for abatement and exemption applications, to extend those dates

by operation of law when they fall on a day city or town offices are ordinarily closed for municipal business (Saturday, Sunday or legal holiday) or unexpectedly closed for business due to a weather or public safety emergency. See [Bulletin 2015-05B, Abatement/Exemption Application and Payment Due Dates on Non-business Days](#), issued April 2015.

§ 58 Snow and Ice Deficit Amortization. Authorizes cities and towns to amortize their fiscal year 2015 snow and ice removal account deficits over the next three fiscal years, in equal installments or more rapidly. See [Bulletin 2015-07B, Amortization of FY2015 Snow and Ice Removal Deficit and Special Accounting Treatment for Intended FEMA Reimbursement](#), issued April 2015.

§ 62 Fiscal Year 2015 Due Date Extension. Extends the February 2, 2015 due date for some fiscal year 2015 property tax payments and abatement applications to February 6, 2015 instead. See [Bulletin 2015-04B, February 2, 2015 Due Date Extension](#), issued April 2015.

CHAPTER 10 OF THE ACTS OF 2015 (EXCERPTS)
An Act Making Appropriations for the Fiscal Year 2015 to Provide for Supplementing Certain Existing Appropriations and For Certain Other Activities and Projects.

Whereas, The deferred operation of this act would tend to defeat its purposes, which are to forthwith make supplemental appropriations for fiscal year 2015 and to make certain changes in law, each of which is immediately necessary to carry out those appropriations or to accomplish other important public purposes, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows

SECTION 9. Section 57 of chapter 59 of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

Notwithstanding the first paragraph, if the last day for making a tax payment without incurring interest on a bill for real estate or personal property taxes occurs on a Saturday, Sunday or legal holiday, or on a day on which a municipal office is closed as authorized by charter, by-law, ordinance or otherwise for a weather-related or public safety emergency, the payment may be made on the next day on which a municipal office is open, without penalty or interest.

SECTION 10. Section 57C of said chapter 59, as so appearing, is hereby amended by adding the following paragraph:-

Notwithstanding the preceding paragraphs, if the last day for making a tax payment without incurring interest on a bill for real estate or personal property taxes occurs on a Saturday, Sunday or legal holiday, or on a day on which a municipal office is closed as authorized by charter, by-law, ordinance or otherwise for a weather-related or public safety emergency, the payment may be made on the next day on which a municipal office is open, without penalty or interest.

SECTION 11. Section 59 of said chapter 59, as amended by section 16 of chapter 62 of the acts of 2014, is hereby further amended by adding the following paragraph:-

Notwithstanding the foregoing provisions, if the last day for making an application for abatement of tax falls on a Saturday, Sunday, legal holiday or day on which municipal offices are closed as authorized by charter, by-law, ordinance or otherwise for a weather-related or public safety emergency, the application may be made on the next day that a municipal office is open.

...

SECTION 58. Notwithstanding section 23 of chapter 59 of the General Laws, section 31D of chapter 44 of the General Laws or any other general or special law to the contrary, a city or town may amortize over fiscal years 2016 to 2018, inclusive, in equal installments or more rapidly, the amount of its fiscal year 2015 snow and ice removal deficit. The local appropriating authority as defined in section 21C of said chapter 59 shall adopt a deficit amortization schedule in accordance with the preceding sentence before setting the municipality's fiscal year 2016 tax rate. The commissioner of revenue may issue guidelines or instructions for reporting the amortization of deficits authorized by this section.

...

SECTION 62. Notwithstanding section 57, section 57C or section 59 of chapter 59 of the General Laws, an owner of property subject to tax under said chapter 59 who was required to make a payment or file an abatement application on February 2, 2015, and who made such payment not later than February 6, 2015, shall have any interest or penalty waived.

...

SECTION 69. Sections 9, 10 and 11 shall take effect as of January 26, 2015.

Approved March 31, 2015.

AGENCY DECISIONS OR ADVISORIES



MICHAEL J. SULLIVAN
DIRECTOR

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE
ONE ASHBURTON PLACE, ROOM 411
BOSTON, MASSACHUSETTS 02108

TEL: (617) 979-8300
(800) 462-OCPF
FAX: (617) 727-6549

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INTERPRETIVE BULLETIN

**The Use of Governmental Resources
for Political Purposes**

This office frequently is asked about the extent to which public resources may be used for political purposes, most often whether public resources may be used to distribute information to voters concerning a municipal ballot question. In addition, questions have been asked regarding whether public facilities, especially buildings and other property, may be used by groups supporting or opposing a particular ballot question or candidate.

This Interpretive Bulletin addresses restrictions on the use of governmental resources for political purposes under the campaign finance law, M.G.L. c. 55. It is important to note, however, that a separate statute, the Massachusetts conflict of interest law, M.G.L. c. 268A, also restricts public employees' use of governmental resources. In some cases, the conflict of interest law prohibits activity not addressed by the campaign finance law. Public officials should ensure that their activities comply with both statutes. The conflict of interest law is enforced by the State Ethics Commission, and questions regarding the conflict of interest law should be directed to that office.¹

In general, the campaign finance law prohibits the use of public resources for political purposes, such as public employees engaging in campaign activity during work hours or using their office facilities for such a purpose. For example, a candidate who also works in a public office may not use the office phones or computer to conduct campaign work.

The law prohibits the use of public funds or other public resources to support or oppose a question put to voters, such as the use of public resources to distribute a mailing days before an election. The law does not, however, prohibit the expression of views by public officials concerning ballot questions to the extent such expression is within the scope of their official responsibilities and protected by the First Amendment.

¹ The Ethics Commission has issued Advisory 11-1 "Public Employee Political Activity," which is posted on the Commission's website at <http://www.mass.gov/ethics/education-and-training-resources/educational-materials/advisories/advisory-11-1.html>. The Ethics Commission can be reached at 888-485-4766 or 617-371-9500.



I. Scope of the restriction, in general

In Anderson v. City of Boston, 376 Mass. 178, 187, 380 N.E.2d 628 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court indicated that public resources may generally not be used for political purposes. In that case, the court concluded that the City of Boston could not use public funds to set up an office “for the purpose of collecting and disseminating information about the impact” of a ballot question. The court stated that the campaign finance law is “comprehensive legislation” which “preempt[s] any right which a municipality might otherwise have to appropriate funds for the purpose of influencing” the outcome of a ballot question. 376 Mass. at 185-186.

The court pointed to Section 22A of Chapter 55, which states that “[n]othing contained herein shall be construed as authorizing the expenditures of public monies for political purposes.” The court also stated that:

[T]he Legislature may decide, as it has, that fairness in the election process is best achieved by a direction that political subdivisions of the State maintain a “hands off” policy. It may further decide that the State government and its various subdivisions should not use public funds to instruct the people, the ultimate authority, how they should vote.

376 Mass. at 194-195.

The analysis in Anderson applies to the Commonwealth and its “political subdivisions,” which use taxpayer or rate payer funds. 376 Mass. at 193. Political subdivisions of the commonwealth include all agencies within the state government, and within county, regional, town and city governments. State authorities, e.g., the Massachusetts Port Authority and the Massachusetts Turnpike Authority, and state institutions of higher education are subject to the restrictions articulated in the case. See § 179 of ch. 655 of the Acts of 1989. In addition, the Anderson decision applies to municipal utilities that rely on fees paid by ratepayers. See AO-95-42. Finally, non-profit organizations that are supported by state tax revenues and other public funds may not use such revenues to support or oppose a candidate or a ballot question. See AO-95-41 and AO-96-25.

“Governmental resources” include anything that is paid for by taxpayers, e.g., personnel, paper, stationery and other supplies; offices, meeting rooms and other facilities; copiers, computers, telephones, fax machines; automobiles and other equipment purchased or maintained by the government. A bulk mail permit is also considered a governmental resource.

Chapter 55 was enacted to regulate “election financing.” Anderson, 376 Mass. at 185 (emphasis added). The prohibition on the use of governmental resources for political purposes therefore applies to all expenditures made to promote or oppose a matter placed before voters at the polls, such as a ballot question. In municipal elections, the Anderson restriction and other provisions of the campaign finance law are generally triggered once the appropriate municipal authority, i.e., the board of selectmen, city or town council or mayor, decides to place the question on the ballot. See IB-90-02. However, there are cases where the law would apply to activity undertaken before a question is officially placed on the ballot. Funds spent prior to a question being “on the ballot” may also be subject to campaign finance law if the funds are spent to influence the outcome of an anticipated ballot question. Id.

Although it applies to anticipated ballot questions, the prohibition does not extend to expenditures made to discuss policy issues (e.g., the need to renovate aging school buildings), which currently are not the subject of a scheduled or anticipated ballot question, but may at some **undetermined** future point become the subject of a ballot question. In addition, the prohibition does not apply to expenditures concerning public policy issues that are not, and are not expected to be, the subject of an election. An example would be an issue that is on the warrant for a town meeting only, as noted later in this bulletin.

This bulletin deals largely with the publicly funded distribution of information, especially printed matter, as it relates to the Anderson restriction. Such distribution is the most common source of questions and complaints to OCPF. This bulletin does not, however, concern the speech of public officials regarding a ballot question, such as comments supporting or opposing a question or statements made during public meeting. Such comments are generally unrestricted by the campaign finance law. See Interpretive Bulletin IB-92-02, "Activities of Public Officials in Support of or Opposition to Ballot Questions."

II. Distribution of information relating to ballot questions

Public officials often wish to distribute, or assist others in distributing, information relating to ballot questions at public expense. Such distribution is generally not appropriate. It is appropriate only if it is consistent with specific statutes authorizing distribution of information. Most significantly, section 18B of chapter 53 establishes a mechanism for local governmental officials to provide information to voters regarding ballot questions in a manner similar to the "red book" that is distributed prior to state elections by the Secretary of the Commonwealth to provide voters with information regarding state ballot questions.² See M.G.L. c. 54, §§ 53 and 54 (relating to the distribution of the "red book"). Section 18B establishes the timeline for actions that must be taken by local officials if a city or town decides to provide information to voters relating to ballot questions. It specifies that after a governing body of a city or town has decided to distribute voter information in accordance with section 18B, the city or town, if it complies with the timeline and other provisions of the statute, must prepare and distribute informational material, including a brief summary of the ballot question and arguments for and against the question, to voters.³

The general rule, if distribution of information is not undertaken consistent with section 18B, is that governmental resources may *not* be used to distribute voter information commenting on the substance of a ballot question. The prohibition applies whether the material that is distributed advocates for or against a question (it is "advocacy") or simply purports to be objective and factual (it is "informational"). As noted above, Anderson prohibits the distribution of advocacy material. As for informational material, distribution is prohibited unless consistent with section 18B or other statutory authority. If a municipality does not accept section 18B and comply with its provisions, or is not authorized to distribute information in accordance with another statute, the use of public resources to make an unsolicited distribution of information relating to the

² Questions relating to the interpretation of section 18B should be directed to the Secretary of the Commonwealth's Elections Division, which may be reached at (617) 727-2828.

³ In addition, several municipalities have obtained special legislative authority, allowing them to distribute informational material, including Newton (Chapter 274 of the Acts of 1987), Cambridge (Chapter 630 of the Acts of 1989), Sudbury (Chapter 180 of the Acts of 1996), Burlington (Chapter 89 of the Acts of 1998), Dedham (Chapter 238 of the Acts of 2002), Lancaster (Sections 285-288 of Chapter 149 of the Acts of 2004), Yarmouth (Chapter 404 of the Acts of 2006), Shrewsbury (Chapter 427 of the Acts of 2006), Plymouth (Chapter 50 of the Acts of 2008), and Hubbardston (Chapter 370 of the Acts of 2010). Also, at least one other state law allows governmental entities to distribute information to voters regarding ballot questions: M.G.L. c. 43B, § 11, which directs the city council or board of selectmen to distribute the final report of a charter commission to voters.

substance of a ballot question, such as a blanket mailing or other publicly funded dissemination of material, outside of an official meeting, would not comply with Anderson.

Two examples illustrate the circumstances in which the office most often finds that information has been distributed (by municipalities that have not accepted the provisions of section 18B) in violation of Anderson. Both concern the preparation and distribution of information that deals with a ballot question, though the method of distribution varies in each example.

1) A board of selectmen uses public funds to prepare and distribute a mailing (or an email) to all town residents concerning an upcoming Proposition 2 ½ override. The mailing either argues for a yes vote or provides arguably "objective" information about the question. If the mailing calls for a particular vote, it is an inappropriate use of public resources and violates Anderson. Even if the mailing simply provides "information" concerning the question, however, and may reflect an effort to be neutral, it violates Anderson, unless distribution takes place in accordance with either section 18B of chapter 53 or other law.

2) A public school system prepares and distributes to teachers a flyer similar to the one noted in the first example. While there is no town-wide mailing, public resources are still used: school resources to prepare or copy the flyer, and the time of teachers in distributing it to students. Therefore, school officials should not ask children to take literature (including literature prepared by a parent/teacher organization) regarding the substance of a ballot question home from school to give to parents.⁴ See AO-94-11.

Although the scope of the general rule prohibiting distribution of public resources absent legislative authority is broad, there are several exceptions. As discussed below, public officials may prepare and make available certain information since such activity is consistent with their official responsibilities. Examples of such allowable actions would be preparing material and giving out copies at official meetings or sending it to voters who have requested more information. This type of activity, discussed below and in IB-92-02, is limited in scope and, in general, complies with Anderson.

A. Distribution of information relating to Town Meeting

In addition to consideration by voters at the polls, some ballot questions, such as Proposition 2 ½ overrides and debt exclusions, also involve review by town meeting or a city or town board in the weeks and months prior to, or shortly after, an election.

The campaign finance law does not regulate expenditures of public funds made for the purpose of lobbying town meeting or city or town boards or for other purposes not designed to influence voters at an election. See AO-93-36 and AO-94-37 (stating that the campaign finance law does not regulate expenditures made primarily to affect the deliberations on a warrant article at town meeting). Municipal officials are not restrained from using public resources to distribute information regarding a warrant article to residents prior to a town meeting, as long as the material is distributed primarily to influence the town meeting.

⁴ This office is sometimes asked about teachers' discussion of a ballot question, such as an override, in the classroom. Such activity often engenders controversy and is seen as an indirect attempt to influence parents, even if it is undertaken for educational or information purposes. Since there is no explicit prohibition of this activity under the campaign finance law, questions or concerns about such activity should be directed to local school officials or the Massachusetts Department of Education.

Material distributed using public funds prior to a town meeting may not advocate a position on a ballot question. For example, a report summarizing or supporting a warrant article pending before town meeting may not also urge a vote in a subsequent town election.

In addition, because it is not always easy to determine the primary purpose of material distributed before a town meeting and related election, municipal officials *should be careful to avoid any discussion regarding an election* in such material. Even if it does not expressly urge a vote in an election, any discussion regarding an election in a flyer or other document distributed using public resources may raise an inference that the document is being distributed to influence the election.

There are, however, limited circumstances where the mere mention of an election in a document that is distributed using public resources prior to a town meeting would not violate the campaign finance law. For example, the town meeting warrant may include a reference to a subsequent election, especially in the context of a town meeting vote that is contingent on an override vote. In addition, a town's finance committee may use governmental resources to distribute a booklet containing its report and recommendations on warrant articles, if the recommendations are limited in scope to the warrant articles and the content of the booklet would reasonably be seen as primarily providing information in connection with town meeting, not the election which may take place after the town meeting. In such circumstances, the mention of the election is clearly secondary to the material's primary purpose of providing information relating to town meeting.

The above examples deal with situations where town meeting precedes the election. In contrast, where an election, instead of following town meeting, precedes the relevant town meeting, OCPF advises that public resources should generally not be used to distribute information to voters until *after* the election. Distribution after the election eliminates any inference that taxpayer funds are being inappropriately used to influence or affect the outcome of the election. See AO-04-02 (relating to the distribution of the report and recommendations of a finance committee with the town meeting warrant).

Material that raises legal concerns under Anderson should be distributed with private funds by entities such as a duly organized ballot question committee or an existing association, corporation or other organization, in accordance with M.G.L. c. 55. Officials unsure about the appropriateness of any material planned for distribution should contact OCPF, which will review it and make a recommendation.

B. Preparation of material by officials; restrictions on distribution

Policy-making officials may act or speak out concerning ballot questions in their official capacity and during work hours if in doing so they are acting within the scope of their official responsibilities. See IB-92-02.

Such responsibilities may include preparing a document for use in responding to public inquiries or taking steps to understand the implications of a ballot question that is within their area of responsibility. An official may therefore produce a document that deals with a ballot question, such as a summary of the effects of the question or an agency's position on the question, as long as such preparation is in accordance with his or her official responsibilities and does not expressly advocate a vote on an upcoming election.

An example of a document that concerns a ballot question but does not pose an immediate problem under Anderson is a report prepared by a school building committee supporting the need for a new facility

that will be the subject of a Proposition 2½ debt exclusion. The document would be a public record. It may be provided to those who ask for it, such as a citizen who calls the official seeking more information on the ballot question. Any person or group, at that person or group's expense, in turn may distribute the information to voters without violating the campaign finance law if the person or group complies with the campaign finance law's reporting and disclosure requirements. In addition, information prepared by a governmental entity regarding a ballot question may be posted on a bulletin board at town hall, and it may be made available at a counter or other convenient location for the public. It may also be posted on a governmental website.⁵ See AO-01-27, and IB-04-01.

While the preparation of the document is allowable, its distribution by a public entity on a larger scale, beyond those who seek out the document or receive it at official meetings as noted below, would raise concerns under Anderson. Because the document is a public record, however, it may be copied and mailed to residents by a private entity using private funds, such as a parent-teacher organization (PTO), a ballot question committee or a corporation. See IB-92-02. The entity would, however, have to report the expenditures in accordance with the campaign finance law's requirements.

C. Distribution of information at public meetings or hearings

Governmental resources may be used to produce and distribute, or make available, a reasonable quantity of a summary or other document, e.g., an architect's report on a proposed new school building, at a meeting or hearing of the governmental entity, even if the document advocates a particular vote in an anticipated election or otherwise refers to such an election. In meetings or hearings conducted by a public body, materials prepared by or for the body may be distributed to persons in attendance where such materials are designed to facilitate discussion or where the materials otherwise relate to the agenda of the meeting.⁶

The content of such material is generally not subject to Anderson, even if it references or makes a recommendation concerning an upcoming ballot question, because its primary purpose is to facilitate the meeting. Such unsolicited distribution of the material to a larger audience after a meeting should be avoided.

D. Distribution of notices of public meetings or municipal elections

The campaign finance law does not restrict the distribution of some basic information, such as notice of a public meeting held by a governmental body or a notice regarding an upcoming election.

Public resources may be used to prepare and distribute a brief neutral notice to voters announcing the times and dates of meetings such as the type referred to in the previous section, as well as notices of meetings of governmental bodies. For example, a notice of a selectmen's meeting to discuss the municipal budget and an upcoming override may be distributed at public expense. Such notice should be confined to a simple notice of the meeting and avoid any discussion of the substance or merits of the override. A notice that encourages people to attend so they can "learn why an override is needed" would not comply with this standard.

⁵ It may not, however, be distributed to voters electronically using a government server, i.e., by email.

⁶ Generally, such public documents may not be reproduced using public funds if they are to be distributed at a meeting sponsored or organized by a ballot question committee. The documents could, however, be distributed by an official who has been invited to speak at a meeting of other private groups regarding a ballot question within the scope of the official's area of responsibilities.

In addition, public resources may be used to distribute information that simply advises voters of an upcoming vote, such as a notice of the time, date and place of a municipal election. Information distributed using public resources may urge people to vote, and provide information about how to register to vote. Also, such information may include a brief neutral title describing the ballot question, and the text of the ballot question. **Extreme care should be taken to avoid any appearance of advocacy.** For example, the title "school expansion project" would be appropriate. On the other hand, titles which would not be appropriate include "ballot question relating to need for school expansion," or "ballot question addressing school overcrowding problem."

III. Use of government buildings or other public facilities or resources

Notwithstanding the Anderson prohibition, there are limited circumstances in which groups supporting or opposing a ballot question may use public resources. In its decision, the court stated that the city's use of publicly funded facilities "would be improper, at least unless each side were given equal representation and access." 376 Mass. at 200.

"Equal access" means that a group supporting or opposing a ballot question, such as a registered ballot question committee, may be allowed to use a room or other space in a public building for a meeting, as long as a group on the opposing side is given the opportunity, on request, to have a similar meeting, on the same terms and conditions.⁷

"Equal access," if provided, does not mean that proponents or opponents must be invited to attend a particular event or be asked or permitted to speak at an event. See AO-90-02. For example, an opponent of a ballot question who demands an opportunity to speak at a meeting of the committee supporting the question is not entitled to such an opportunity under the equal access rule. The content and agenda of the meeting is set and controlled by the group using the space.

While a political meeting in a public building may be allowable under the campaign finance law, the meeting may not include any fundraising activity. Political fundraising is not allowed in buildings occupied for governmental purposes, such as city and town halls and schools. In addition, as previously noted, public employees who work in those buildings are also prohibited from raising funds for any political purpose. See M.G.L. c. 55, § 13-17 and IB-92-01.

"Equal access" does not mean that a private group may use a room or building which has been used for a meeting by a public body, such as a board of selectmen, within the scope of its official responsibilities, even if the public body endorsed or discussed a ballot question at its meeting and the private group opposes the ballot question. The "equal access" requirement also does not provide individuals or groups any right to speak or be placed on the agenda at a public meeting of a governmental body, such as a board of selectmen or school committee. Nor does it mean that an opponent of a ballot question is entitled to such access to distribute information, after the public body has made ballot question information, prepared within the scope of the entity's responsibilities, available to the public in the building or at the meeting. See AO-01-27.

⁷ A municipality may choose, however, to not allow *any* access to meeting space by political committees; such a policy does not violate the campaign finance law as long as it is evenly applied to all groups. In other words, equal access may mean no access by political groups. See AO-04-06.

The equal access requirement generally is not triggered by the use of public facilities by parent-teacher organizations (PTOs) for regularly scheduled PTO meetings, even if a meeting is used in part to discuss the merits of a ballot question. The primary purpose of PTOs is not to promote or oppose ballot questions. In short, "equal access" is triggered by the use of governmental resources by private groups organized to influence a ballot question, or when private groups use public resources primarily for that purpose.

In addition to access to buildings or space for meetings, groups may be given the opportunity, if equal access is provided, to distribute non-fundraising flyers regarding a ballot question in public buildings. If each side is provided the same opportunity, proponents and opponents may also be offered access to certain public services, such as mailing labels (AO-88-27), a city council chamber for campaign announcement (AO-89-28), faculty mailboxes in public school to distribute non-fundraising campaign material (AO-04-06), or a public park for a political rally (AO-92-28). In addition, a state or local governmental agency may, as part of a collective bargaining agreement, use public resources to administer a payroll deduction plan for a public employee PAC, since the use of such resources would be for the purpose of fulfilling the governmental entity's contractual obligation, not primarily to provide a benefit to the PAC. See AO-03-04. A municipality or agency, which provides such a resource, must be reimbursed for any additional out-of-pocket expenses incurred in providing the resource. See AO-03-04.

The campaign finance law does not regulate the extent to which proponents and opponents of a ballot question may have access to cable television resources. Questions relating to such access should be addressed to the Cable Television Division of the Massachusetts Department of Telecommunications and Cable at (617) 305-3580. See M-99-01.

IV. Privately-funded political committees and other permissible activities

Government officials, public employees or anyone else who wishes to oppose or promote a ballot question may undertake such activity using private funds, through a ballot question committee or other existing organization.

A separate ballot question committee should first be established with the local election official, in the case of a municipal ballot question, or with OCPF, in the case of a question put to voters on the state ballot. This committee may then be used to raise and expend funds to promote or oppose the ballot question. Public employees may not solicit or receive any contribution on behalf of the committee, although they may make contributions and participate in activities of the committee that do not involve fundraising. A school newsletter prepared using public resources, or a PTO newsletter, if distributed by teachers, should not be used to help support a ballot question committee. For example, it should not announce the formation of a ballot question committee or provide information on how to contact the committee. See AO-00-06.

A group may not solicit or receive contributions to support or oppose a ballot question until it organizes and registers as a ballot question committee. Where two or more persons "pool" their money to support or oppose a question, e.g., to pay for an advertisement, the persons should first register as a ballot question committee. Such groups are subject to all the reporting and disclosure provisions of M.G.L. c. 55.

Groups such as parent-teacher organizations and local teachers' unions, which do not raise funds specifically to influence the vote on a ballot question, may make expenditures from existing funds to support or oppose a ballot question, and may make contributions to a ballot question committee. See IB-88-01 ("The Applicability of the Campaign Finance Law to Organizations Other Than Political Committees"). Groups making expenditures must, however, file a report (OCPF Form M22 or 22) with either the local election

official or OCPF to disclose the expenditures. See IB-90-02. In addition, individuals spending \$250 or more to influence a ballot question (unless the individual's expenditure is made in the form of a contribution to a ballot question committee) must also file the report. See M.G.L. c. 55, § 22.

V. Expenditures of Governmental Resources - Remedies

The treasurer of any city, town or other governmental unit, which has made expenditures or used public resources to influence or affect the vote on any question submitted to the voters, must file a report with the clerk disclosing such activity. See M.G.L. c. 55, § 22A and M-95-06.⁸

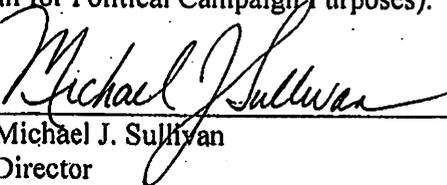
Because of the differing circumstances and severity of instances of the improper use of public resources to influence elections, the final disposition and remedies in such cases may vary. Where the use of public resources is minor or difficult to quantify, or where officials are not aware of the restrictions, OCPF focuses on providing guidance to ensure that the action is not repeated.

In other cases, however, restitution of funds adjudicated to have been spent contrary to law may be required. Such restitution may not be paid from public funds. It may, however, be paid by a ballot question committee, association or other private group or individual. Any officer of a governmental unit violating § 22A may be subject to criminal penalties.

Finally, any ten persons may file suit to restrain illegal use of public funds at the local level by filing a ten taxpayer suit. See M.G.L. c. 40, § 53. It was such a "ten taxpayer" suit that led to the Anderson decision. At the state level, any 24 taxpayers can file a similar suit. See M.G.L. c. 29, § 63.

VI. Other Bulletins and Memoranda

This bulletin provides general guidance. If you are in doubt regarding the scope of the campaign finance law, you should contact OCPF at (800) 462-OCPF or (617) 979-8300. This office's web site, www.ocpf.us, provides additional guidance on this and other campaign finance topics. In addition, related interpretive bulletins and memoranda which may be of interest -- and which may be downloaded from OCPF's website -- include: IB-90-02 (Disclosure and Reporting of Contributions and Expenditures Related to Ballot Questions); IB-92-01 (The Application of the Campaign Finance Laws to Public Employees and Political Solicitation); IB-92-02 (Activities of Public Officials in Support of or Opposition to Ballot Questions); IB-95-02 (Political Activity of Ballot Question Committees and Civic Organizations' Involvement in Ballot Question Campaigns); M-95-06 (Disclosure of expenditures of public resources required under M.G.L. c. 55, § 22A); and IB-04-01 (Use of the Internet and E-mail for Political Campaign Purposes).


Michael J. Sullivan
Director

⁸ A report is not required where distribution occurs in accordance with section 18B of chapter 53 or other legislation authorizing the distribution of voter information.



MICHAEL J. SULLIVAN
DIRECTOR

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE
ONE ASHBURTON PLACE, ROOM 411
BOSTON, MASSACHUSETTS 02108

TEL: (617) 979-8300
(800) 462-OCPF
FAX: (617) 727-6549

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INTERPRETIVE BULLETIN

**Activities of Public Officials
in Support of or Opposition to Ballot Questions**

This office frequently is asked about the extent to which public officials may act or speak in support of or in opposition to a question submitted to the voters.

In general, officials may undertake various official actions that concern ballot questions relating to matters that are within their areas of authority, such as voicing their opinions, holding or attending meetings and making information available to the public. Officials should not, however, use public resources to engage in a campaign to influence voters concerning a ballot question, for example by authorizing a publicly funded mass mailing to voters or using city or town resources to support or oppose a ballot question.

This Interpretive Bulletin addresses restrictions on the use of governmental resources for political purposes under the campaign finance law, M.G.L. c. 55. It is important to note, however, that a separate statute, the Massachusetts conflict of interest law, M.G.L. c. 268A, also restricts public employees' use of governmental resources. In some cases, the conflict of interest law prohibits activity not addressed by the campaign finance law. Public officials should ensure that their activities comply with both statutes. The conflict of interest law is enforced by the State Ethics Commission, and questions regarding the conflict of interest law should be directed to that office.¹

In Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court ruled that public resources may not be used to influence voters concerning a ballot question.

In accordance with the Anderson decision, OCPF has consistently advised that governmental entities may not contribute or expend anything of value in support of or opposition to a ballot question,

¹ The Ethics Commission has issued Advisory 11-1 "Public Employee Political Activity," which is posted on the Commission's website at <http://www.mass.gov/ethics/education-and-training-resources/info-section-7/advisories/advisory-11-1.html>. The Ethics Commission can be reached at 888-485-4766 or 617-371-9500.



whether it is on the statewide ballot or placed before voters in a single city or town.² See OCPF Interpretive Bulletin IB-91-01 and advisory opinions cited therein for more specific guidance on activities that fall under this prohibition. In addition, public resources may not be used to distribute even admittedly objective information regarding a ballot question unless expressly authorized by state law. See IB-91-01.

Anderson, however, does permit public officials to act and speak regarding ballot questions, subject to certain limitations. As the Anderson court noted with apparent approval:

At oral argument, the plaintiffs conceded that the mayor and persons in relevant policy-making positions in . . . government are free to act and speak out in support [of a ballot question]. Id. at 199 (emphasis added).

In short, the decision reflected a recognition that if officials were prohibited from stating their positions regarding a ballot question related to their official responsibility, such a prohibition would unnecessarily (and probably unconstitutionally) restrain such officials from carrying out the duties of their offices.

Nevertheless, OCPF always advises caution on the part of officials to avoid the appearance of improperly using public resources to support or oppose a ballot question. In Anderson, the court indicated that the campaign finance law reflects an interest “in assuring the fairness of elections and the appearance of fairness in the electoral process.” 376 Mass. at 193. In general, officials should be aware that some of their actions or comments may be viewed unfavorably by those who oppose their positions, even if those actions are not specifically prohibited by the campaign finance law. On the other hand, members of the public who may question an official’s conduct or comments concerning a ballot question should be aware that, as noted by the court in Anderson above, an official has the right to voice his or her opinion on a public policy issue, including a ballot question. Objections to the speech or actions of officials concerning a ballot question are sometimes based not on the law, but on other considerations that are beyond the scope of OCPF’s jurisdiction.

This bulletin provides more specific guidance regarding the scope of such permissible activities concerning a ballot question, but it cannot be seen as encompassing all situations that might arise. OCPF is aware that ballot questions, especially those concerning Proposition 2 ½ overrides and debt exclusions, are often contentious issues. Given the limited treatment of this issue in Anderson, and the absence of relevant statutory provisions, questions and issues not addressed or reflected in this bulletin will continue to be raised regarding the extent to which officials may speak or act regarding ballot questions in a manner consistent with Anderson. Those who have questions not addressed here may contact OCPF for advice.

I. Permissible Official Activity by Public Officials

In general, a public official may comment regarding a ballot question. In addition, a public official may take certain actions regarding a ballot question, if the actions are consistent with his

² Anderson generally does not address or restrict activities of officials concerning town meeting. There may be some limitations, however, in the case of a ballot question that is also the subject of a town meeting, such as a Proposition 2½ override. See IB-91-01.

official responsibilities.³ An official may therefore address an issue or advocate a position regarding a ballot question that may affect the official's agency or which relates to a matter within the scope of his agency's enabling legislation. See AO-02-03.

On the other hand, if an official could utilize governmental resources to promote or oppose a ballot question, the fundamental prohibition set forth in Anderson would be meaningless. While voters have the right to know an official's position, they also have the right to expect that their tax dollars will not be used for political purposes, whether to support the election of a candidate or to gain approval of a question put before voters. Therefore, officials may not use public resources in an attempt to promote or oppose a ballot question, e.g., by placing an advertisement in a newspaper urging a "yes" or "no" vote on the question, or by conducting a mass mailing of flyers urging a yes or no vote on a question or by distributing such a flyer through students at a public school.

In general, officials are prohibited from using any publicly funded publications, including newsletters, to influence voters concerning a ballot question. Such materials may be prepared, but they may not be sent unsolicited to voters.

Even with these restrictions, however, public officials may act or speak regarding ballot questions in a number of ways without violating the campaign finance law. Notwithstanding the Anderson restrictions, a public official may:

A. Discuss a ballot question, including at meetings of a governmental entity or at informational meetings of private groups. Officials may discuss a ballot question at any time, including at an official meeting of a governmental body, such as a board of selectmen or school committee, or at informational meetings sponsored by a private group. Although sometimes a person may complain that the statements made by officials at such meetings are inaccurate or inappropriate, the accuracy or appropriateness of officials' statements is not an issue under the campaign finance law.

B. Take a position on a ballot question. Officials may endorse, or vote as a body to endorse, a ballot question, and may issue statements supporting or opposing a ballot question. However, the distribution of such statements should be restricted to such usual methods as posting on a bulletin board or a press release, not in a manner restricted by Anderson as noted below. The fact that a ballot question is discussed or a vote is taken does not make an official meeting a "political event" and therefore does not trigger an equal access requirement for the use of the meeting room or inclusion on the agenda of the meeting. See AO-95-33 (selectmen may discuss ballot question at meetings, respond to inaccurate or misleading statements and post a statement on town hall bulletin board) and AO-00-19 (selectmen may endorse candidate or ballot question).

³ It is worth noting, however, that *elected* officials have considerably more leeway than *appointed* officials. An *elected* official may speak about a ballot question at any time, even if the ballot question is not within the official's area of responsibility. In contrast, an *appointed* official may speak regarding a ballot question during work hours only if the question relates to a matter within the scope of the official's area of responsibilities. In addition, an appointed official may not appear at a political committee's campaign function to promote or oppose a ballot question during working hours. The appointed official may attend the event during non-working hours. An elected official, however, may attend such an event at any time.

C. Analyze the impact of a ballot question. An official may conduct an analysis of a ballot question's impact on agency operations or assign staff to conduct such an analysis, provided the question would affect the official's area of responsibility or agency. For example, a police chief may prepare an analysis of the effect of a Proposition 2 ½ override that would fund his department; if the question concerned the school budget only, however, such a use of police department resources would run counter to Anderson. The results of such analysis would be considered a public document and could be made available to the public upon request, but should not be prepared or distributed in a manner inconsistent with the next section. The official may not conduct a study primarily to aid the proponents or opponents of a ballot question.

D. Provide copies of the agency's analysis of and/or position on a ballot question, or other public documents, to persons requesting copies or to persons attending public meetings of a governmental entity. An official may distribute information containing the official's position on a ballot question or the agency's analysis to persons requesting such information, and may make a reasonable number of copies available to persons attending an official meeting (such as a public forum) of a governmental entity. However, even if the study is a public record, it may not be mailed or distributed, beyond those who attend such a meeting or request such information, to voters or a class of voters at public expense without express statutory authorization. See IB-91-01. A copy may be made available to an individual or group and may be reproduced with private funds and distributed by individuals or political committees, if such distribution is disclosed in accordance with the campaign finance law. Officials should not provide an excessive number of copies to a private group, political committee, or individual, for mailing or any other type of distribution.

E. Hold an informational forum, participate in a forum held by a private group, and distribute a notice of the forum. An official or agency may hold an informational forum concerning a ballot question, or participate in a forum sponsored by a private group. As noted above, the campaign finance law generally does not cover the content of public meetings. If the governmental agency distributes a notice of a forum, however, such a notice may not discuss the substance of the ballot question or contain an argument for or against the question. For example, it may announce the date, time and location of the forum, but it may not contain a discussion of the reasons for supporting or opposing the ballot question.

F. Speak to the press. An official may speak to the press regarding a ballot question that concerns a matter within the official's area of responsibilities. An official may also respond to or direct staff to respond to questions from the press or the public about the official's position on such a ballot question. See AO-92-32. Officials should contact OCPF before a press release is prepared or distributed using public resources.

G. Post information on a government bulletin board or Web site. Information or endorsements by governmental entities or other information regarding a ballot question that are public records may be posted on a town's Web site or bulletin board. See AO-00-12. Further use of the governmental web site or the Internet for a more political purpose, such as unsolicited e-mails to voters asking for their support, should be avoided.

H. Allow private groups to use a public building for a meeting concerning a ballot question. In Anderson the court stated that the political use of certain government resources, such as facilities paid for by public funds “would be improper, unless each side were given equal representation and access.” Accordingly, ballot question committees, or other groups that support or oppose a ballot question, may use areas within public buildings that are accessible to the public (i.e., not private offices) for meetings if each side is given equal access. See AO-90-02. “Equal access” does not mean that the other side must be invited to attend a meeting. It means that both sides may, upon request, use the same space for separate meetings on the same terms and conditions. It is important to remember, however, that fundraising relating to the ballot question may not take place at such a meeting. See M.G.L. c. 55, § 14 (prohibiting any demand, solicitation or receipt of money or other things of value for any political campaign purpose in any building or part thereof “occupied for state, county or municipal purposes”).

I. Appear on cable television. The fact that an official may, as described above, discuss or take a position on a ballot question is not altered if such an action is broadcast on local access cable television. In addition to speaking at public meetings that may be broadcast, an official may appear on a local cable or broadcast television or radio show, during work hours if applicable, to discuss a ballot question that relates to a matter within the scope of the official’s area of responsibilities. During the course of the official’s appearance on the show, the official may state that he or she supports or opposes the ballot question. See AO-02-03. Questions concerning content of cable television programming and the use of cable television by municipalities should be directed to Cable Television Division of the state Department of Telecommunications and Cable at (617) 305-3580.

J. Distribution of information advising voters of election. Officials may distribute a notice (either in printed or electronic form, or by automated phone calls) to advise voters of an upcoming vote, such as a notice of the time, date and place of a municipal election. Also, such information may include a brief neutral title describing the ballot question, and the text of the ballot question. Extreme care should be taken to avoid any comment on the merits of a ballot question or the appearance of advocacy. See AO-07-03.

K. Use of a newsletter to inform persons of how they may obtain information regarding a ballot question. Although an official may not use a newsletter mailed or emailed to recipients using public resources to distribute information or advocacy regarding a ballot question, the official may use such a newsletter to let recipients know how they can get such information from the municipality or other governmental agency. For example, a newsletter may advise persons that they can visit a school district’s website to obtain information relating to an override, or may provide a link to such a website. The newsletter should not, however, be used to provide a link to a ballot question committee’s website, or to provide information on how persons may contact a ballot question committee.

II. Private activity by officials

The examples listed above concern an official’s actions while using some type of public resource, i.e., staff time or material, to promote or oppose or otherwise influence a ballot question. The Anderson opinion applies to the use of such public resources, but does not extend to the use of privately-funded resources. A person’s status as a public official does not preclude him or her from engaging in political activity when not at work, including activity supporting or opposing a ballot

question. The campaign finance law does not prohibit officials from acting or speaking in favor of or in opposition to a ballot question on an individual basis on their own time. It is important to keep in mind, however, that appointed, paid public employees may not, be involved *at any time* in fundraising to support or oppose a ballot question. See M.G.L. c. 55, § 13, which state that public employees may not "directly or indirectly solicit or receive" any contributions of anything of value for any political purpose. For more information regarding restrictions on fundraising, see OCPF's *Campaign Finance Guide: Public Employees, Public Resources and Political Activity*.

Specifically, public officials may, on their own time:

A. Serve on a ballot question committee or perform services for such a committee. An official may, on his or her own behalf, perform services or serve as a member of a political committee, or hold any committee position, aside from treasurer or any other position that involves fundraising (if the official is appointed as opposed to elected, as noted above). In addition, as discussed below, some activities of public officials acting or speaking in favor of or opposition to ballot questions may raise issues relating to the conflict of interest law, M.G.L. c. 268A, which is enforced by the State Ethics Commission.

B. Contribute to a ballot question committee or make expenditures to support or oppose a ballot question. An official may use his or her own personal funds to contribute to a ballot question committee or otherwise to support or oppose a ballot question. There is no monetary limit to such contributions or expenditures.

This bulletin provides general guidance. To ensure compliance with the campaign finance law, OCPF strongly encourages officials to contact this office if they are in doubt regarding the scope of permissible involvement in ballot question campaigns.

If you have any questions or need further information regarding this interpretive bulletin or any other campaign finance matter, please call OCPF at (800) 462-OCPF or (617) 979-8300. The office's web site, www.ocpf.us, provides additional guidance on this and other campaign finance topics.

 2/25/15
Michael J. Sullivan
Director



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411
BOSTON, MASSACHUSETTS 02108

MICHAEL J. SULLIVAN
DIRECTOR

TEL: (617) 727-8352
(800) 462-OCPF
FAX: (617) 727-6549

May 15, 2015

Superintendent Suzan B. Cullen
North Attleborough School Department
Woodcock Administration Building
6 Morse Street
North Attleborough, MA 02760

Re: CPF-15-15

Dear Superintendent Cullen:

This office has completed its review of numerous complaints we received concerning e-mails sent by the North Attleborough Schools, using its e-mail list, to support the April 7, 2015 override and the posting of a document entitled "Data & Info FY16" to the School Department's website, which also clearly advocated the passage of the override.

In Anderson v. City of Boston, 376 Mass. 178 (1978), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence a ballot question. The court stated that the campaign finance law demonstrates an intent to "assure fairness of elections and the appearance of fairness in the electoral process" and that **the law should be interpreted as prohibiting the use of public funds "to advocate a position which certain taxpayers oppose."** 376 Mass. at 193-195.

Accordingly, this office has concluded that governmental entities may not expend public resources or contribute anything of value to influence or affect the outcome of a ballot question. Public resources may not, therefore, be used to distribute information regarding a ballot question, even if the information is intended to be objective and factual, unless expressly authorized by state law.

You attended a seminar in North Attleborough on February 25, 2015, related to the issues addressed in the Anderson decision.

You have acknowledged that the North Attleborough School Department, with your authorization, used its server and e-mail list on March 3, 2015, to send an e-mail advocating for passage of the override. I find it difficult to comprehend how, after attending the seminar hosted by this office, the distribution of such an e-mail could be approved. Public resources, namely use of the school server, the e-mail list and the time of the school staff, were used to distribute the document. In addition, a document, "Data & Info FY16", posted to the School Department's



Superintendent Suzan B. Cullen
May 15, 2015
Page 2

website, contained language advocating for the passage of the override. In particular, the last page of that document included the following language: "Devastation...Impacting the lives of our children...Our voices must be heard." The e-mailing and posting of this document did not comply with the campaign finance law and the Anderson decision. You agreed to revise the posted document and delete the last page.

Subsequently, we received two further complaints relevant to additional alleged violations of the campaign finance law. On March 13, the North Attleborough Middle School Principal sent an e-mail to parents, using the school's server and e-mail list, advocating for passage of the override. The distribution of this e-mail using public resources did not comply with the campaign finance law or the Anderson decision. Clearly, your attendance at the February 25 seminar and subsequent conversations with OCPF regarding the previous complaint did not result in effective communication throughout the school administration.

Finally, we received yet another complaint regarding an April 1 e-mail sent by the Community School Principal, which also advocated for the override. This e-mail, using public resources, namely the school's server and e-mail list, also did not comply with the campaign finance law or the Anderson decision. Again, OCPF's communication with you did not put an end to actions by school administrators that did not comply with the campaign finance law.

While the direct cost of sending e-mails to certain categories of voters is minimal, it is clear, in this case, that the court's ruling and OCPF's discussion with you about such activity was disregarded. Please be advised that future violations of the campaign finance law, regardless of the direct cost involved, will result in referral to the Attorney General of the person or persons responsible for authorizing such activity.

In this case, however, I have determined that referral to the Attorney General is not warranted at this time, primarily because it is your administration's first interaction with OCPF on a ballot question issue. This office anticipates that the additional guidance you have received will result in future compliance with the law by you and your staff.

In accordance with the opinion of the Supervisor of Public Records, this letter is a public record. A copy is being provided to the person(s) who brought this matter to our attention.

Sincerely,



Michael J. Sullivan
Director



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411
BOSTON, MASSACHUSETTS 02108

MICHAEL J. SULLIVAN
DIRECTOR

TEL: (617) 727-8352
(800) 462-OCPF
FAX: (617) 727-6549

May 20, 2015

Denise Dembkoski
Finance Director
Town of Groveland
183 Main Street
Groveland, MA 01834

Re: Community Preservation Committee Mailing; CPF-15-23

Dear Ms. Dembkoski:

This office has completed its review of the information it received regarding the Town of Groveland's ("the Town's") distribution of the Groveland Community Preservation Committee's ("the Committee's") March 25, 2015 newsletter. The newsletter was distributed to residents with their tax bills. Based on our review, we have concluded that the distribution of the newsletter did not comply with the campaign finance law.

The two-page newsletter stated that voters at the April 27, 2015 Town Meeting would be asked to approve seven projects that may be funded under the Community Preservation Act ("CPA"). The newsletter discussed the projects, how the CPA works, and also contained an article with the title "Should We Reduce CPA from 3% to 1%?" The article concluded that "Groveland needs the CPA and we need it funded at the 3% levy. Without this affordable, valuable levy our town infrastructure cannot be improved. Consider the negative impact a change would have on the future of our town."

In Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court concluded that a municipality could not appropriate funds, or use funds previously appropriated for other purposes, to influence a ballot question submitted to the voters at a state election. The court indicated that the campaign finance law, M.G.L. c. 55, demonstrates an intent "to assure fairness of elections and the appearance of fairness in the electoral process" and that the law should be interpreted as prohibiting the use of public funds "to advocate a position which certain taxpayers oppose." 376 Mass. at 193-95. Accordingly, this office has concluded that governmental entities may not expend public resources or contribute anything of value to support or oppose any ballot question. See OCPF Interpretive Bulletin IB-91-01.

Public resources may not be used to distribute even "informational" material regarding a ballot question, i.e., information that avoids advocating a particular vote, unless such distribution complies with a statute authorizing the distribution. See, e.g., M.G.L. c. 53, § 18B, which establishes a mechanism for local governmental officials in a municipality which has accepted the provisions of the statute to distribute summaries of ballot questions and brief arguments provided by proponents and opponents. Generally, if distribution is not undertaken consistent with section 18B,



Denise Dembkoski
May 20, 2015
Page 2

governmental resources may *not* be used to distribute voter information commenting on the substance of a ballot question. *See* IB-91-01. The prohibition applies to information distributed relating to CPA-related ballot questions. *See* AO-01-03, or to communications that reference an expected ballot question which will likely be on the town election ballot shortly after a town meeting. *See* IB-90-02.

"Public resources" include, but are not limited to: staff time, office space, stationery and office supplies, office equipment such as telephones, copiers, fax machines and computers. *See* IB-91-01. Even the occasional, minor use of public resources for a political purpose is inconsistent with state law and should be avoided. Providing postage to deliver a newsletter involves the use of a public resource, even if the additional enclosure in the mailing that would be sent to deliver the tax bill did not involve additional cost. The public resources include the cost of the paper and copying, and also the staff time to stuff envelopes.

You stated that in January 2015 the Committee asked you to include the Committee's annual newsletter in envelopes used to mail tax bills to residents. The newsletters were delivered to you on March 19. On March 25 the Town Clerk notified you of a certified citizen petition to put a question on the ballot to reduce the CPA levy from 3% to 1%. On March 31 the tax bill was mailed along with the newsletter. On April 2, Town Counsel issued his opinion that the petition was valid and should go on the ballot.¹

The ballot question was, however, anticipated at the time of distribution of the newsletter. Therefore, its distribution was not consistent with the campaign finance law. Because we believe, however, that our explanation of the law will help ensure future compliance, we have determined that this matter can be closed at this time.

In accordance with the opinion of the Supervisor of Public Records, this letter is a public record, and a copy will be provided to persons who filed complaints with our office. If you have any questions regarding this letter or any other campaign finance matter, please do not hesitate to contact this office. Thank you for your cooperation.

Sincerely,



Michael J. Sullivan
Director

MJS/gb

¹ The election took place on May 4. Voters rejected the question, keeping the 3% levy unchanged.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

In the Matter of

CITY OF SPRINGFIELD

and

COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 93

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Case No. MUP-12-2466

Date issued:
June 30, 2015

Board Members Participating:

Marjorie F. Wittner, Chair
Elizabeth Neumeier, CERB Member
Harris Freeman, CERB Member

Appearances:

Maurice M. Cahillane, Esq. - Representing the City of Springfield
Joseph L. DeLorey, Esq. - Representing AFSCME, Council 93

DECISION ON APPEAL OF HEARING OFFICER DECISION

SUMMARY

1 On November 25, 2014, a Department of Labor Relations (DLR) Hearing Officer
2 issued a decision holding that the City of Springfield (City or Employer) had violated
3 Section 10(a)(5) and derivatively, Section 10(a)(1) of M.G.L. c.150E (the Law) by: 1)
4 installing tracking devices in vehicles driven by City employees and recording the
5 employees' location, idle time, distance driven, number of stops and speeding events in

1 those vehicles without first giving the American Federation of State, County and
2 Municipal Employees, Council 93 (Union or AFSCME) prior notice and an opportunity to
3 bargain to resolution or impasse over the decision to install the tracking devices and
4 record relative data, and the impacts of that decision; and 2) failing to bargain on
5 demand with the Union over that decision. The City filed a timely appeal from the
6 decision to the Commonwealth Employment Relations Board (CERB), claiming that the
7 Hearing Officer failed to rely on applicable precedent and disputing the Hearing Officer's
8 conclusion that the installation of the GPS devices altered standards of performance
9 such that bargaining was required. The Union filed a response claiming that the
10 decision was correct. After reviewing the record and the parties' arguments on appeal,
11 we affirm the decision.

12 Facts

13 The facts are undisputed. We therefore adopt them in their entirety and reiterate
14 only those facts necessary to an understanding of our Opinion. Further reference may
15 be made to the facts set out in the Hearing Officer's decision, reported at 41 MLC 130
16 (2014) and attached to the slip opinion of this decision.

17 Opinion¹

18 The question before us is whether the Hearing Officer correctly decided that the
19 City violated the Law when it refused to bargain with the Union before it installed global
20 positioning system (GPS) devices on Department of Public Works (DPW) vehicles
21 driven by members of the Union's bargaining unit. We start with the elemental principle
22 that a public employer violates Section 10(a)(5) and, derivatively, Section 10(a)(1) of the

¹ The CERB's jurisdiction is not contested.

1 Law when it unilaterally changes an existing condition of employment or implements a
2 new condition of employment involving a mandatory subject of bargaining without first
3 giving its employees' exclusive collective bargaining representative notice and an
4 opportunity to bargain to resolution or impasse. Commonwealth of Massachusetts v.
5 Labor Relations Commission, 404 Mass. 124 (1989). However, a public employer may
6 alter a procedural mechanism for enforcing existing work rules without bargaining,
7 provided that the employer's actions do not change underlying conditions of
8 employment. City of Taunton, 38 MLC 96, 98, MUP-06-4836, MUP-08-5150 (November
9 2, 2011) (citing Duxbury School Committee, 25 MLC 22, MUP-1446 (August 7, 1998)).

10 In this case, the Hearing Officer concluded that the City instituted a new practice
11 when it surreptitiously installed the GPS devices. Because she further found that the
12 installation affected a mandatory subject of bargaining, i.e., standards of productivity
13 and performance, she concluded that the City violated Section 10(a)(5) and derivatively,
14 Section 10(a)(1) of the Law when it installed the GPS devices without first giving the
15 Union notice and an opportunity to bargain with the Union over the decision and its
16 impacts.

17 The City makes several arguments on appeal. It first claims that the Hearing
18 Officer erred when she declined to "properly credit" City of Worcester, MUP-05-4409
19 (Order of Dismissal, September 5, 2007). The City claims that it is not clear whether
20 this case was a full decision or a pre-probable cause dismissal and, therefore, the
21 Hearing Officer was wrong to dismiss it so cavalierly. We disagree. The title, first and
22 final paragraphs and appeals language of this case make clear that the former Labor

1 Relations Commission dismissed the charge in this case for lack of probable cause.²
2 Therefore, as the Hearing Officer correctly stated, although she could look to this pre-
3 complaint dismissal for guidance, it had no precedential value. See City of Taunton, 38
4 MLC at 98-99, n. 7 (citing Quincy City Employees Union, H.L.P.E. 15 MLC 1340, 1368,
5 n. 54 (1989) *aff'd sub nom. Pattison v. LRC*, 309 Mass. App. Ct. 9 (1991), *further rev.*
6 *den'd*, 409 Mass. 1104 (1991)) ("Just as an issuance of a complaint reflects only the
7 DLR's determination that there is probable cause to believe that the alleged conduct
8 *could* violate the Law and not that the alleged conduct *does* violate the Law . . . the
9 DLR's dismissal of a charge reflects that the evidence at the investigation was
10 insufficient to establish probable cause to believe the Law had been violated")
11 (emphasis added). As such, the Hearing Officer committed no error, much less
12 reversible error, by failing to rely on this dismissal order. Id.

² The Appeals Language stated that the charging party could seek review of the determination pursuant to 456 CMR 15.04 (3). Both in 2005, when this dismissal letter issued and presently, this regulation sets forth the procedure a charging party must follow to appeal the dismissal of a charge. In 2005, this regulation stated in pertinent part:

If, after a charge has been filed, the [Labor Relations] Commission declines to issue a complaint, it shall so notify the parties in writing by a brief statement of the procedural or other grounds for its determination. The charging party may obtain a review of such declination to issue a complaint by filing a request therefor with the Executive Secretary within ten days from the date of receipt of notice of such refusal by the Commission.

The first two sentences of the current regulation are the same except that it has been modified to comport with the 2007 amendments to Chapter 150E providing that DLR investigators and not the Commission issue dismissal letters in the first instance and requests for review are directed to the CERB. See M.G.L c. 150E, §11, as amended by Chapter 145 of the Acts of 2007.

1 The City next claims that, although the Hearing Officer appropriately declined to
2 rely on Roadway Express, a 2002 NLRB Advice Memorandum,³ her "strained attempt to
3 diminish [Roadway Express] and City of Worcester only serves to highlight the fact that
4 all the known existing authority on this issue supports the City." Along the same lines,
5 the City argues that the Hearing Officer erroneously distinguished Duxbury School
6 Committee, 25 MLC 22, MUP-1446 (August 7, 1998) in concluding that the installation
7 of the tracking devices changed an underlying condition of employment by impacting
8 standards of performance and productivity, a mandatory subject of bargaining. The City
9 contends that the installation of the GPS devices did not change any performance
10 standards because, both before and after they were installed, employees were required
11 to go to their assigned location and perform their job.

12 It may be the case, as the City argues, that the installation of GPS devices on
13 City vehicles did not alter the most basic of work rules, requiring employees to show up
14 and work when the GPS devices were installed. This argument, however, ignores the
15 undisputed findings, that prior to the installation of the GPS devices, the City neither
16 monitored real-time data from DPW vehicles driven by unit members, nor required them
17 to formally report this data absent a specific request from a supervisor. As the Hearing
18 Officer correctly observed, these facts distinguish Duxbury, where the open installation
19 of surveillance cameras to monitor discrepancies between employees' departure times
20 and the times recorded on their timecards did not change the fact that employees had
21 always been required report their time accurately on an electronic time clock. Here,
22 however, the introduction of GPS technology occurred at a time where no formal vehicle

³ 13-CA-39940-1 (Advice Memorandum, April 15, 2002).

1 data collection method existed and enabled the City to have continuous access to
2 information concerning not only driver location, but also driving speed, idle time, number
3 of stops, etc. Unlike in Duxbury, this plainly changed both the type and amount of
4 information the City had previously been able to obtain regarding its drivers' job
5 performance and productivity as opposed to monitoring compliance with a discrete work
6 rule regarding time reporting.

7 The Hearing Officer also correctly distinguished Duxbury on grounds that the
8 GPS here were installed surreptitiously. The clandestine installation of devices that
9 enable an employer, for the first time, to engage in constant, remote electronic
10 monitoring of aspects of employee performance that had not previously been routinely
11 reported or observed plainly constitutes the institution of a new practice. The question
12 then becomes whether the City had to bargain over this change. City of Taunton, 38
13 MLC at 98-99.

14 The Hearing Officer held that the installation of the GPS devices affected terms
15 and conditions of employment impacting mandatory subjects of bargaining, including
16 standards of productivity and performance. The City disagrees, arguing that employees
17 faced no new work standards and claiming that there is no precedent to support the
18 Hearing Officer's holding. We agree with the Hearing Officer's conclusion. The facts
19 show that the GPS devices provided the City with continuous, real-time information
20 about their drivers' job performance and productivity, e.g., where their drivers were, the
21 distances they drove, how fast they were going, how many stops they made and how
22 long they idled. Thus, even assuming that, in the short period of time that the GPS

1 devices were installed,⁴ no new work rules or standards were formally implemented, the
2 installation of the devices vastly increased the amount of data the employer had to
3 evaluate performance and productivity. Indeed, within four days after the devices were
4 installed in the Union president's vehicle, the City notified him that it had monitored and
5 recorded two purportedly unauthorized trips he had taken to conduct union business.
6 The increased monitoring of, and information about, employee job performance and
7 productivity affected employees' underlying terms and conditions of employment such
8 that the City was required to bargain over whether to install the devices and whether
9 and how it intended to use the constant stream of information before installing them. Id.

10 In reaching this conclusion, we find an NLRB Advice Memo issued three years
11 after Roadway Express instructive. In BP Exploration of Alaska, Inc., Case No. 19-CA-
12 29566 (July 11, 2005) (BP Exploration), the issue was whether the employer violated
13 Section 8(a)(5) of the National Labor Relations Act (NLRA) when it installed vehicle data
14 recorders (VDRs) for the purpose of monitoring employee compliance with its driving
15 safety rules without bargaining. The NLRB concluded that the employer was not free to
16 unilaterally install the VDRs to monitor employee driving behavior because their
17 installation "constituted a significant change in the employer's monitoring and
18 disciplinary practices." Id. at slip op. 9-10. The NLRB discussed the Roadway Express
19 Advice memo referenced above, in which the employer installed computer tracking
20 devices on its vehicles to monitor driver locations. Because the drivers in that case had
21 previously been required to radio their locations to dispatchers from destination to
22 destination, the NLRB observed that the only difference between the new and old

⁴ The GPS devices were installed sometime in November 2012 and deactivated the same month.

1 systems was whether the location information was generated by the employees or the
2 computer. On those facts, the NLRB concluded that the unilateral change charge
3 should be dismissed because the installation of the GPS devices did not have a
4 substantial impact on employee working conditions. In BP Exploration, by contrast, the
5 NLRB observed that the VDRs provided the employer with “far more information about
6 employee driving behaviors” than it had previously been able to obtain via radio or
7 personal observation.” The NLRB further found that, “By substituting constant
8 electronic observation for the security officers’ intermittent, occasional, personal
9 observations and radar readings, the use of the VDRs increases greatly the chances of
10 being disciplined” and thus concluded that their use had a “material, substantial and
11 significant impact on employee working conditions.” BP Exploration, slip op. at 9-10
12 (internal quotation marks omitted). We reach a similar conclusion here and, on these
13 facts, affirm that the City violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of
14 the Law when it installed GPS devices without giving the Union notice and an
15 opportunity to bargain. It also violated the Law when it refused to bargain on demand
16 with the Union over the installation of these devices.⁵

17 Conclusion

18 For the foregoing reasons, we affirm the Hearing Officer’s decision and issue the
19 following Order.

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⁵ The City does not dispute the facts on which the Hearing Officer concluded that it refused to bargain over this issue. It only disputes whether this was a mandatory subject of bargaining.

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ORDER

WHEREFORE, based on the foregoing, it is hereby ordered that the City of Springfield shall:

Cease and desist from:

- a. Implementing GPS tracking devices in DPW vehicles driven by unit members without first giving the Union notice and an opportunity to bargain to resolution or impasse over the decision and its impacts.
- b. Failing or refusing to bargain collectively and in good faith with the Union over the issue of installing GPS tracking devices in DPW vehicles driven by unit members.
- c. In any like manner, interfering with, restraining and coercing its employees in any right guaranteed under the Law.

2. Take the following affirmative action that will effectuate the purpose of the Law:

- a. Restore the prior practice of requiring unit members to provide their supervisors DPW vehicle reports via radio communication and in-person supervisory observation.
- b. Upon request, bargain with the Union over the decision to install GPS tracking devices on DPW vehicles driven by unit members, and the impacts of that decision.
- c. Sign and post immediately in all conspicuous places where members of the Union's bargaining unit usually congregate and where notices to these employees are usually posted, including electronically, if the City customarily communicates to its employees via intranet or e-mail, and maintain for a period of thirty (30) consecutive days thereafter, signed copies of the attached Notice to Employees; and

1 d. Notify the DLR in writing within thirty (30) days of receiving this Decision of
2 the steps taken to comply with the Order.

3 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT
RELATIONS BOARD

MARJORIE F. WITTNER, CHAIR

ELIZABETH NEUMEIER, CERB MEMBER

HARRIS FREEMAN, CERB MEMBER

APPEAL RIGHTS

Pursuant to M.G.L. c. 150E, Section 11, decisions of the Commonwealth Employment Relations Board are appealable to the Appeals Court of the Commonwealth of Massachusetts. To claim such an appeal, the appealing party must file a Notice of Appeal with the Commonwealth Employment Relations Board within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD
NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

The Commonwealth Employment Relations Board (CERB) has held that the City of Springfield (City) violated Sections 10(a)(5) and, derivatively, 10(a)(1) of General Laws Chapter 150E (the Law) by: (1) installing GPS tracking devices in vehicles driven by City employees and recording the employees' location, idle time, distance driven, number of stops and speeding events in those vehicles without first giving the Union prior notice or an opportunity to bargain to resolution or impasse over the decision to install the GPS tracking devices and record relative data, and the impacts of that decision; and (2) by failing to bargain with the Union to resolution or impasse on November 27 and 28, 2012 after it refused the Union's demand to bargain over the City's installation of GPS tracking devices and recording of relative data. The City posts this Notice to Employees in compliance with the Hearing Officer's order.

Section 2 of the Law gives all employees the right to form, join or assist a union; to participate in proceedings at the Department of Labor Relations; to act together with other employees for the purpose of collective bargaining or other mutual aid or protection; and, to choose not to engage in any of these protected activities.

The City assures its employees that:

WE WILL NOT unilaterally implement GPS tracking devices in DPW vehicles driven by unit members without first giving the Union notice and an opportunity to bargain to resolution or impasse over the decision and its impacts.

WE WILL NOT fail or refuse to bargain collectively and in good faith with the Union over the issue of installing GPS tracking devices in DPW vehicles driven by unit members.

WE WILL NOT in any like or similar manner interfere with, restrain, or coerce employees in the exercise of their rights protected under the Law.

WE WILL restore the practice of requiring unit members to provide their supervisors DPW vehicle reports via radio communication and in-person supervisory observation.

WE WILL upon request, bargain with the Union in good faith to resolution or impasse over the decision to install GPS tracking devices on DPW vehicles driven by unit members, and the impacts of that decision.

City of Springfield

Date

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department Labor Relations, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).

DEPARTMENT OF LABOR RELATIONS

In the Matter of

CITY OF SPRINGFIELD

and

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 93

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Case No. MUP-12-2466

Date issued:
November 25, 2014

Hearing Officer:

Kendrah Davis, Esq.

Appearances:

Maurice M. Cahillane, Esq. - Representing the City of Springfield

Joseph L. DeLorey, Esq. - Representing AFSCME, Council 93

HEARING OFFICER'S DECISION

SUMMARY

1 The issues are whether the City of Springfield (City or Employer) violated Section
2 10(a)(5) and derivatively, Section 10(a)(1) of M.G.L. c.150E (the Law): (1) by installing
3 tracking devices in vehicles driven by City employees and recording the employees'
4 location, idle time, distance driven, number of stops and speeding events in those
5 vehicles without first giving the American Federation of State, County and Municipal
6 Employees, Council 93 (Union or AFSCME) prior notice and an opportunity to bargain
7 to resolution or impasse over the decision to install the tracking devices and record

1 relative data, and the impacts of that decision; and (2) by failing to bargain in good faith
2 with the Union when it refused to bargain on November 27 and 28, 2012 after AFSCME
3 requested to meet with the City on those dates to negotiate over the decision to install
4 tracking devices and record relative data.

5 For the reasons explained below, I find that the City violated Section 10(a)(5)
6 and, derivatively, Section 10(a)(1) of the Law by installing tracking devices in vehicles
7 driven by City employees and recording the employees' location, idle time, distance
8 driven, number of stops and speeding events in those vehicles without first giving the
9 Union prior notice and an opportunity to bargain to resolution or impasse over the
10 decision to install the tracking devices and record relative data, and the impacts of that
11 decision. I also find that the City violated the Law by refusing to bargain with the Union
12 on November 27 and 28, 2012, after AFSCME requested to meet with the City on those
13 dates to bargain over the decision to install tracking devices and record relative data.

14 STATEMENT OF THE CASE

15 On December 7, 2012, AFSCME filed a Charge of Prohibited Practice (Charge)
16 with the Department of Labor Relations (DLR), alleging that the City had engaged in
17 prohibited practices within the meaning of Section 10(a)(5) and derivatively, 10(a)(1) of
18 the Law. On February 11, 2013, AFSCME filed an Amended Charge alleging an
19 additional Section 10(a)(3) violation which it later withdrew on March 27, 2013. On July
20 11, 2013, a duly-designated DLR Investigator issued a two-count Complaint of
21 Prohibited Practice (Complaint) alleging that the City: (1) unlawfully installed tracking

1 devices on City vehicles driven by certain employees and recorded data from those
 2 devices without first giving the Union prior notice and an opportunity to bargain to
 3 resolution or impasse over the decision to install and record data from the devices, and
 4 the impacts of that decision; and (2) refused to bargain in good faith on November 27
 5 and 28, 2012 after the Union requested to meet to bargain over the tracking devices.
 6 On June 22, 2013, the City filed its Answer.

7 On June 17, 2014, I conducted a hearing at which both parties had a full
 8 opportunity to be heard, to examine and cross-examine witnesses and to introduce
 9 evidence.⁶ The Union and the City filed their post-hearing briefs on July 16 and 17,
 10 2014, respectively.

11 STIPULATION OF FACTS

12 The parties stipulated to the following facts:

- 13 1. The City is a public employer within the meaning of Section 1 of the Law.
- 14 15 2. The Union is an employee organization within the meaning of Section 1 of the
- 16 Law.
- 17 18 3. The Union is the exclusive bargaining representative for certain employees
- 19 employed by the City, including employees who work in the Department of Public
- 20 Works (DPW).

21 FINDINGS OF FACT

22 ⁶ At the hearing, approximately 26 minutes of witness testimony was missing from the official record due to an inadvertent technical error. In lieu of relitigating that portion of the hearing, on or about September 9, 2014, the parties agreed to include a typed version of my handwritten notes from that 26-minute segment as part of the official record.

1

2 The Collective Bargaining Agreement

3 The Union and the City were parties to a collective bargaining agreement
4 (Agreement) effective from July 1, 2011 – June 30, 2012. The Agreement is silent
5 about the City's use of Global Positioning Systems (GPS) and GPS tracking devices.

6 The GPS Devices

7 In or about 2010, the City first acquired four GPS tracking devices for use in
8 DPW vehicles. GPS tracking devices capture and process certain data about the
9 location and movements of DPW vehicles, eliminating the need for alternate forms of
10 monitoring (e.g., radio communication by the driver, in-person supervisory visits and/or
11 public complaints). If a supervisor needed a certain driver's vehicle data, either the
12 driver would informally report that information via radio communication or a supervisor
13 would informally obtain that information via in-person visit.

14 In or about November of 2012, DPW Deputy Director Mario Mazza (Mazza) first
15 installed GPS tracking devices in vehicles operated by DPW administrative personnel
16 (non-bargaining unit members) for experimental purposes only. After that experimental
17 period, Mazza installed those devices in DPW vehicles driven by unit-members. The
18 City also began electronically monitoring the GPS tracking devices from a remote
19 location via a GPS unit map on the GPS website. By remotely monitoring the GPS

1 tracking devices, supervisors were able to determine the drivers' "real time" work
2 locations, idle time, speed, distance driven and number of stops made.⁷

3 Prior to the GPS device installations, the City did not have any tracking devices
4 in its DPW vehicles. Nor did it have the capacity to determine a DPW vehicle's "real-
5 time" location, idle time, speeding events or number of stops other than what the driver
6 reported to the supervisor over the radio or what the supervisor observed personally.⁸
7 Prior to, during and after the GPS device installations, the City never required individual
8 unit members to formally report their vehicle's location, idle time, vehicle speed,
9 distance driven or number of stops made unless that information was specifically
10 requested by a supervisor. At all relevant times, the City expected unit members to
11 adhere to traffic laws and the "rules of the road."

12 **Sumares' GPS data**

13 The City authorizes DPW employees to make work-related trips in their DPW
14 vehicles. If DPW employees want to make non work-related trips in DPW vehicles, they
15 must first secure proper authorization.⁹

⁷ The record is unclear about whether the City kept the GPS data in perpetuity or deleted the information.

⁸ The record is unclear about the frequency of driver-to-supervisor radio reports and when/how many times a supervisor would personally observe a driver's DPW vehicle information.

⁹ The record is unclear about whether the City allows employees to take DPW vehicles home with them.

1 On or about November 23, 2012, Mazza instructed Bob Bernard (Bernard) to
2 install a GPS tracking device on a vehicle operated by DPW foreman and Union
3 President Charles Sumares (Sumares). Soon after the installation, Mazza learned that
4 Sumares had made two unauthorized trips in his DPW vehicle to conduct Union
5 business at the City's Police Department and at another city's municipal water treatment
6 plant.¹⁰ At some point between November 23 and 27, 2012, the City notified Sumares
7 that it had monitored and recorded his two unauthorized trips via the GPS tracking
8 device that it installed on his DPW vehicle. Sumares then complained to Union Staff
9 Representative Martha Fila (Fila) about the City's installation of a GPS tracking device
10 on his DPW vehicle and explained that his two unauthorized trips were for Union-related
11 business.

12 Fila corresponded with the City's Director of Human Resources William Mahoney
13 (Mahoney) by e-mail on November 27 and 28, 2012, demanding that the City stop using
14 GPS tracking devices on DPW vehicles driven by unit-members, including Sumares.
15 Specifically, on November 27, 2012, Fila stated in full:

16 Good Morning,

17

18 It has been reported to me that a change in working conditions has taken
19 place. I understand that a GPS device has been placed in one of the
20 Foreman's trucks by Bob Bernard.

21

¹⁰ The record does not indicate whether Sumares used his DPW vehicle to make unauthorized trips during or after his scheduled work hours.

1 Please let this e-mail serve as an official notice to cease and desist from
2 this immediately. I am requesting that you provide to me in writing that
3 this demand has been met no later than November 29, 2012.
4

5 Thank you,
6 Martha Fila
7

8 By reply e-mail to Fila on November 27, 2012, Mahoney stated that the City was
9 authorized to use the GPS tracking devices pursuant to a probable cause determination
10 made by the Commonwealth Employment Relations Board (CERB) where it had
11 dismissed a similar GPS allegation raised by another union in a separate case.
12 Specifically, Mahoney's e-mail stated, in full:

13 Hi Martha,
14

15 I believe the DLR has already decided this issue in one or two cases and
16 determined that this is not a change in working conditions. Specifically,
17 please see City of Worcester and NAGE Local 495 MUP-05-4409.
18

19 Thanks,
20 Bill
21

22 By e-mail on November 28, 2012, Fila responded to Mahoney's November 27,
23 2012 e-mail, inquiring about whether his response meant that the City would "not be
24 cooperating with the Union's demand to cease and desist?" By reply e-mail on that
25 same day, Mahoney replied to Fila, stating in full:

26 Hi Martha,
27

28 Yes, I don't believe we are in violation of the law based on the DLR's
29 decision in the City of Worcester case. If you have another decision on
30 point please let me know.
31

32 Thanks,

1 Bill

2
3 Fila corresponded with Mahoney on November 28, 2012, reiterating the Union's
4 position that the installation of GPS tracking devices constituted "a change in working
5 conditions, and requires notice to the union, and is a mandatory subject of bargaining."
6 The City did not reply to Fila's last correspondence and the parties never met to bargain
7 over the issue.

8 The Employer never disciplined Sumares for his unauthorized travel in November
9 of 2012; and, since that incident, the City has deactivated and discontinued its use of
10 the four GPS tracking devices.

11 DECISION

12 A public employer violates Section 10(a)(5) and, derivatively, 10(a)(1) of the Law
13 when it unilaterally changes an existing condition of employment or implements a new
14 condition of employment involving a mandatory subject of bargaining without first giving
15 its employees' exclusive bargaining representative notice and an opportunity to bargain
16 to resolution or impasse. Commonwealth of Massachusetts v. Labor Relations
17 Commission, 404 Mass. 124 (1989); School Committee of Newton v. Labor Relations
18 Commission, 388 Mass. 557 (1983); Commonwealth of Massachusetts, 30 MLC 63,
19 SUP-4784 (Oct. 9, 2003). To establish a violation, a union must show that: (1) the
20 employer changed an existing practice or instituted a new one; (2) the change had an
21 impact on a mandatory subject of bargaining; and, (3) the change was implemented
22 without prior notice to the union and an opportunity to bargain to resolution or impasse.

1 Commonwealth of Massachusetts, 30 MLC at 64; Town of Shrewsbury, 28 MLC 44, 45,
2 MUP-1704 (June 29, 2001); Commonwealth of Massachusetts, 27 MLC 11, 13, SUP-
3 4378 (Aug. 24, 2000).

4 **The Unilateral Change.**

5 The Union argues that the City instituted a new practice when it installed GPS
6 tracking devices on DPW vehicles driven by unit employees in November of 2012. The
7 Union contends that the installation was unlawful because prior to November of 2012,
8 the City did not have an established practice of requiring unit members to report their
9 "real-time" location, idle time, speed distance traveled and number of stops made,
10 absent a request for that information by a supervisor. In the alternative, the Union
11 asserts that if the City did establish a prior work rule that required unit members to
12 report their location, idle time, speed distance traveled and number of stops made while
13 driving DPW vehicles, such reporting was only done by the driver via radio
14 communication or by a supervisor's personal observations; but, never by real-time, 24-
15 hour monitoring on a GPS website.

16 The City contends that because it has always monitored DPW employees while
17 driving DPW vehicles, there was neither a change to any existing practice nor an
18 institution of a new practice when it installed GPS tracking devices on those vehicles in
19 November of 2012. To the extent that the installation of GPS tracking devices on DPW
20 vehicles was a new (or changed) practice, the City argues that the decision was based

1 on a "brief" experimental time period that ended without discipline or consequence to
2 unit members.

3 Specifically, the Employer relies on an unpublished CERB determination in City
4 of Worcester, MUP-05-4409 (Sept. 5, 2007).¹¹ In that case, the city required unit
5 members to carry GPS cellular telephones while they were on duty but not during their
6 breaks. At the investigatory stage, the CERB dismissed the charge after finding that the
7 Union had failed to show: (1) how the GPS phones altered unit members' wages, hours
8 and other terms and conditions of employment; and (2) how the GPS phones
9 constituted anything more than a more efficient and accurate way for the employer to
10 enforce its existing work rules. The Employer also relies on a National Labor Relations
11 Board (NLRB) advisory memorandum in Roadway Express, Inc., Case 13-CA-39940-1
12 (April 15, 2002), which dismissed the allegations that an employer's implementation of
13 GPS technology violated the National Labor Relations Act (NLRA).

14 While I find some guidance in the City of Worcester and Roadway Express, Inc.
15 dismissals, I need not rely on them here because neither the CERB nor the NLRB gives
16 precedential value to pre-hearing dismissals. See City of Taunton, 38 MLC 96, 98-99
17 n.7, MUP-06-4836 and MUP-08-5150 (H.O. May 19, 2011), aff'd 38 MLC 96 (Nov. 2,
18 2011) (citing Quincy City Employees Union, H.L.P.E., 15 MLC 1340, 1368 n. 54, MUPL-

¹¹ Between 2006 and 2007, the CERB issued probable cause determinations for prohibited practice charges filed at the investigatory stage. At some point on or after November 14, 2007, this practice changed and hearing officers began issuing probable cause determinations pursuant to Chapter 145 of the Acts of 2007.

1 2883 and MUP-6037 (Jan. 24, 1989) aff'd sub nom Pattison v. Labor Relations
2 Commission, 309 Mass. App. Ct. 9, (1991), further rev. den'd, 409 Mass. 1104 (1991));
3 see also Bakery Wagon Drivers & Salesmen, Local Union No. 484 v. NLRB, 321 F.2d
4 353, 356-57 (1963) (the NLRB will not find a violation of the NLRA that is not fully
5 litigated at the hearing). Consequently, the City's reliance on City of Worcester and
6 Roadway Express, Inc. as binding precedent must fail.

7 Arguing that it was not obligated to bargain with the Union over the installation of
8 the GPS tracking devices or its impacts, the City also cites Duxbury School Committee,
9 25 MLC 22, 24, MUP-1446 (Aug. 7, 1998). In that case, the CERB found that there was
10 no violation of the Law when the employer installed a surveillance camera in an open
11 and fixed location to monitor employees' arrival and departure times because the
12 installation neither altered any pre-existing work rules nor affected any underlying
13 conditions of employment. Specifically, the employer had required unit members to
14 regularly record their arrival and departure times by punching an electronic time clock.
15 After learning that some unit members had falsified their time cards, the employer
16 installed a surveillance camera to ensure the accuracy of the existing method of
17 timekeeping. Id. at 24. Because the employer's surveillance was limited to recording
18 only employees' departure times and was instituted merely as a more efficient and
19 dependable means of enforcing existing work rules, the CERB held that the employer
20 was not obligated to bargain with the union over the surveillance camera installation.

1 The City contends that it was not obligated to bargain with the Union because
2 like the employer's installation of surveillance cameras in Duxbury, its installation of
3 GPS tracking devices on DPW vehicles in November of 2012 did not change any
4 underlying conditions of employment. However, Duxbury is distinguished because in
5 that case the employer had previously required employees to electronically report their
6 arrival and departure times, and only installed one surveillance camera in an open and
7 fixed location to monitor the accuracy of employees' arrival and departure times. Here,
8 there is no evidence that the City had previously required employees to electronically
9 report their whereabouts while traveling in DPW vehicles; instead that reporting was
10 done via radio communication or in-person observation and, only upon request. Also,
11 the City's installation of GPS tracking devices did not occur in a fixed and open location
12 where employees could see the devices, but were surreptitiously placed on DPW
13 vehicles without first notifying the employees or the Union of their installation. Duxbury
14 is further distinguished because the employer in that case was motivated to install the
15 surveillance camera to enforce a pre-existing timekeeping system and to prevent
16 already discovered fraud. Here, the City installed the GPS tracking devices at a time
17 when no formal vehicle data collection method existed; and made those installations
18 weeks *before* Sumares had taken his two unauthorized trips.

19 In addition, the City contends that its sole motivation for instituting the GPS
20 program was for "experimental" purposes only, not to monitor or investigate any pre-
21 existing suspicions of inappropriate employee conduct. Because of the experimental

1 nature of the GPS program and because the City terminated the program after a brief
2 test-period, the Employer argues that there was no need for it to bargain with the Union.
3 However, the CERB holds that an employer must still bargain over
4 experimental/temporary changes to employees' terms and conditions of employment
5 when those changes affect mandatory subjects of bargaining. See generally
6 Commonwealth of Massachusetts, 39 MLC 14, SUP-08-5447 (H.O. July 31, 2012), aff'd
7 in part, rev'd in part (Dec. 27, 2012) (employer's implementation of policy created new
8 changes in the way it temporarily reassigned state-owned vehicles).

9 **1. Standards of Productivity and Performance**

10 A public employer must bargain with its employees' bargaining representative to
11 impasse or resolution before establishing new conditions of employment affecting
12 mandatory subjects of bargaining. Newton School Committee, 5 MLC 1016 (1978), enf'd
13 sub. nom. School Committee of Newton v. Labor Relations Commission, 388 Mass.
14 557, 572 (1983). The charging party must establish a unilateral change in a pre-existing
15 condition of employment affecting a mandatory subject of bargaining to prove a violation
16 of the Law. City of Boston, 8 MLC 1077, 1081 (1981). The Board holds that a
17 performance evaluation system, which measures standards of productivity and
18 performance is a mandatory subject of bargaining within the meaning of Section 6 of the
19 Law. Town of Wayland, 5 MLC 1738, 1741 (1979).

20 Prior to November of 2012, the City neither monitored real-time data from DPW
21 vehicles driven by unit members, nor required unit members to formally report their real-

1 time data absent a specific request from a supervisor. On or about November 23, 2012
2 the City changed that underlying condition of employment when it installed GPS
3 tracking devices in DPW vehicles driven by unit members and began monitoring real-
4 time data gleaned from those tracking devices (e.g., idle time, speed, distance driven or
5 number of stops made) via the GPS website, which impacted standards of performance
6 and productivity: Town of Andover, 28 MLC 264, 269-70, MUP-1012 and MUP-1186
7 (Feb. 7, 2002) (citing City of Lowell, 28 MLC 126, 127-28, MUP-2299 (October 10,
8 2001); Commonwealth of Massachusetts, 27 MLC 1, 4-5, SUP-4304 (June 30, 2000) (it
9 is well established that the decision to implement a new standard for assessing
10 performance is a mandatory subject of bargaining); see generally Murphy Diesel Co.,
11 184 NLRB 757, 762-64 (1970) aff'd 454 F.2d 303 (7th Cir. 1971) (employer changed a
12 pre-existing work rule that did not require a written explanation to be excused for an
13 absence; the new work rule required written explanations for excused absences, which
14 constituted a material, substantial, and a significant change that affected employees'
15 terms and conditions of employment).

16 The City intended for the GPS program to electronically measure in real-time,
17 specific information that the employer had previously used to evaluate the performance
18 of DPW drivers. Thus, because the Employer changed the standards of measuring
19 Sumares' performance by using electronic GPS tracking devices instead of using radio
20 call-ins or supervisory in-person check-ins, the City was obligated to first negotiate with
21 the Union prior to implementing that change. See City of Taunton, 38 MLC at 98-99. In

1 that case, the city had established a practice of taking employees' daily attendance on
2 sheets of paper, which did not include their actual arrival or departure times. Without
3 bargaining to resolution or impasse with the union, the city installed a new time-punch
4 clock along with a surveillance camera to monitor employees' activity at the time-punch
5 clock. The city later upgraded the time-punch clock and installed an electronic card
6 swipe system to track employees' attendance, again without notifying the union and
7 providing it with an opportunity to bargain to resolution or impasse. Consequently, the
8 CERB found that the employer in City of Taunton was obligated to bargain over the
9 installation of surveillance equipment because the installation affected an underlying
10 term or condition of employment. Id., 38 MLC at 98-99.

11 Based on this evidence, I find that the City unlawfully instituted a new practice of
12 installing GPS tracking devices and recording real-time data from DPW vehicles driven
13 by unit members, which impacted a mandatory subject of bargaining. The City
14 instituted that change without giving the Union prior notice and an opportunity to bargain
15 to resolution or impasse over the decision or its impacts because it was implemented in
16 the beginning of November of 2012, several weeks before the Union actually became
17 aware of the change. Commonwealth of Massachusetts, 27 MLC at 13. Accordingly, I
18 find that the City has violated Section 10(a)(5) of the Law in the manner alleged.

19. **The Failure to Bargain.**

20 Section 6 of the Law requires public employers to negotiate before changing the
21 wages, hours, working conditions or standards of productivity and performance of their

1 number of stops and speeding events from those tracking devices without first giving
2 the Union prior notice and an opportunity to bargain to resolution or impasse over the
3 decision and its impacts. I also conclude that the City violated the Law by refusing to
4 bargain with the Union on November 27 and 28, 2012 after AFSCME requested to meet
5 with the City on those dates to bargain over the installation of GPS tracking devices on
6 DPW vehicles driven by unit members and the recording of relative data from those
7 vehicles.

8 ORDER

9 WHEREFORE, based on the foregoing, it is hereby ordered that the City of
10 Springfield shall:

11 Cease and desist from:

- 12 e. Implementing GPS tracking devices in DPW vehicles driven by unit members
13 without first giving the Union notice and an opportunity to bargain to resolution
14 or impasse over the decision and its impacts.
- 15
- 16 f. Failing or refusing to bargain collectively and in good faith with the Union over
17 the issue of installing GPS tracking devices in DPW vehicles driven by unit
18 members.
- 19
- 20 g. In any like manner, interfering with, restraining and coercing its employees in
21 any right guaranteed under the Law.
- 22

23 3. Take the following affirmative action that will effectuate the purpose of the Law:

- 24
- 25 a. Restore the prior practice of requiring unit members to provide their
26 supervisors DPW vehicle reports via radio communication and in-person
27 supervisory observation.
- 28

- 1 b. Upon request, bargain with the Union over the decision to install GPS tracking
2 devices on DPW vehicles driven by unit members, and the impacts of that
3 decision.
- 4
- 5 c. Sign and post immediately in all conspicuous places where members of the
6 Union's bargaining unit usually congregate and where notices to these
7 employees are usually posted, including electronically, if the City customarily
8 communicates to its employees via intranet or e-mail, and maintain for a
9 period of thirty (30) consecutive days thereafter, signed copies of the attached
10 Notice to Employees; and
- 11
- 12 d. Notify the DLR in writing within thirty (30) days of receiving this Decision of
13 the steps taken to comply with the Order.

14 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

/s/
KENDRAH DAVIS, ESQ.