



A. JOSEPH DeNUCCI
AUDITOR

The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

ONE WINTER STREET, 9TH FLOOR
BOSTON, MASSACHUSETTS 02108

TEL (617) 727-0980
(800) 462-COST
FAX (617) 727-0984

February 3, 2009

Mr. Donald L. McKinnon, Chairman
Bridgewater-Raynham Study Committee
Office of the Selectmen
558 South Main Street
Raynham, Massachusetts 02767

Re: Municipal Revenue Growth Factor and the Local Mandate Law

Dear Mr. McKinnon:

Auditor DeNucci asked that I respond to your letter regarding the use of the "Municipal Revenue Growth Factor" (MRGF) in determining a city or town's minimum required local contribution to the support of public schools under Chapter 70 of the General Laws. As defined in Chapter 70, the MRGF is a measure of the annual percentage change in certain local revenues, and is used to determine the preliminary increase over the prior year's minimum required level of school support. You express concern that this methodology results in significantly greater obligations to the regional and vocational schools than would result from traditional apportionments, and raise two questions. As we discussed by telephone, the State Auditor's Office is not in a position to address questions regarding the constitutionality of school finance law, as in your first question. Regarding your second question, it is the opinion of the Auditor's Division of Local Mandates that the Commonwealth is not financially responsible under Proposition 2 ½ for increases in local contributions to schools that may result from application of the MRGF. This is essentially because local obligations under Chapter 70 apply "notwithstanding" the Local Mandate Law. The following further explains this conclusion.

When you cite Proposition 2 ½ in this context, you are referring to the part that inserts section 27C into Chapter 29 of the General Laws, known as the Local Mandate Law. In relevant part, the Local Mandate Law provides that any law adopted after Proposition 2 ½ (after 1980) that imposes significant new costs upon any city or town must either be subject to local acceptance, or fully funded by the Commonwealth. Note that a community may not

Mr. Donald L. McKinnon, Chairman

Page Two

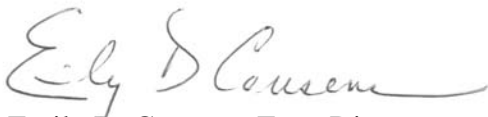
unilaterally decide not to comply with an unfunded state mandate, and an opinion of the Division of Local Mandates does not negate the duty to comply. Rather, a city or town aggrieved by a state law or regulation adopted contrary to this standard may seek a superior court order exempting it from compliance until the state assumes the amount of the cost imposed.

Even though this law establishes the general rule that the state must pay for mandated costs, the State Supreme Judicial Court (SJC) has ruled that the General Court is free to supercede or override the Local Mandate Law. In *Lexington v. Commissioner of Education*, 393 Mass. 693, 696 (1985), the SJC wrote: "Proposition 2 ½ is not a constitutional amendment, and although its genesis was in initiative and referendum, it enjoys a legal status no different from any other statute."

Provisions regarding the MRGF, as well as the whole of Chapter 70, apply "to all cities, towns, and regional school districts, notwithstanding section twenty-seven C of chapter twenty-nine, and without regard to any acceptance or appropriation by a city, town or regional school district or to any appropriation by the general court." See section 15 of Chapter 70. This text overrides the Local Mandate Law with respect to Chapter 70 calculations. As explained in the *Lexington* decision, this is a legitimate exercise of legislative prerogative. In light of this precedent, it is our opinion that the Local Mandate Law does not apply to local obligations resulting from the use of the MRGF.

I regret that this conclusion does not aid your efforts to control local spending. You face an unenviable job in this toughest of economies. Nonetheless, the Division of Local Mandates must apply the terms of the Local Mandate Law consistently to each issue, as interpreted by the courts. In closing, please be advised that this opinion does not prejudice your right to seek direct judicial review of the matter under General Laws Chapter 29, section 27C(e). I thank you for bringing your concerns to our attention, and encourage you to contact us with future issues that may arise.

Sincerely,

A handwritten signature in cursive script that reads "Emily D. Cousens".

Emily D. Cousens, Esq., Director
Division of Local Mandates