



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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AUDITOR

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December 5, 2003

Gerard D. Perry
Acting Deputy Commissioner
Massachusetts Department of Revenue
Division of Local Services
P.O. Box 55490
Boston, MA 02205-5490

RE: The E-government Initiative

Dear Mr. Perry:

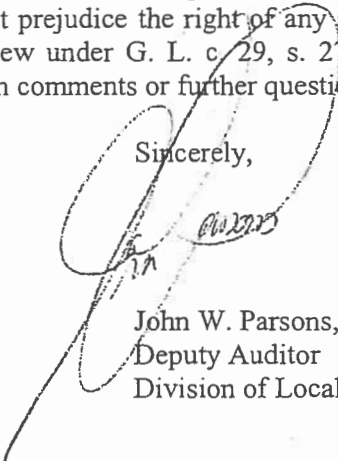
Auditor DeNucci asked that I respond to your request for an opinion regarding the Local Mandate Law, G. L. c. 29, s. 27C, and the so-called E-government Initiative of the Department of Revenue, Division of Local Services (DLS). This initiative is described generally in your letter, and in DLS Bulletin 2003-12B. Although the bulletin indicates DLS's immediate intent to encourage local officials to file certain documents electronically rather than on paper, your letter states "...eventually we will not accept certain sorts of filings except via the Internet." We note that there is no expressed intent to require new types of reports. Under this initiative, localities will be asked to compile and file the same reports they always have, but in a different mode – electronically. Your question regarding the Local Mandate Law arises in recognition of the fact, borne out in DLS's municipal survey, that some communities would need to incur costs for computer equipment, Internet access and training to comply with this requirement. As further explained below, it is our opinion that the Local Mandate Law would not apply to the E-government initiative, as it would appear to impose only "incidental local administration expenses."

In relevant part and in general terms, the Local Mandate Law provides that post-1980 agency rules that impose additional costs upon cities, towns or regional school districts will be subject to local acceptance, unless the Commonwealth assumes the cost of compliance. However, this general rule does not apply to agency requirements that impose only "incidental administration expenses." G. L. c. 29, s. 27C (c). The Supreme Judicial Court defines this term as "...relatively minor expenses related to the management of municipal services...subordinate consequences of a municipality's fulfillment of primary obligations." *City of Worcester v. the Governor*, 416 Mass. 751, 758 (1994). In that case, the Court reasoned that a certain school parental notice requirement was a subordinate consequence of the primary pre-1981 duty to identify children with special needs. As such, the regulation in question imposed only incidental administration expenses, and was not subject to the Local Mandate Law.

In light of this precedent, we observe that the compliance costs in this case would be "relatively minor expenses." We would not expect outlays for this purpose to exceed a one-time cost of \$2,000.00 in any community. Additionally, we would not view the requirement to file reports electronically as a primary obligation. Rather, this would be a "subordinate consequence" of the primary obligation to provide financial information to DLS. This obligation pre-dates the Local Mandate Law in various parts of the General Laws. See, for example, G. L. c. 44, s. 43 regarding the duty to file financial schedules with the Director of Accounts, and G. L. c. 58, s. 10 requiring statements relating to property values and property taxes. For these reasons, we conclude that the proposed E-government initiative would impose only incidental administration expenses, and would not be subject to the Local Mandate Law. Nonetheless, we strongly support DOR's intent to provide technical assistance, and to utilize a flexible implementation schedule to the extent feasible. Such efforts would be especially important for unprepared communities, particularly smaller towns, where even relatively minor costs may be difficult to absorb.

We thank you for the opportunity to comment on this matter, and reserve the right to revisit the issues should the final requirements of the initiative differ significantly from those we reviewed. Please be advised that our opinion would not prejudice the right of any aggrieved city, town or regional school district to seek judicial review under G. L. c. 29, s. 27C (e). Please contact Attorney Emily Cousens at 617.727.0980 with comments or further questions that may arise.

Sincerely,



John W. Parsons, Esq.
Deputy Auditor
Division of Local Mandates

JWP:kd