



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

STATE HOUSE, BOSTON 02133

A. JOSEPH DeNUCCI
AUDITOR

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April 1, 2008

Geoffrey C. Beckwith, Executive Director
Massachusetts Municipal Association
One Winthrop Square
Boston, Massachusetts 02110

RE: G. L. c. 29, s. 27C and Enhanced 911 Emergency Telecommunications Systems

Dear Mr. Beckwith:

This letter is in response to your request, on behalf of the cities and towns of Massachusetts, relative to the local financial impact of implementation and maintenance of so-called "E911" emergency telecommunications systems. Although you note that the Commonwealth has provided some financial assistance for these expenses, you have also observed many communities incurring significant additional compliance costs not covered by this level of state funding. As an example, you explain that the Town of Tewksbury has had to allocate over \$27,000 for these purposes. Of this amount, over \$24,000 supported personnel overtime for mandatory training sessions, with the remainder for maintenance and housing of equipment.

Specifically, you ask that my office determine whether the Local Mandate Law, G. L. c. 29, s. 27C, applies to these expenses. After reviewing your argument, input from relevant state agencies, and court precedent, my Division of Local Mandates has reached the opinion that the Local Mandate Law does not apply in this case. This is because the expenses at issue are the result of a local option law, whereby cities and towns agreed to assume these costs in exchange for access to the E911 system, equipment, training, and other services supplied by the Commonwealth. See St. 1990, c. 291, ss. 8 and 9. The following further explains this conclusion.

In relevant part, the Local Mandate Law provides that any post-1980 law that imposes more than incidental administrative cost obligations on any community will be effective only if the city or town votes to accept the law, or if the General Court appropriates sufficient monies to assume local compliance costs. The Supreme Judicial Court has recognized that this language allows that communities may voluntarily accept the terms of an unfunded (or under funded) state law, without creating financial obligations for

the Commonwealth under the Local Mandate Law. See *Town of Lexington v. Commissioner of Education*, 393 Mass. 693 (1985).

The state law establishing the enhanced 911 telecommunications network and system is explicitly a local option law, effective only in cities and towns that vote to accept it. St. 1990, c. 291, s. 8 provides:

Each municipality shall...certify in writing to the secretary of the commonwealth whether it accepts the provisions of this act. [Those that accept] ...shall receive enhanced 911 service...and the benefits of enhanced 911 network features and network components, including at least one public safety answering point, and any other enhanced 911 network features that may be made available by the statewide emergency telecommunications board. Municipalities that exercise this option shall be responsible for the staffing and operation of the public safety answering point terminal equipment provided to it in accordance with the terms and conditions specified by the board.

Section 9 states that the act “shall take effect in a city or town which accepts its provisions in accordance with section 8.” For most communities (including Tewksbury), records of the local votes to accept Chapter 291 are on file at the Office of the Secretary of the Commonwealth. In light of these facts, it is clear that local compliance with the enhanced 911 emergency telecommunications law is not mandatory in any city or town. Accordingly, it is the opinion of my Division of Local Mandates that G. L. c. 29, s. 27C does not apply in this case.

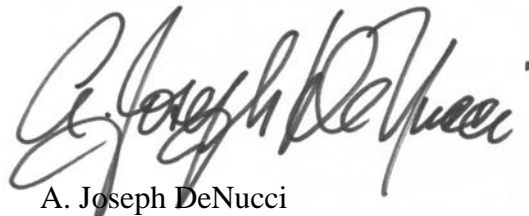
Nonetheless, it is expected that legislative attention will turn soon to this program, as the statutory funding mechanism is due to expire on June 30, 2008. Presently, E911 technology development, equipment, installation, and deficit recovery are funded from revenues derived from surcharges against subscribers to wire-line and wireless telephone service, plus any interest earned on the trust accounts. These revenues were projected to exceed \$74 million in fiscal 2007. Also from these revenues, the state Department of Telecommunications and Energy (DTE) approved a \$2.6 million Statewide Emergency Telecommunications Board municipal grant program.

The purpose of this grant program is to offset costs associated with personnel training in the use of updated equipment recently installed at most locations across the state. However, disagreement apparently exists among the program’s stakeholders as to the propriety of this use of surcharge revenues. Accordingly, DTE has recommended that the Legislature further clarify the permitted uses of these funds when it addresses

reauthorization of the surcharge method of raising revenues to finance the enhanced emergency telecommunications system.

I have directed my Division of Local Mandates to monitor ongoing developments in this program. Even though we have concluded that the Local Mandate Law does not apply in this case, this fact clearly does not prohibit the Legislature from authorizing greater financial assistance for communities that have chosen to cooperate in this vital public safety initiative. Like all programs supported in whole or in part by property taxes, the E911 system is vulnerable to the pressures of inflation in the cost of conducting government business within the revenue restrictions of Proposition 2 ½. As Auditor of the Commonwealth, I would support legislation to ease the local fiscal impact of operating the E911 public safety answering points. In fact, my staff, in discussions with Executive Office of Public Safety staff, has expressed our support of the anticipated legislation as it pertains to local funding. Please contact me with further concerns that may arise, and I thank you for bringing this matter to my attention.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Joseph DeNucci". The signature is fluid and cursive, with a large initial "A" and "J".

A. Joseph DeNucci
Auditor of the Commonwealth