The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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June 29, 2010

Ms. Sally Hayden
Massachusetts Town Clerks' Association
Town Hall
250 Main Street
Rutland, Massachusetts 01543

RE: Petition of the Massachusetts Town Clerks' Association (MTCA) Relative to the Local Mandate Law, G. L. c. 29, § 27C, and Regulations Requiring the Use of Accessible Voting Equipment at All Elections, 950 CMR 51.02(6)

Dear Ms. Hayden:

Some time ago, I wrote to request your comments on the position of the Massachusetts Office on Disability (MOD) relative to the above-captioned matter. While recognizing that the Secretary of State has provided for appropriate machinery and programming for federal and state elections, you questioned whether the Local Mandate Law applies to the unfunded aspect of this regulation. That is, the cost of programming the accessible equipment for local elections in which no candidate for federal or state office appears on the ballot.

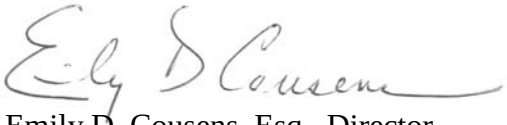
We consulted MOD on this matter in light of its authority as the state coordinating agency for the federal Americans with Disabilities Act (ADA), 42 USC § 12131, et seq. I forwarded to you MOD correspondence explaining that the Automark voting machines (or similar direct recording voting technology) are required at all elections -- including strictly local elections -- by the accessibility standards set by the ADA.[1] As such, it is MOD's judgment that the regulations at issue only specify in state regulation requirements that already exist under federal mandates. As I explained previously, it is the opinion of the State Auditor's Division of Local Mandates (DLM) that the Local Mandate Law would not be applied to exempt cities and towns from complying with actions required by federal law; the scope of the Local Mandate Law is limited to mandates imposed by state law, rule, or regulation. The basis for this opinion is summarized below.

[1] It is also MOD's position that this type of technology is required by the standards of Article 114 of the Amendments to the State Constitution. Because this matter can be determined on the basis of federal law, there is no need to address this point at this time.

As a general rule, the Local Mandate Law provides that any post-1980 law or regulation that imposes additional costs upon any city or town must either be fully funded by the Commonwealth, or subject to local acceptance. However, as is the case with many general rules, there are exclusions. The state Supreme Judicial Court has recognized that the Local Mandate Law does not apply to "mandated costs or services which were not initiated by the Legislature and over which it has no control." *Town of Lexington v. Commissioner of Education*, 393 Mass. 693, 697 (1985). In that case, the Court was referring to the G. L. c. 29, § 27C(g) exception for costs resulting from court decisions, or from laws enacted to comply with court decisions. In the case at hand, it was the Congress of the United States that enacted the ADA. From this viewpoint, the ADA is a matter over which the state Legislature has no control. To the extent that 950 CMR 51.02(6) imposes no greater obligations at the local level than the ADA, the Commonwealth is not obligated under the Local Mandate Law to assume the cost of complying with state implementation of this federal mandate.

Having received no further comments from you on the scope of the ADA, the Division of Local Mandates is now closing this matter to further review, concluding that the Local Mandate Law does not apply to 950 CMR 51.02(6), on the basis that is does not impose obligations at the local level beyond the requirements of federal law. Nonetheless, I thank you for bringing this issue to our attention, and encourage you to contact us with questions that may arise in the future.

Sincerely,



Emily D. Cousens, Esq., Director

Division of Local Mandates