



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

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A. JOSEPH DeNUCCI
AUDITOR

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December 8, 2008

The Honorable Thomas G. Ambrosino, Mayor
City of Revere
Office of the Mayor
281 Broadway
Revere, Massachusetts 02151

RE: November 2008 Ballot Question 3, Prohibiting Dog Racing in the Commonwealth

Dear Mayor Ambrosino:

Auditor DeNucci asked that I respond to your request relative to the prohibition on dog racing to take effect on January 1, 2010, and the Local Mandate Law, Chapter 29, section 27C of the Massachusetts General Laws. This ban became law as a result of the approval of Question 3 at the November 2008 state election, adding section 14E to Chapter 128A of the General Laws. You explain that this ban will result in revenue losses for the City of Revere in two ways. First, the City will no longer receive distributions of its statutory entitlement (0.35%) from the pari-mutuel wagers made at the Wonderland race track per General Laws Chapter 58, section 18D. (For fiscal 2009, the Department of Revenue Cherry Sheet for Revere shows an estimate of \$390,833 for this distribution.) Second, you anticipate that the value of the Wonderland parcel will diminish when it can no longer be used as a dog race track, resulting in a reduction in property tax collections. You ask whether the Local Mandate Law applies to Question 3, and request a determination of the financial impact of this initiative upon the City of Revere. In this initial response, I will address the question regarding the Local Mandate Law, and will follow up at a later date on the local financial impact.

As to the applicability of the Local Mandate Law, it is the opinion of the Auditor's Division of Local Mandates (DLM) that Chapter 29, section 27C does not apply to law

enacted by the voters through the initiative petition process provided by the State Constitution. Although there is no court authority directly on point, this conclusion is based upon the precise wording of the Local Mandate Law and related court interpretations. In relevant part, Chapter 29, section 27C(a) provides that any post-1980 law that imposes additional costs upon any city or town will be effective only if locally accepted, “...unless the general court, at the same session in which such law is enacted, provides by general law and by appropriation...” for state assumption of the additional cost. (Emphasis added.) The law that will ban dog racing in the Commonwealth was not enacted in a session of the General Court. We note that legislation to enact this ban was originally filed with the General Court, but that body did not vote on the petition before the established deadline. In legislative procedure, such failure to act is tantamount to rejection. As a result, supporters of the measure collected additional signatures to have the matter placed on the November 2008 state election ballot as Question 3 for decision by the voters. Since it was the voters at the state election that enacted the dog racing ban, this law was not enacted in a session of the General Court.

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 vs. Commissioner of Education*, 393 Mass. 693, 697 (1985). (The Court was referring to the Chapter 29, section 27C(g) exception for costs resulting from court decisions, or from laws enacted as a direct result of court decisions.) In the case at hand, the Legislature declined to approve the dog racing ban, and the people enacted the law notwithstanding the inclination of the Legislature. From this viewpoint, this enactment is a matter over which the General Court had no control, like court decisions and federal laws.

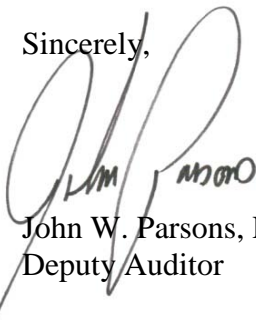
Moreover, we note that the Local Mandate Law provides that a community aggrieved by an unfunded state mandate may petition superior court for an exemption from complying with the law at issue. Court authority has established that the Commonwealth is not obligated to fund state mandates, but instead, that communities may be freed from the obligation to comply by court order. See *City of Worcester v. the Governor*, 416 Mass. 751 (1994). Upon review of the full text of Question 3, we do not find language that imposes any requirement upon the City of Revere. Rather, the text regulates the actions of individuals and the State Racing Commission by prohibiting dog racing in the Commonwealth. As such, there appears to be no requirement from which a court could exempt the City of Revere.

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In summary, DLM concludes that General Laws Chapter 29, section 27C does not apply to the Chapter 128A, section 14E ban on dog racing in the Commonwealth for two reasons. First, this ban was enacted by initiative petition in accordance with standards set by the state Constitution, and second, the ban does not impose any direct requirements upon the City of Revere. Please be aware that this conclusion is subject to reconsideration, should you bring forward factors that would require a different result. Additionally, this opinion does not prejudice your right to seek direct judicial review of the matter pursuant to General Laws Chapter 29, section 27C(e).

These legal and technical matters aside, we do realize that, as a practical matter, the City has come to rely on the chapter 58, section 16D statutory entitlement that will end when wagering ceases at Wonderland Park. I will have DLM's Director, Emily Cousens, contact your staff for additional information necessary to estimate the amount of revenue loss.

Sincerely,

A handwritten signature in black ink, appearing to be 'JWP', with a large, stylized flourish extending upwards and to the right.

John W. Parsons, Esq.
Deputy Auditor

cc: The Honorable Anthony Galluccio
The Honorable Anthony Petrucelli
The Honorable Robert A. DeLeo
The Honorable Kathi-Ann Reinstein
City Council President, George V. Colella