



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

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June 29, 2006

The Honorable Richard T. Moore
Massachusetts Senate
State House – Room 111
Boston, Massachusetts 02133-1053

Dear Senator Moore:

This letter is in response to your request for an opinion relative to Article 115 of the Massachusetts Constitution and a proposal to remove local option provisions from sections 18 and 19 of Chapter 32B, general law governing contributory group insurance for local employees. Presently, section 18 allows cities and towns (and other political subdivisions) to vote to require their eligible retirees to participate in the federal Medicare program in lieu of the municipal health insurance program. If adopted, a community must provide an extension plan, if necessary to ensure coverage of comparable value. Section 19 allows cities and towns to vote to provide that the selection of a health insurance carrier be made with approval of a proportional vote of the employee bargaining units. This contrasts to the standard requirement for unanimous approval of all units. As you know, the Division of Local Mandates (DLM) has no specific authority to determine when Article 115 applies. Nonetheless, in light of our experience with analogous provisions of the Local Mandate Law, we offer the following observations that lead to the conclusion that Article 115 would not apply to law making sections 18 and 19 mandatory for all communities.

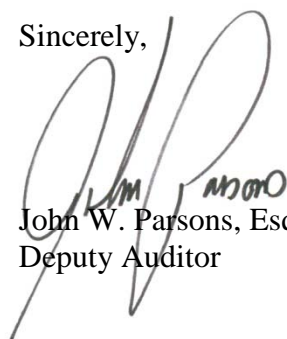
Article 115 essentially provides that any "...law imposing additional costs upon two or more cities or towns by the regulation of the compensation, hours, status, conditions or benefits of municipal employment..." will be subject to local acceptance unless one of two standards is met. Such a law may be binding if the Commonwealth assumes its cost, or the law is enacted by a two-thirds vote of each branch of the Legislature. In this way, "Article 115 limits the Legislature's power to regulate the terms of municipal employment." *City of Cambridge v. Attorney General*, 410 Mass. 165, 170 (1991). However, this restriction does not apply to every type of legislative action that may affect local labor relations. Of particular relevance to the issue at hand, Article 115 applies to state laws that "*impose additional costs*" on communities.

It is fully expected that communities would save money by adopting section 18, and thereby shifting a substantial amount of the cost of retiree health insurance to the federal government. It is unlikely that the expenses for any late enrollment penalties and extension plans in any given community would approach the level of savings that would result from enrollment in the federal program. Thus far, the experience of the City of Springfield is affirming this expectation, with net first year savings of approximately \$6 million attributable to the adoption of section 18. The state Department of Revenue has recently initiated a data collection effort to verify which cities and towns have voted to accept the current, voluntary version of section 18. The early respondents are showing a growing interest in this provision, with 68 of 71 reporting that they have adopted section 18. Note that thirty of these respondents made the election within the last three years, and this number includes sixteen that voted to adopt the provision this year. Still, it is possible that these early results may be skewed by a tendency for those that have voted yes to be the earlier respondents. Pending the availability of additional data on this matter, you may wish to consider allowing for a waiver opportunity in the event that a community could demonstrate a negative financial impact. A waiver provision would ensure that an otherwise mandatory section 18 would not impose additional costs upon any city or town, and therefore would not raise concerns related to Article 115.

Additionally, there is no expectation that a mandatory version of section 19 would impose additional costs upon cities and towns. Section 19 would affect the procedures for selecting a health insurance carrier, but would not affect the substance of that decision. A change in procedure would not, in itself, impose additional costs. Accordingly, in our view, a law making the provisions of section 19 mandatory would not be subject to the standards of Article 115.

On behalf of State Auditor DeNucci, I thank you for bringing this matter to our attention, and commend your efforts on behalf of local government in Massachusetts. Please contact me with further questions or comments you may have on this or other matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'John W. Parsons, Esq.', is written over a large, stylized, cursive signature that is mostly illegible.

John W. Parsons, Esq.
Deputy Auditor