

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

No. SJC-12780

Franklin, ss.

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Susan Boss, Appellee-Plaintiff

V.

Town of Leverett, Appellant-Defendant and Leverett School  
Committee, Defendant

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On Appeal from a Judgment of the Franklin County Superior Court

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**Appellant's Brief for Town of Leverett**

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Date: 07/31/2019

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	4
STATEMENT OF THE ISSUES.....	6
STATEMENT OF THE CASE.....	6
STATEMENT OF FACTS.....	7
I.    FACTUAL BACKGROUND.....	7
A. Proceedings of the Local Legislature in 2004.....	7
B. Ms. Boss's Employment History.....	9
II.   PROCEDURAL HISTORY.....	10
STANDARD OF REVIEW.....	13
STATUTORY BACKGROUND AND HISTORY.....	13
ARGUMENT.....	16
I.    NOTHING IN THE PLAIN LANGUAGE OF G.L. c. 32B, §9A REQUIRES THE TOWN TO CONTRIBUTE TOWARDS THE PREMIUMS OF A RETIREE'S DEPENDENTS.....	17
A. Applicable Principles of Statutory Construction.....	17
B. Relevant Legislative Purpose.....	19
II. <i>ASSUMING ARGUENDO</i> , THIS COURT SUSTAINS THE LOWER COURT'S INTERPRETATION OF SECTION 9A, IN THE PARTICULAR CIRCUMSTANCES PRESENTED BY THIS CASE, THE TOWN MEETING WARRANT MISLED THE TOWN'S CITIZENRY SO AS TO RENDER THE VOTE TO ADOPT SECTION 9A INVALID.....	26
CONCLUSION.....	32
ADDENDUM.....	33

CERTIFICATE OF COMPLIANCE.....	60
CERTIFICATE OF SERVICE.....	61

## TABLE OF AUTHORITIES

### Cases:

<u>Adams v. Boston,</u> 461 Mass. 602 (2012) .....	15
<u>American Lithuanian Naturalization Club, Athol, Mass., Inc. v. Board of Health of Athol,</u> 446 Mass. 310 (2006) .....	13
<u>Becton, Dickinson &amp; Co. v. State Tax Comm'n.,</u> 374 Mass. 230 (1978) .....	17, 19, 22
<u>Blomquist v. Arlington,</u> 338 Mass. 594 (1959) .....	26
<u>Broderick v. Mayor of Boston,</u> 375 Mass. 98 (1978) .....	15
<u>Burlington v. Dunn,</u> 318 Mass. 216 (1945) .....	27
<u>Cioch v. Treasurer of Ludlow,</u> 449 Mass. 690 (2007) .....	13, 15, 17, 21
<u>Coffin v. Lawrence,</u> 143 Mass. 110 (1886) .....	26, 28
<u>Commonwealth v. Galvin,</u> 388 Mass. 326 (1983) .....	24
<u>Coonamessett Inn v. Chief of Falmouth Police Dept.,</u> 16 Mass. App. Ct. 632 (1983) .....	27, 28
<u>Hemenway v. Milton,</u> 217 Mass. 230 (1914) .....	18, 22
<u>Loring v. Inhabitants of Town of Westwood,</u> 238 Mass. 9 (1921) .....	26
<u>Mann v. Assessors of Wareham,</u> 387 Mass. 35 (1982) .....	18, 19, 22
<u>Somerville v. Commonwealth Employment Relations Board,</u> 470 Mass. 563 (2015) .....	21



<u>Twomey v. Middleborough,</u>	
468 Mass. 260 (2014).....	14, 15, 21
<u>Welch v. Barach,</u>	
84 Mass. App. Ct. 113 (2013).....	13
<u>Xtra v. Commissioner of Revenue,</u>	
380 Mass. 277 (1980).....	18
<u>Yeretsky v. Attleboro,</u>	
424 Mass. 315 (1997).....	14, 15

**Statutory Provisions:**

G.L. c. 4, § 4.....	14
G.L. c. 32B, § 1.....	<i>passim</i>
G.L. c. 32B, § 3.....	14
G.L. c. 32B, § 7.....	14
G.L. c. 32B, § 7A.....	15
G.L. c. 32B, § 9.....	17
G.L. c. 32B, § 9A.....	<i>passim</i>
G.L. c. 32B, § 9E.....	15
G.L. c. 32B, § 16.....	17
G.L. c. 39, § 10.....	26

### **STATEMENT OF THE ISSUES**

1. Did the lower court err when it construed G.L. c. 32B, § 9A to require the Town of Leverett to contribute towards premiums associated with retiree's dependents?
2. *Assuming arguendo*, G.L. c. 32B, § 9A is interpreted to include premium cost associated with dependents, did the lower court correctly conclude that the Town effectively adopted G.L. c. 32B, § 9A at the Town Meeting on April 24, 2004?

### **STATEMENT OF THE CASE**

This is an appeal by the Defendant-Appellant, the Town of Leverett (the "Town"), from the lower court's grant of Summary Judgment for the Plaintiff-Appellee, Susan Boss ("Ms. Boss"), and the corresponding denial of the Town's Cross-Motion for Summary Judgment. The lower court determined that a town that has adopted G.L. c. 32B, § 9A ("Section 9A") must pay not only a portion of a retired employee's individual health insurance premiums, but also a portion of her dependents' insurance premiums. It also determined that the Town had adopted Section 9A despite the

misleading and fundamental inconsistency between the Town Meeting warrant article discussing it and the court's interpretation. Through this appeal, the Town seeks a ruling that adoption of Section 9A does not require contribution towards dependents' premiums. Alternatively, if this court finds Section 9A does require such contribution, the Town seeks a ruling that Town Meeting warrant failed to properly notify and fundamentally misled the Town's citizenry such that Section 9A was not validly adopted.

#### **STATEMENT OF THE FACTS**

##### **I. FACTUAL BACKGROUND**

##### **A. Proceedings of the Local Legislature in 2004.**

The Town is a municipal corporation and had provided access to group health insurance coverage for current and retired employees of the Leverett Public Schools ("LPS"), pursuant to G.L. c. 32B. (Record Appendix ("R.A.") 033.)

Prior to the convening of the Town's Annual Town Meeting in April of 2004, a warrant was posted to alert the Town's citizens of matters to be voted. (R.A. 037-039.) Two articles concerned retirement benefits. (Id.) Article Two of the warrant alerted

citizens to a proposed budget appropriation for specified insurance premiums. (R.A. 037.) It also proposed to adopt specific language regarding retiree health insurance premium contributions. (Id.) Article Two of the warrant stated as follows:

Article Two: To see if the town will vote, contingent upon the affirmative vote of the ballot question in Article Four of this warrant, to raise and appropriate the sum of \$23,500 to pay one-half the premium costs payable for life and medical insurances in FY 2005 for retired Town of Leverett employees and to adopt the following wording regarding retiree health insurance, or take any action relative thereto:

The town will pay 50% of the cost of an individual health plan offered by the town for a retiree as long as the retiree notifies the town of his/her choice to enroll in a Leverett health insurance plan within 60 days of retirement from the town or a qualifying event; the individual was enrolled in a Leverett health insurance program at the time of retirement; the retiree is older than the eligible retirement age; and the retiree has a minimum of ten (10) years of credible service with the Town of Leverett in a benefited position. Employees eligible for Medicare shall be required to obtain such coverage and comply with Chapter 32B, Section 18 of the Massachusetts General Laws.

A retiree, who has not reached Medicare-eligible age, can apply 50% of the individual premium of his/her chosen health plan to the family or employee-plus one premium of the same health plan until the retiree reaches Medicare-eligible age.

(R.A. 037.)

At the Town Meeting, the warrant article was moved as written. (R.A. 037.) The motion was seconded, carried unanimously and the polls were opened for the retiree health insurance question. (R.A. 037-038.)

The ballot question was provided in Article Four of the warrant which stated:

Article Four (Ballot Question): Shall the town pay one-half the premium costs payable by a retired employee for group life insurance and for group general or blanket hospital, surgical, medical, dental and other health insurance? Polls close at end of Town Meeting.

(R.A. 038.) The Ballot Question passed with 205 ballots cast, 184 in favor and 21 opposed. (R.A. 039.)

**B. Ms. Boss's Employment History.**

Ms. Boss was hired as a teacher in the LPS in 1990. (R.A. 034.) During her employment, she subscribed to health insurance coverage through group plans offered by the Town to LPS employees pursuant to G.L. c. 32B. (R.A. 034.) Specifically, she was a "1+1" or "Employee Plus One" subscriber to the Network Blue New England HMO Plan prior to retirement, covering herself and her dependent spouse. (R.A. 034.)

In 2015, Ms. Boss retired from the LPS and continued to participate in the group health insurance coverage through the Town. (R.A. 035-036.) Prior to retirement, Ms. Boss was advised that she could continue her plan and that the Town would make a contribution of fifty-percent of the premium cost for an individual plan and she would be responsible for the balance of the "1+1" plan premium. (R.A. 035.)

Since her retirement, the Town has contributed fifty percent of Ms. Boss's premium cost for an individual plan and she has paid the remaining balance for the "1+1" plan for her dependent spouse. (R.A. 036.)

## **II. PROCEDURAL HISTORY**

On October 28, 2016, Ms. Boss filed a Complaint with the lower court against the Town and the Leverett School Committee (the "School Committee"). (R.A. 014-016.)

The Complaint sought a declaration that the Town was obligated to pay fifty-percent (50%) of the full premium cost for health insurance for not only their retired employees, but also their dependent spouses. (R.A. 016.) The Complaint sought damages equaling 50%

of the amounts paid by Ms. Boss since January 2016 to maintain coverage for her Dependent. (Id.)

On November 21, 2016 the Town filed an Answer, affirmative defenses and demand for trial by jury. (R.A. 021-024.) On April 26, 2017 a default was entered by the Court against the School Committee. (R.A. 025.) On July 31, 2017 a Joint Motion was filed to Set Aside the Default of the School Committee and to Indefinitely Suspend any Action on Claims Against the School Committee. (R.A. 026-028.) The Motion was granted by the Court on August 2, 2017. (R.A. 029.) The Town without conceding liability advised the Court that it, not the School Committee, would be responsible for any liability that might result from this action. (R.A. 027.)

Ms. Boss filed a Motion for Summary Judgment against the Town. (See generally, R.A. 031-052.) Ms. Boss also filed a Statement of Facts Relating to the Plaintiff's Motion for Summary Judgment. (R.A. 033-036.) The Town opposed Ms. Boss's Motion for Summary Judgment and filed a Cross-Motion for Summary Judgment. (See generally, R.A. 053-065.) The Plaintiff

filed a Reply to the Town's opposition and Cross-Motion for Summary Judgment. (R.A. 066-070.)

On March 28, 2018, the court conducted a hearing on the Motion for Summary Judgment and Cross-Motion for Summary Judgment. (R.A. 071.) On June 18, 2018, the lower court (Mason, J.) entered a Memorandum of Decision and Order on Cross-Motions for Summary Judgment allowing Ms. Boss's Motion for Summary Judgment and denying the Town's Cross-motion for Summary Judgment. (R.A. 073-082; Addendum "Add.", at 034-043.) The next day, on June 19, 2018, the court entered Judgment for Ms. Boss. (R.A. 083; Add., at 044.)

The Town filed its Notice of Appeal on July 19, 2018. (R.A. 084-085.) On September 20, 2018, the Town's counsel in the lower court proceeding filed a Motion to Withdraw as counsel. (R.A. 093-094.) The lower court granted the Motion to Withdraw on September 21, 2018. (R.A. 101.)



## **STANDARD OF REVIEW**

A grant of summary judgment is reviewed de novo from the same record as the motion judge. Welch v. Barach, 84 Mass. App. Ct. 113, 118-119 (2013). "Where the Superior Court judge has decided the case on stipulated facts and agreed exhibits, all questions of law and fact are open to our decision on review." (internal quotations omitted). Cioch v. Treasurer of Ludlow, 449 Mass. 690, 695 (2007), citing American Lithuanian Naturalization Club, Athol, Mass., Inc. v. Board of Health of Athol, 446 Mass. 310, 322 (2006)). When reviewing a decision of cross motions for summary judgment, the judge will inspect the record in the light most favorable to the losing party. Welch v. Barach, 84 Mass. App. Ct. at 119.

## **STATUTORY BACKGROUND AND HISTORY**

Pursuant to the Home Rule Amendment to the Massachusetts Constitution, municipalities may undertake to provide health insurance and other forms of insurance to their employees. See Cioch v. Treasurer of Ludlow, 449 Mass. 690, 695 (2007). General Laws Chapter 32B ("Chapter 32B") is referred to as a "local option" statute which takes effect only

when a municipality adopts the provisions thereunder. M.G.L. c. 4, § 4; Twomey v. Town of Middleborough, 468 Mass. 260, 261 (2014).

Once a municipality undertakes to provide health insurance to its employees pursuant to Chapter 32B, it shall negotiate and purchase insurance policies "on such terms as it deems to be in the best interest of the governmental unit and its employees." G.L. c. 32B, § 3.

Upon initial adoption of Chapter 32B, "default" provisions dealing with both active and retired employees become applicable to the municipality. With respect to active employees, G.L. c. § 7 requires the municipality to contribute 50% of the premium costs of active employees and their dependents. Chapter 32B, §9 is the "default" provision for retirees, "according to which retirees are required **to pay the entire cost** of such health insurance." (emphasis added). Yeretsky v. Attleboro, 424 Mass. 315, 317 (1997).

It is within the municipalities sole discretion to not only undertake health insurance obligations to their employees pursuant to Chapter 32B, but also to contribute towards premium payments in excess of the

default provisions thereunder. See generally, G.L. c. 32B, §§ 7A, 9A and 9E. Beyond the initial adoption of Chapter 32B and its default provisions, “a municipality is permitted to adopt only those provisions of the statute that best accommodate its needs and budget.” (internal quotations omitted). Twomey v. Town of Middleborough, 468 Mass. 260, 261 (2014), quoting Cioch v. Treasurer of Ludlow, 449 Mass. 690, 697 (2007). For towns, individual local option provisions, including Chapter 32B, § 9A (“Section 9A”), are adopted upon a vote of the town’s inhabitants at a town meeting. Yeretesky v. Attleboro, 424 Mass. 315, 317 n. 5 (1997).

Once a municipality adopts the local option statute and any provisions thereunder, it is bound to any subsequent legislative amendments. Adams v. City of Boston, 461 Mass. 602, 610 (2012) (“a ‘fresh acceptance’ may be required only where a later amendment is ‘not germane’ to the subject of the original statute.”), citing Broderick v. Mayor of Boston, 375 Mass. 98, 102-103 (1978).

## ARGUMENT

**THE TOWN'S CITIZENS DID NOT COMMIT ITS TAXPAYERS TO  
CONTRIBUTE TOWARDS HEALTH INSURANCE PREMIUM COSTS  
ASSOCIATED WITH ITS RETIREES' DEPENDENTS.**

Two arguments in the alternative require a finding that the Town is not obligated to contribute toward the insurance premiums of its retirees' dependents. First, the plain language of Section 9A does not require such contributions. Second, *assuming arguendo*, Section 9A does require such a contribution, the Town Meeting warrant incorrectly informed the Town's citizenry of the subject matter to be voted upon. It did inform them that contributions to the premiums of the Town's retirees would be discussed and voted upon. (R.A. 037-039.) It did not inform them that contributions to the premiums of retirees' dependents would be discussed and voted upon. (*Id.*) Under either scenario, the Town did not make the considerable financial commitment to contribute towards the premiums of its retirees' dependents.

I. **NOTHING IN THE PLAIN LANGUAGE OF G.L. c. 32B, §9A  
REQUIRES THE TOWN TO CONTRIBUTE TOWARDS THE  
PREMIUMS OF A RETIREE'S DEPENDENTS.**

A. **Applicable Principles of Statutory  
Construction.**

Section 9A specifies the content of the ballot question to be put before the citizens of a town to adopt it. Section 9A states follows:

Shall the town pay one-half the premium costs payable by a retired employee for group life insurance and for group general or blanket hospital, surgical, medical, dental and other health insurance?

Reading words into a statute, in the present case the word "dependents", where it is not included or referenced is inconsistent with the rules of statutory interpretation. See Cioch v. Treasurer of Ludlow, 449 Mass. 690, 698 (2007) (holding language of G.L. c. 32B, §§ 9 or 16, did not require municipality to permit plan enrollment post retirement).

Massachusetts courts "have emphasized that statutes embodying procedural requirements should be construed, when possible, to further the statutory scheme intended by the Legislature without creating snares for the unwary." Becton, Dickinson & Co. v. State Tax Comm'n., 374 Mass. 230, 233 (1978). Laws "administered in large part by [] plain citizens...

should be construed and interpreted as far as possible so as to be susceptible of easy comprehension and not likely to become pitfalls for the unwary." Hemenway v. Milton, 217 Mass. 230, 233, (1914). In the case of tax statutes, Massachusetts rules of statutory construction provide that as to questions of interpretation, "all doubts are to be resolved in favor of the taxpayer." Mann v. Assessors of Wareham, 387 Mass. 35, 39 (1982), quoting Xtra v. Commissioner of Revenue, 380 Mass. 277, 281 (1980). The lower court's construction of Section 9A fails to meet these criteria.

In Hemenway v. Milton, the Supreme Judicial Court held that the word "inhabitants" as used in a statute, should be interpreted by applying the word's natural meaning. 217 Mass. at 232-233. The Court acknowledged that in order to be effective, a statute and the words included therein, must be "susceptible of easy comprehension." Id. at 233. If the Court applied the "strained and unusual meaning" advanced by the petitioners, then the statute, which was administered by ordinary citizens (serving on their local Board of Assessors), would likely become a pitfall for the unwary. Id.

With respect to Section 9A, the Town Meeting is a group of ordinary citizens (serving as the Town Legislative body) that will consider Section 9A's adoption. They are also taxpayers that will fund the premium contributions. To prevail on the statutory construction question presented by this appeal, Ms. Boss must meet two burdens. First, she must demonstrate that the lower court's construction of Section 9A, particularly its ballot question, is consistent with the plain and ordinary meaning of its words and that all doubts have been resolved in favor of the Town's citizenry. Mann v. Assessors of Wareham, 387 Mass. 35, 39 (1982). Second, she must demonstrate that the lower court's construction furthers the statutory scheme intended by the legislature without creating snares for the unwary. See Becton, Dickinson & Co. v. State Tax Comm'n, 374 Mass. 230, 233 (1978). Ms. Boss is unable to meet either burden.

**B. Relevant Legislative Purpose.**

Chapter 32B, §1 ("Section 1") states in pertinent part:

The purpose of this chapter is to provide [various plans of group insurance] for certain persons in the service of...towns... and their dependents.

This statement of purpose only contemplates municipalities providing its employees and their dependents with **access** to group insurance plans. G.L. c. 32B, § 1. (emphasis added). Access to group insurance is in and of itself a benefit. The initial municipal adoption of Chapter 32B and its default provisions achieves the broad purpose stated in Section 1. It does not require payment of any portion of the health insurance premiums of its retired employees. Additional local option provisions within Chapter 32B serve the separate and distinct purpose of allowing municipalities to control the financial burden of contributing towards premiums.

In the case at bar, the Chapter 32B legislative purpose of providing access to group insurance is not at issue. The Town had adopted Chapter 32B and long provided to its employees access to group insurance in concert with the legislative purpose stated in Section 1. (R.A. 033.) The Section 1 purpose is irrelevant to the statutory construction of Section 9A.



With respect to Chapter 32B local option provisions such as Section 9A that when adopted provide for health insurance premium contributions by a municipality, the Supreme Judicial Court has described the policy underlying those provisions as follows:

In our view, the Legislature conferred authority on municipalities to decide whether and how much to contribute to retirees' health insurance premiums in recognition of the fact that, as public employers, they must balance the needs of their retired workers with the burdens of safeguarding their own fiscal health, thereby ensuring their ability to provide services for all of their citizens.

Somerville v. Commonwealth Employment Relation Board, 470 Mass. 563, 572 (2015).

Under Chapter 32B, "a municipality is permitted to adopt only those provisions of the statute that best accommodate its needs and budget." (internal quotations omitted). Twomey v. Town of Middleborough, 468 Mass. 260, 261 (2014), quoting Cioch v. Treasurer of Ludlow, 449 Mass. 690, 697 (2007). The legislative purpose of municipal financial control is the relevant legislative purpose when construing Section 9A.

Any construction of Section 9A must be interpreted to achieve the legislative purpose of ensuring

municipal control over the financial commitment to premium contributions. In the case of towns, that control is in the hands of "plain citizens" who are also taxpayers. Therefore, in the present case, Section 9A should be "construed and interpreted as far as possible so as to be susceptible of easy comprehension and not likely to become pitfalls for the unwary." Hemenway, 217 Mass. at 232-233. All doubts should be resolved in favor of the citizenry - taxpayers. Mann, 387 Mass. at 39. Finally, the construction should further the Legislative purpose of financial control without creating snares for the unwary. Becton, Dickinson & Co. v. State Tax Comm'n., 374 Mass. 230, 233 (1978). Using these analytic principles, the lower court's interpretation cannot stand.

The lower court's interpretation of Section 9A starts with an acknowledgement that:

[N]o specific language includes or excludes dependents within the meaning of the premium cost for a retiree's health insurance plan. The meaning of [Section 9A is] ambiguous as to this issue.

(R.A. 078; Add., at 039.) Having made this determination, the lower court goes on to examine the legislative history of Section 9A. (R.A. 078-080; Add.,

at 039-041.) It then purports to recite the legislative purpose behind Section 9A. Here, the court errs. (R.A. 081; Add., at 042.)

The court recites Section 1 as the legislative purpose underlying Section 9A. (R.A. 081; Add., at 042.) As discussed above, Section 1 states as a legislative purpose the provision of access to group insurance to employees and their dependents. That purpose is served and achieved upon the initial adoption of Chapter 32B and its default provisions. The Section 1 purpose is irrelevant to Section 9A. Again, as discussed above, the legislative purpose behind additional local options provisions such as section 9A is to afford municipalities financial control over their decisions to make premium contributions.

Relying on the wrong legislative purpose, i.e., Section 1, the lower court reached the wrong conclusion that Section 9A called for payment of premiums for dependents. (R.A. 081-082; Add., at 042-043.) The lower court chose to read the words "including dependents" into Section 9A. (R.A. 081-082; Add., at 042-043.) Its incorrect reliance on the wrong legislative purpose led to an interpretation of Section 9A that significantly

changes and increases the financial obligation incurred by a municipality adopting it.

In the instant case, the lower court did not adhere to the rules of statutory interpretation and implied that Section 9A included the word dependents when the Legislature omitted any reference to dependents in the plain language of the statute. Such implication runs afoul of the established precedent set forth by the Supreme Judicial Court that courts shall not read language into the plain language of section that is not present therein. See Commonwealth v. Galvin, 388 Mass. 326, 330 (1983) (refusing to read appeal procedure language from one statutory section into another).

The lower court's interpretation of Section 9A, particularly its ballot question, strains comprehension and creates a pitfall for unwary citizens. The Town's taxpayers sought in good faith to make the generous financial commitment to contribute towards the premiums for its individual retirees as stated in the ballot question presented to them. (R.A. 038.) The lower court's interpretation extended the language to embrace not only the premiums of retired employees, but also

the premiums of their dependents. (R.A. 073-082; Add., at 034-043.) This interpretation does not protect the financial control intended by the legislature. Instead, it acts to lure "plain citizens," taxpayers, into unwittingly imposing greater, un contemplated financial burdens on themselves. Financial burdens that could only be detected, if at all, through a strained reading of the ballot question. The lower court's interpretation of Section 9A undermines the exact fiscal responsibility and control the legislature sought to provide to municipalities.

The lower court's interpretation fails both tests necessary to sustain its validity. First, the interpretation is not consistent with the plain and ordinary meaning of its words when all doubts are resolved in favor of the citizenry, i.e. taxpayers. Second, the interpretation creates snares for the unwary in that it lures communities into making greater financial commitments than could reasonably be anticipated. For these reasons the lower court's interpretation cannot be sustained.

II. ASSUMING ARGUENDO, THIS COURT SUSTAINS THE LOWER COURT'S INTERPRETATION OF SECTION 9A, IN THE PARTICULAR CIRCUMSTANCES PRESENTED BY THIS CASE, THE TOWN MEETING WARRANT MISLED THE TOWN'S CITIZENRY SO AS TO RENDER THE VOTE TO ADOPT SECTION 9A INVALID.

Massachusetts General Laws Chapter 39, Section 10 states in pertinent part:

The warrant for all town meetings shall state the time and place of holding the meeting and the subjects to be acted upon thereat.

...

No action shall be valid unless the subject matter thereof is contained in the warrant.

It is well established that the, "[s]ubjects to be acted upon at town meeting must be sufficiently stated in the warrant to apprise voters of the nature of matters with which the meeting is authorized to deal." Blomquist v. Town of Arlington, 338 Mass. 594, 598 (1959). "Warrants are held sufficient if they indicate with substantial certainty the nature of the business to be acted on." Coffin v. Lawrence, 143 Mass. 110, 112 (1886). "[T]he deliberations of a town meeting are confined to the articles in the warrant..." Loring v. Inhabitants of Town of Westwood, 238 Mass. 9, 10 (1921).

A Town Meeting warrant can render a vote invalid in certain circumstances. A town meeting vote to adopt a local option statute may be rendered invalid if the warrant language is misleading or the exclusion of language or inclusion of additional language, "materially or substantially affected the acceptance of the statute." Coonanmessett Inn v. Chief of Falmouth Fire Department, 16 Mass. App. Ct. 632, 635 (1983) (finding exclusion from warrant article of portion of language to be voted on did not materially or substantially affect adoption of statute). Where the difference between a warrant article subject and the subject deliberated and voted upon at town meeting is one of fundamental character such that it changes the identity of the proposal, the vote is invalid.

Grounds for invalidation include: (1) misleading language; (2) the inclusion or exclusion of language that materially and substantially affects the acceptance of a statute; (3) language that changes the meaning of the statute to be accepted in a substantial respect; (4) or failure of the warrant to "indicate with substantial certainty the nature of the business to be acted on." See Burlington v. Dunn, 318 Mass. 216 (1945) *cert. denied*, 326 U.S. 739 (1945); Coonamessett

Inn, 16 Mass. App. Ct. at 634-635 (1983); Coffin, 143 Mass. at 112 (1886).

A town meeting vote to adopt a local option statute may be rendered invalid if the warrant language is misleading or the exclusion of language or inclusion of additional language, "materially or substantially affected the acceptance of the statute." Coonanmessett Inn, 16 Mass. App. Ct. at 635. In the case at bar, *assuming arguendo*, Section 9A requires contribution towards premiums of retirees' dependents, the warrant misled the Town Meeting by stating that contributions would be made only towards the premiums of the retired employee and not those of their dependents. (R.A. 037-039.)

Two articles relative to Section 9A premium contributions were presented to the Town Meeting. One dealt with appropriation for such premium contribution and the other with the ballot question to be voted upon at the Town Meeting. (R.A. 037-039.) The two articles were linked in that the appropriation article was contingent upon the outcome of the ballot question. (Id.) Thus, the meaning of one was represented to be the same as used in the other.



Specifically, the extent of premium coverage in one was expected to reflect the premium coverage to be voted upon in the other. (Id.)

Warrant Article Two stated in pertinent part:

Article Two: To see if the town will vote, contingent upon the affirmative vote of the ballot question in Article Four of this warrant, to raise and appropriate the sum of \$23,500 to pay one-half the premium costs payable for life and medical insurances in FY 2005 for retired Town of Leverett employees and to adopt the following wording regarding retiree health insurance, or take any action relative thereto:

The town will pay 50% of the cost of an individual health plan offered by the town for a retiree...

Employees eligible for Medicare shall be required to obtain such coverage and comply with Chapter 32B, Section 18 of the Massachusetts General Laws.

A retiree, who has not reached Medicare-eligible age, can apply 50% of the individual premium of his/her chosen health plan to the family or employee-plus one premium of the same health plan until the retiree reaches Medicare-eligible age.

(R.A. 037.)

Article Two unmistakably reflects the Town's interpretation of Section 9A. It contemplates that until a retired employee reaches Medicare-eligible age, the Town will contribute 50% of the premium cost

for an individual health plan. (Id.) That contribution amount can be applied towards the retiree's individual plan or a plan that covers the retiree's dependents. (Id.) The article makes clear that the Town's citizens can expect that per retiree, their taxes will only be paying 50% of the premium cost for an individual health plan per retiree. (Id.)

Article Two was **contingent** upon passage of the following ballot question specified in Article Four of the Warrant:

Shall the town pay one-half the premium costs payable by a retired employee for group life insurance and for group general or blanket hospital, surgical, medical, dental and other health insurance?

(R.A. 037-038.) As evidenced by the lower court's decision, the above language is at best ambiguous.

(R.A. 073-082; App., at \_\_\_\_.) The link between Article Two and the ballot question (Article Four) would logically inform a citizen-taxpayer that the financial consequence of an affirmative vote would be limited to 50% of an individual plan premium. (R.A. 037-038.) The same linkage and rationale applies to the actual motion brought on Article Two at the Town Meeting. (R.A. 037.) It should be noted that neither

Article made any reference or citation to G.L. c. 32B,  
§ 9A. (R.A. 037-039.)

*Assuming arguendo*, this court sustains the lower court's interpretation of Section 9A, together, Articles Two and Four served to mislead and to fundamentally change the character of the subject to be voted upon. Furthermore, the fundamental misdirection was with respect to a substantial ongoing financial commitment. The Articles more than doubled the potential financial commitment of the community. On this basis, both the Town Meeting vote with respect to Article Two and the Article Four ballot question vote should be invalidated by this court.

## CONCLUSION

On the basis of the foregoing arguments, the Town of Leverett respectfully requests that this Court reverse the lower court's entry of summary judgment in favor of Susan Boss and denial of the Town's cross-motion for summary judgment, and rule that G.L. c. 32B, Section 9A does not require the Town to contribute towards the premium payments of both retired employees and retired employees' dependents.

Alternatively, the Town of Leverett respectfully requests that this Court invalidate the votes related to Article Two and Four of the April 24, 2004 Town Meeting.

Respectfully submitted,

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Date: 04/04/2019

**ADDENDUM**  
**TABLE OF CONTENTS**

Superior Court's Memorandum of Decision and Order Cross-Motions for Summary Judgment, dated June 18, 2018.....	34
Superior Court's Notice, Motion for Summary Judgment for Plaintiff, Susan Boss, Allowed, Cross-Motion for Summary Judgment For Defendant, Town of Leverett, Denied, dated June 19, 2018.....	44
G.L. c. 4, § 4.....	45
G.L. c. 32B, § 1.....	46
G.L. c. 32B, § 3.....	47
G.L. c. 32B, § 7.....	49
G.L. c. 32B, § 7A.....	50
G.L. c. 32B, § 9.....	53
G.L. c. 32B, § 9A.....	54
G.L. c. 32B, § 9E.....	55
G.L. c. 32B, § 16.....	56
G.L. c. 39, § 10.....	58

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 1678CV00109

SUSAN BOSS

vs.

TOWN OF LEVERETT & another<sup>1</sup>

MEMORANDUM OF DECISION AND ORDER CROSS-MOTIONS FOR  
SUMMARY JUDGMENT

INTRODUCTION

This case arises from a dispute over a retired public school teacher's health insurance benefits. The plaintiff, Susan Boss, brought this complaint against the defendant, the Town of Leverett (the "Town"),<sup>2</sup> seeking to recover fifty percent of the premium costs of her insurance plan which covered herself and her husband. The Town denies responsibility for any premium cost associated with providing health insurance to Ms. Boss' husband. Both parties rely on G. L. c. 32B, § 9A, to support their arguments. They have filed cross-motions for summary judgment on the complaint. For the following reasons, the Town's cross-motion for summary judgment is **DENIED**, and the plaintiff's motion for summary judgment is **ALLOWED**.

BACKGROUND

The relevant material facts are undisputed. The Town is a municipal corporation and provides group health insurance coverage for current and retired employees of the Leverett

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<sup>1</sup> Leverett School Committee

<sup>2</sup> The court allowed a joint motion to set aside a default entered against the defendant Leverett School Committee and to suspend indefinitely any action on claims against it.

Public Schools (“LPS”), pursuant to G. L. c. 32B. The plaintiff was hired as a teacher in the LPS in 1990. During her teaching tenure, the plaintiff was a subscriber to health insurance coverage through group plans offered by the Town to LPS employees pursuant to G. L. c. 32B. She was a “1+1” or “Employee Plus One” subscriber to the Network Blue New England Health Maintenance Organization (“HMO”) plan (the “plan”) covering herself and her husband. On April 24, 2004, the members of the Town voted to adopt G. L. c. 32B, § 9A.

In 2015, the plaintiff retired and continued to participate in the group health insurance coverage through the Town. Prior to retirement, the plaintiff learned that she could continue her plan, but the Town would only make its fifty percent contribution as required under c. 32B, § 9A, based on the premium cost for an individual plan and she would be responsible for the remaining balance of the “1+1” plan. Since her retirement, the Town has paid fifty percent of the plaintiff’s premium cost for an individual plan and the plaintiff has paid the remaining balance of the “1+1” plan in order for her husband to receive health insurance.

## **DISCUSSION**

### **I. The Parties’ Positions**

The plaintiff argues that under c. 32B, § 9A, the Town is obligated to pay half of her husband’s premium cost as part of her plan. She contends that the plain language of § 9A applies to all plans a retiree can choose from and requires the Town to pay half of the total premium cost of that plan. The plaintiff asserts that the inclusion of dependents in the language of G. L. c. §§ 4, 11C, and 16, as referenced in § 9, evidences an intent to provide coverage to dependents. She argues that § 9A neither contemplates nor permits the exclusion of dependents from the full benefits afforded by the statute.

The Town counters that § 9A does not require it to contribute towards her husband's premium cost. The Town argues that the overall framework of c. 32B supports an interpretation that it is not required to pay the premium cost attributable to providing health insurance to a retiree's spouse. In support of its position, the Town points to both its ability to opt into providing progressively more benefits to retirees along a spectrum and the plain language of § 9A which contains no mention of dependents in the Town's obligation to pay half of a retiree's premium. The Town contrasts the language of § 9A with that of § 9E, and contends that the inclusion of "dependents" in § 9E means the exclusion of "dependents" in § 9A was intentional.<sup>3</sup> The Town further argues that the members of the Town understood § 9A as only requiring the Town to pay half of the cost of an "individual health plan" for a retiree as stated in article two of the Town Meeting warrant.

## II. Standards

The parties present no genuine issues of material fact. The crux of their dispute raises a question of statutory interpretation: does the term "premium" as set forth in G. L. c. 32B, § 9A, encompass the cost associated with having a dependent on a retired employee's health insurance plan? Stated another way, does G. L. c. 32B, § 9A, require a town to pay half of the premium cost for a 1 + 1 or Employee Plus One Plan? The parties' controversy is ripe for summary judgment adjudication. See *Boston Police Patrolmen's Association, Inc. v. Boston*, 435 Mass. 718, 719-720 (2002) ("Statutory interpretation is a question of law for the court"). "Summary judgment is appropriate when . . . all material facts have been established and the moving party is entitled to judgment as a matter of law" (citations omitted; internal quotation marks omitted).

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<sup>3</sup> The Town cites *Skawski v. Greenfield Investors Property Dev. LLC*, 473 Mass. 580, 588 (2016) for the statutory maxim "*expression unius est exclusion alterius*, meaning the expression of one thing in a statute is an implied exclusion of other things not included in the statute."



*Scholz v. Delp*, 473 Mass. 242, 249 (2015), cert. denied, 136 S. Ct. 2411 (2016); Mass. R. Civ. P. 56 (c).

“When construing statutes such as c. 32B, we attempt to ascertain and carry out the intent of the Legislature” (internal quotation marks omitted). *Cioch v. Treas. of Ludlow*, 449 Mass. 690, 697 (2007). The legislative intent of a statute is “ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated” (internal quotation marks omitted). *Yeretsky v. Attleboro*, 424 Mass. 315, 319 (1997).

A review of the relevant statutory provisions that govern retired public employee insurance benefits is necessary in resolving this case.

### **III. Statutes**

#### **A. General Laws c. 32B**

“Under the Home Rule Amendment, art. 89 of the Amendments to the Massachusetts Constitution, the Commonwealth’s various municipalities may undertake certain health insurance obligations to their employees.” *Cioch*, 449 Mass. at 697. “General Laws c. 32B is a comprehensive statute empowering municipalities to provide group insurance (medical and certain other coverages) to their employees and their employees’ dependents. . . . General Laws c. 32B is a ‘local option’ statute: it does not take effect until a governmental unit accepts it. . . . Once accepted, however, it provides the exclusive mechanisms by which and to whom the city may provide group health insurance.” (citations omitted; internal quotation marks omitted). *Connors v. Boston*, 430 Mass. 31, 37 (1999). “Where a municipality has exercised its local option to provide group health insurance for its employees through acceptance of G. L. c. 32B,

employees are automatically covered by group insurance unless the employee give[s] written notice . . . indicating that he is not to be insured for such coverages” (internal quotation marks omitted). *Galenski v. Erving*, 471 Mass. 305, 308 (2015); G. L. c. 32B, § 4.

### **B. Sections 9, 9A & 9E**

“[Section 9] provides for the maintenance of health insurance coverage by a public employee who (1) retires (first par.), (2) terminates his service and defers retirement (third par.), and (3) terminates his service (fourth par.). These provisions also set forth the manner in which the coverage may be continued and the level of contribution, if any, by the public employee for continuing coverage” (footnote omitted). *Larson v. Sch. Comm. of Plymouth*, 430 Mass. 719, 721-722 (2000). The default provision of c. 32B requires group health insurance to be continued for retired employees if it is offered to a municipality’s active employees. See *id.*; G. L. c. § 32B, § 9. The first paragraph of § 9 provides that a retired employee bears the full cost of the continued coverage unless a municipality has adopted § 9A or § 9E.<sup>4</sup> See *Massachusetts Nurses Ass’n v. Cambridge Public Health Com’n*, 82 Mass. App. Ct. 909, 911 (2012). See also *Yeretsky*, 424 Mass. at 317 (“[A] municipality may opt to pay 50% of the retirees’ . . . costs by adopting § 9A, or a higher percentage by adopting § 9E”). “If the municipality accepts § 9A,<sup>5</sup> it

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<sup>4</sup> Section 9, sentence one, provides in relevant part: “The policy or policies of insurance shall provide . . . group life insurance . . . and the retired employee shall make payment of the full premium cost, subject to the provisions of section nine A or nine E, whichever may be applicable, of the average group premium as determined by the appropriate public authority for such insurance; and the group general or blanket insurance providing hospital, surgical, medical, dental and other health insurance, as provided under sections four, eleven C, and sixteen as may be applicable, shall be continued and the retired employee shall pay the full premium cost, subject to the provisions of section nine A or section nine E whichever may be applicable of the average group premium as determined by the appropriate public authority for such hospital, surgical, medical, dental and other health insurance.”

<sup>5</sup> Section 9A provides in relevant part: A [town] . . . may provide that it will pay one-half of the amount of the premium to be paid by a retired employee under the first sentence of section 9. A town shall provide for the payment by vote of the town at a town meeting or if a majority of the votes cast in answer to the following question which shall be printed on the official ballot to be used at an election in said town is in the affirmative:-- “Shall the town pay one-half the premium costs payable by a retired employee for group life insurance and for group general or blanket hospital, surgical, medical, dental and other health insurance?”

pays fifty percent of the retiree's health insurance premium; if it accepts § 9E,<sup>6</sup> then the municipality may elect to pay 'a subsidiary or additional rate' greater than fifty percent of health insurance premiums to its retirees." *Massachusetts Nurses Ass'n*, 82 Mass. App. Ct. at 911.

### ANALYSIS

As noted by the parties, §§ 9 and 9A provide no specific language that includes or excludes dependents within the meaning of the premium cost for a retiree's health insurance plan<sup>7</sup>. The meaning of the provisions are ambiguous as to this issue. This ambiguity makes it appropriate to consider the history of the relevant sections in order to discern the legislative purpose. See *Yeretsky*, 424 Mass. at 319.

General Laws c. 32B, § 1, et seq. derives from a session law passed in 1956. St. 1956, c. 730, § 1. The 1956 session law included § 9, which extended insurance policies to retired employees at a cost borne by the retired employee. In 1959, § 9A was added to allow towns to pay for half of the premium cost paid by a retired employee for his or her insurance policy in accordance with the first sentence of § 9. St. 1959, c. 595. In 1968, § 9E was added to allow

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<sup>6</sup> Section 9E provides in relevant part: A [town] . . . may provide that it will pay in addition to fifty per cent of a stated monthly premium as described in section seven A for contracts of insurance authorized by sections three and eleven C, a subsidiary or additional rate which may be lower or higher than the aforesaid premium and the remaining fifty per cent of said premium is to be paid by a retired employee under the provisions of the first sentence of section nine. A town shall provide for such payment by vote of the town or if a majority of the votes cast in answer to the following question which shall be printed on the official ballot to be used at an election in said town is in the affirmative:--"Shall the town, in addition to the payment of fifty per cent of a premium for contributory group life, hospital, surgical, medical, dental and other health insurance for employees retired from the service of the town, and their dependents, pay a subsidiary or additional rate?" Section nine A shall not apply in any governmental unit which accepts the provisions of this section. No governmental unit, however, shall provide different subsidiary or additional rates to any group or class within that unit.

<sup>7</sup> Inasmuch as § 9, para. 4 references "an individual type of policy" and "an individual policy," § 9 does not pertain to this case. An employee's ability to retain their health insurance as well as any contribution, if any, by the employer varies depending on how their employment ended. See *Larson*, 430 Mass. at 721. Section 9 distinguishes between those that retiree (para. 1) and those who terminate service (para. 4). "The public employee who terminates his employment may continue health insurance coverage by converting to an individual health insurance policy and paying the entire monthly premium." *Id.* at 722. Unlike employees who terminate service (para. 4), retirees (para. 1) are not required to convert their health insurance into an individual health insurance policy and pay the entire monthly premium. As is the case here, retirees may continue their health insurance policies, and the employer is obligated to contribute to the monthly premiums under §§ 9A and 9E.

towns to pay for more than half of that amount in accordance with the first sentence of § 9. St. 1968, c. 100, § 2.

From 1956, when the chapter was first added, through 1965, the first sentence of § 9 included language that “the employee shall pay the entire average group premium . . . for the hospital, surgical and medical benefits **for such employee and his dependents**” (emphasis added). Section 9, and by reference § 9A, made it clear that the employees were paying the premium for themselves and their dependents. In 1966, these first paragraphs of § 9 were amended to include reference to the various other sections of c. 32B, such as §§ 9A, 4, and 11C. In addition to those amendments, the phrase “for such employee and his dependents” was removed. The legislative history is devoid of any indication as to why the language “for such employee and his dependents” was removed from § 9 at the time, but the removal does not appear to coincide with an intent to discontinue covering dependents.<sup>8</sup> Aside from slight difference to other language in § 9,, such as a change from “medical benefits” to “medical and other health insurance,” the substance of the statute remained the same. Prior to the 1966 amendment to § 9, § 9A had been in effect for seven years. It is noteworthy that for seven years there was no question that a town that adopted § 9A was responsible for half of the retiree’s policy premium cost that included the retiree’s dependents.

During the legislative process in adopting § 9A, it was at the very least contemplated that a town would pay half of the premium cost that includes a retiree’s dependents. On May 18, 1959, the Committee on Bills in the Third Reading proposed Senate Document Number 635

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<sup>8</sup> It appears that the language “for such employee and his dependents” was redundant of who the retiree was paying the premium for, and potentially removed as superfluous. The removal of that phrase unlikely indicates that the legislative intent was for § 9 to discontinue covering dependents. In this regard, the phrase “for such employee” was also removed. It would be without reason to conclude that the absence of that language would mean § 9 was not intended to cover the retired employee.

("S.635"). The proposal included a new draft of § 9A to be accepted and titled "An Act Providing That Certain Governmental Units Having Contributory Group General Or Blanket Insurance For persons In The Service Thereof **And Their Dependents** Contribute One Half The Premium For Said Insurance For Persons Retired From Service" (emphasis added). The proposed language of § 9A in S.635 contains essentially the same version of § 9A which is in effect today.

Although the appellate courts have not specifically addressed the issue presented here, the cases which have considered §§ 9A and 9E in other contexts are of note. Those cases address §§ 9A and 9E without drawing a distinction between them in relation to what constitutes the retiree's health insurance premium. See *Galenski*, 471 Mass. at 308 ("By adopting G. L. c. 32B, § 9A, a municipality chooses to pay fifty percent of a retiree's insurance premiums; if a municipality adopts G.L. c. 32B, § 9E, the municipality then may elect to pay a subsidiary or additional rate greater than fifty per cent of a retiree's health insurance premium" [internal quotation marks omitted]); *Yeretsky*, 424 Mass. at 323 ("For retirees, the municipality is not required to pay anything toward the premium cost of indemnity plans but most have adopted G.L. c. 32B, § 9A or § 9E, and pay 50% or more"). Interestingly, the Supreme Judicial Court ("SJC") stated in *Larson*, 430 Mass. 719 (2000), that under § 9, a retired employees can continue coverage in their policy with the town "obligated to contribute to monthly premium payments at the same percentage, fifty per cent or more, paid on behalf of the active employees." Again, the SJC made no distinction (i.e., exclusion or inclusion of dependents) between a town's obligations of premium payments, citing §§ 7, 9A, and 9E. There is no dispute that § 7, which applies to

active employees,<sup>9</sup> requires the governmental unit to pay fifty percent of the premium, which includes the employee and his dependents. A town's obligation to contribute to a retiree's monthly premium payments similar to active employees suggests that the premium payments for retirees would also include dependents as they are included in § 7.<sup>10</sup>

An interpretation of the term "premium" as used in §§ 9 and 9A that encompasses a retirees' cost to insure their dependents reflects the legislative intent behind G. L. c. 32B to "provide a plan of group life insurance . . . and other health insurance for certain persons in the service of . . . towns . . . **and their dependents**" (emphasis added). G. L. c. 32B, § 1. Consistent with such legislative intent, the Town is required under §9A to contribute half of the premium cost, including dependents, that the retirees must pay for their health insurance plan.<sup>11</sup> In light of the legislative materials associated with c. 32B, §§ 9 and 9A and the purpose of c. 32B, the Town's argument for the canon of statutory construction, "*expression unius est exclusion alterius*" is unavailing.<sup>12</sup> Interpreting §§ 9 and 9A to include dependents within the overall premium cost of a retiree's health insurance plan creates a more "harmonious whole" with the

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<sup>9</sup> The plaintiff's health insurance coverage as an HMO would fall under G. L. c. 32B, § 16, as an active employee, rather than § 7. Sections 7 and 16 are similar in function apart from the different types (i.e., indemnity versus HMO) of health insurance coverage.

<sup>10</sup> General Laws c. 32B, § 7 provides in relevant part: (a) With respect to any period of insurance which is in effect for an active or retired employee and dependent there shall be withheld from each payment of salary, wages, other compensation, pension or retirement allowance, subject to the provisions of section nine A, fifty per cent of the premium for the insurance of the employee and his dependents and the governmental unit shall contribute the remaining fifty per cent of such premium.

<sup>11</sup> Also of note is the SJC's citation in *Connors, supra*, to 10 G. Couch, Insurance § 144:26 (3d ed. 1998) in discussing the coverage of an insurance plan. The citation defines those generally covered under policies of medical insurance and provides in relevant part: "Policies of medical insurance generally cover the named insured, **and dependents** of the named insured" (emphasis added). *Connors*, 430 Mass. at 38 n.15.


<sup>12</sup> Likewise, the Town's argument that voters who accepted § 9A did so with the understanding that it would only obligate the Town to "pay 50% of the cost of an individual health plan" as described in article two of the warrant is unavailing. The Town members were provided with the ballot language of § 9A and adopted it, the meaning of which has been previously discussed. The Town's choice to describe § 9A in the way it did in the warrant (article two) has no bearing on the actual interpretation of the statute and does not control. See *Galenski*, 471 Mass. at 310 – 311.

other sections, is supported by legislative documents, and is consistent with the purpose of c.

32B. See *Yerestky*, 424 Mass. at 319.

**ORDER**

For the reasons set forth above, the plaintiff's Motion for Summary Judgment is ALLOWED, and the Town's Cross-Motion for Summary Judgment is DENIED.

  
\_\_\_\_\_  
Mark D Mason  
Justice of the Superior Court

DATE: June 18, 2018

**SUMMARY JUDGMENT  
MASS. R. CIV. P. 56**

**Trial Court of Massachusetts  
The Superior Court**



DOCKET NUMBER

1678CV00109

Susan K. Emond, Clerk of Courts

CASE NAME

Susan Boss  
vs.  
Town of Leverett et al

COURT NAME & ADDRESS

Franklin County Superior Court  
43 Hope Street  
Greenfield, MA 01301

JUDGMENT FOR THE FOLLOWING PLAINTIFF(S)

Boss, Susan

JUDGMENT AGAINST THE FOLLOWING DEFENDANT(S)

Town of Leverett

This action came before the Court, Hon. Mark D Mason, presiding, upon Motion for Summary Judgment of the plaintiff named above, pursuant to Mass. R. Civ. P. 56. The parties having been heard, and/or the Court having considered the pleadings and submissions, finds there is no genuine issue as to material fact and that the plaintiff is entitled to a judgment as a matter of law.

It is ORDERED and ADJUDGED:

The plaintiff's Motion for Summary Judgment is ALLOWED, and the Town's Cross-Motion for Summary Judgment is DENIED

DATE JUDGMENT ENTERED

06/19/2018

CLERK OF COURTS/ASST. CLERK

X



Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title I. Jurisdiction and Emblems of the Commonwealth, the General Court, Statutes and Public

Documents (Ch. 1-5)

Chapter 4. Statutes (Refs & Annos)

M.G.L.A. 4 § 4

§ 4. Mode of acceptance of statute by municipality or district

Effective: September 1, 2004

Currentness

Wherever a statute is to take effect upon its acceptance by a municipality or district, or is to be effective in municipalities or districts accepting its provisions, this acceptance shall be, except as otherwise provided in that statute, in a municipality, by vote of the legislative body, subject to the charter of the municipality, or, in a district, by vote of the district at a district meeting.

**Credits**

Amended by St.1962, c. 182; St.1966, c. 253; St.1977, c. 870, § 1; St.2004, c. 122, § 1, eff. Sept. 1, 2004.

Notes of Decisions (6)

M.G.L.A. 4 § 4, MA ST 4 § 4

Current through the 2018 2nd Annual Session

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Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title IV. Civil Service, Retirements and Pensions (Ch. 31-32b)

Chapter 32B. Contributory Group General or Blanket Insurance for Persons in the Service of Counties, Cities, Towns and Districts, and Their Dependents (Refs & Annos)

M.G.L.A. 32B § 1

§ 1. Purpose of chapter

Currentness

The purpose of this chapter is to provide a plan of group life insurance, group accidental death and dismemberment insurance and group general or blanket hospital, surgical, medical, dental and other health insurance for certain persons in the service of counties, except Worcester county, cities, towns and districts and their dependents.

**Credits**

Added by St.1956, c. 730, § 1. Amended by St.1975, c. 806, § 1; St.1982, c. 615, § 3.

M.G.L.A. 32B § 1, MA ST 32B § 1

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Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title IV. Civil Service, Retirements and Pensions (Ch. 31-32b)

Chapter 32B. Contributory Group General or Blanket Insurance for Persons in the Service of Counties, Cities, Towns and Districts, and Their Dependents (Refs & Annos)

M.G.L.A. 32B § 3

§ 3. Purchase of group life, accidental death, etc., insurance policies; reinsurance agreements

Currentness

Upon acceptance of this chapter as hereinafter provided, the appropriate public authority of the governmental unit shall negotiate with and purchase, on such terms as it deems to be in the best interest of the governmental unit and its employees, from one or more insurance companies, savings banks or non-profit hospital, medical, dental or other, service corporations, a policy or policies of group life and accidental death and dismemberment insurance covering employees, and group general or blanket insurance providing hospital, surgical, medical and dental benefits covering employees and their dependents as provided under section eleven and section eleven A if applicable and shall execute all agreements or contracts pertaining to said policies or any amendments thereto for and on behalf and in the name of such governmental unit. Said policy, or policies, including policies purchased under authority of sections three A and sixteen, shall contain a requirement that the insurance company, savings bank, nonprofit hospital, medical, dental or other service corporations, other intermediary or health care organizations, shall furnish the governmental unit, or its designee, all nonconfidential claims without diagnosis on a form satisfactory to the governmental unit including, but not limited to, computer tape, disc or unlined paper reports. Said insurer may, pursuant to a contract between said insurer and said governmental unit, charge the governmental unit a reasonable fee to cover the costs of providing the nonconfidential claims in the form requested by the governmental unit. Prior to the purchase of said insurance, and execution of all such agreements or contracts within the limits established by said sections, the appropriate public authority shall consult with an advisory committee for the purpose of securing the written recommendations of a majority of the membership of said committee. Said committee shall consist of eight members as follows: seven persons to be duly elected or appointed to membership on such committee by organizations of the employees affected, and one person who shall be a retiree of a governmental unit who shall be duly appointed to membership on said committee by the appropriate public authority. If the appropriate public authority finds that the committee's recommendations in whole or in part cannot be included within the aforementioned agreements or contracts, at the written request of any member of said committee within thirty days from the effective date of the agreements or contracts, the appropriate public authority shall submit to said member, in writing, the reasons for the rejection of any or all of the recommendations and a copy shall be filed with the commission. The appropriate public authority may execute said agreements or contracts for a period not exceeding five years; provided, however, that the portion of the cost of the premium per month to be borne by the governmental unit shall not exceed the estimated monthly cost for which funds have been appropriated for the then current fiscal year. If a town or district having accepted the provisions of section ten accepts any other section of this chapter but fails to appropriate the funds necessary to implement said provisions, the selectmen, in the case of a town, or the prudential committee or district commissioner, in the case of a district, shall certify the cost to the town or district, as the case may be, in carrying out the provisions of this chapter to the board of assessors who shall include the amount so certified in the determination of the tax rate of that year. If a city accepts the provisions of this chapter as provided under section ten and as further provided under sections seven A and nine E, the annual budget shall include sums necessary to implement said provisions. Arrangements may be made with the carrier or carriers issuing such policy or policies purchased under this chapter to reinsure, by reinsurance agreement, under conditions approved by the appropriate public authority, portions of the total amount of such insurance with such other carriers as may elect to participate in such insurance.

For the purposes of this chapter, any non-profit hospital service corporation or non-profit medical corporation organized under chapter one hundred and seventy-six A or one hundred and seventy-six B and any dental service corporation organized under chapter one hundred and seventy-six E shall be and is hereby authorized to enter into a reinsurance agreement as herein provided in the same manner as any other insurance company.

**Credits**

Added by St.1956, c. 730, § 1. Amended by St.1957, c. 242; St.1959, c. 170; St.1960, c. 337, § 2; St.1961, c. 236; St.1961, c. 334, § 1; St.1968, c. 100, § 4; St.1971, c. 196; St.1973, c. 843, § 1; St.1974, c. 721; St.1975, c. 183; St.1975, c. 806, §§ 3, 4; St.1979, c. 268, § 7; St.1987, c. 565; St.1990, c. 499, § 9; St.1993, c. 110, § 100; St.1996, c. 366, § 7.

M.G.L.A. 32B § 3, MA ST 32B § 3

Current through the 2018 2nd Annual Session

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Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title IV. Civil Service, Retirements and Pensions (Ch. 31-32b)

Chapter 32B. Contributory Group General or Blanket Insurance for Persons in the Service of Counties, Cities, Towns and Districts, and Their Dependents (Refs & Annos)

M.G.L.A. 32B § 7

§ 7. Premiums; withholding, contribution; direct payment

Currentness

(a) With respect to any period of insurance which is in effect for an active or retired employee and dependent there shall be withheld from each payment of salary, wages, other compensation, pension or retirement allowance, subject to the provisions of section nine A, fifty per cent of the premium for the insurance of the employee and his dependents and the governmental unit shall contribute the remaining fifty per cent of such premium. The governmental unit shall also contribute fifty per cent of any additional premium which may be required for coverage of an employee's dependent child who is nineteen years of age or over and mentally or physically incapable of earning his own living.

(b) If an employee is entitled to receive, during a calendar month, salary, wages or other compensation, and the premium has not been withheld from said salary, wages or other compensation, he may continue his insurance in effect by paying directly to the governmental unit the premium which would otherwise have been deducted from his salary or wages and said governmental unit shall contribute the remaining fifty per cent of the cost of the premium. If an employee is not entitled to receive salary, wages or other compensation for a calendar month, for purposes of this chapter, he shall be deemed to have been granted a leave of absence without pay, and shall make payment for the entire cost of his insurance to the governmental unit as aforesaid, and there shall be no contribution by the governmental unit for such employee's insurance. If an employee is not entitled to receive salary, wages or other compensation for any calendar month, due to illness of such employee and not because of illness of his immediate family, for purposes of this chapter he shall be deemed to have been granted sick leave without pay, and subject to the rules and regulations of the appropriate public authority, said employee shall make payment for fifty per cent of the cost of his insurance to the treasurer of the governmental unit, and such governmental unit shall contribute the remaining fifty per cent of said premium.

(c) All amounts withheld from an employee's salary, wages or other compensation as provided in paragraph (a) of this section and all amounts paid by an employee as provided in paragraph (b) of this section and all amounts withheld from retired employees as retirement allowances under the provisions of section nineteen A of chapter thirty-two together with the contribution of the governmental unit as provided in paragraph (a) shall be paid by the treasurer of the governmental unit to the carrier or carriers entitled to the premium.

**Credits**

Added by St.1956, c. 730, § 1. Amended by St.1960, c. 214, § 2; St.1965, c. 841, § 4.

M.G.L.A. 32B § 7, MA ST 32B § 7

Current through the 2018 2nd Annual Session

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title IV. Civil Service, Retirements and Pensions (Ch. 31-32b)

Chapter 32B. Contributory Group General or Blanket Insurance for Persons in the Service of Counties, Cities, Towns and Districts, and Their Dependents (Refs & Annos)

M.G.L.A. 32B § 7A

§ 7A. Contribution and withholding for premiums; subsidiary or  
additional rate; payments in lieu of withholding; acceptance of section

Currentness

A governmental unit which has accepted the provisions of section ten and which accepts the provisions of this section may, as a part of the total monthly cost of contracts of insurance authorized by sections three and eleven C, with contributions as required by section seven, make payment of a subsidiary or additional rate which may be lower or higher than a premium determined by the governmental unit to be paid by the insured, the combination of which shall result in the governmental unit making payment of more, but not less, than fifty per cent of the total monthly cost for such insurance. No governmental unit, however, shall provide different subsidiary or additional rates to any group or class within that unit.

(a) With respect to any period of insurance which is in effect for an active or retired employee and dependent, there shall be withheld from each payment of salary, wages, other compensation, pension or retirement allowance, subject to the provisions of section nine E, fifty per cent of a premium for the insurance of the employee and his dependents and the governmental unit shall contribute the remaining fifty per cent of such premium together with any subsidiary or additional rate. The governmental unit shall also contribute fifty per cent of a premium together with any subsidiary or additional rate which may be required of an employee's dependent child who is nineteen years of age or over and mentally or physically incapable of earning his own living.

(b) If an active or retired employee is entitled to receive, during a calendar month, salary, wages, other compensation, pension or retirement allowance, and the premium has not been withheld from said salary, wages, other compensation, pension or retirement allowance, he may continue his insurance in effect by paying directly to the governmental unit the premium which would otherwise have been deducted from his salary or pension and said governmental unit shall contribute the remaining fifty per cent of the premium together with any subsidiary or additional rate. If an employee is not entitled to receive salary, wages or other compensation for a calendar month, for purposes of this chapter, he shall be deemed to have been granted a leave of absence without pay, and he shall make payment for the entire cost of his insurance to the governmental unit as aforesaid, and there shall be no contribution by the governmental unit for such employee's insurance. If an employee is not entitled to receive salary, wages or other compensation for any calendar month, due to illness of such employee and not because of illness of his immediate family, for purposes of this section he shall be deemed to have been granted sick leave without pay, and subject to the rules and regulations of the appropriate public authority, said employee shall make payment of fifty per cent of the premium for his insurance to the treasurer of the governmental unit, and such governmental unit shall contribute the remaining fifty per cent of such premium together with any subsidiary or additional rate.

(c) All amounts withheld from an employee's salary, wages or other compensation as provided in paragraph (a) of this section and all amounts paid by an employee as provided in paragraph (b) of this section and all amounts withheld from retired employees as retirement allowances under the provisions of section nineteen A of chapter thirty-two together with the contribution of the governmental unit as provided in paragraph (a) shall be paid by the treasurer of the governmental unit to the carrier or carriers entitled to the total premium and subsidiary or additional rate, if any.

(d) This section shall take effect in a county, except Worcester county, city, town or district upon its acceptance in the following manner:--In a county by vote of the county commissioners; in a city having a Plan D or Plan E charter by majority vote of its city council; in any other city by vote of its city council, approved by the mayor; in a district, except as hereinafter provided, by vote of the registered voters of the district at a district meeting; in a regional school district by vote of the regional district school committee; in a veterans' services district by vote of the district board; in a welfare district by vote of the district welfare committee; in a health district established under section twenty-seven A of chapter one hundred and eleven by vote of the joint committee; and in a town either by vote of the town or by a majority of affirmative votes cast in answer to the following question which shall be printed upon the official ballot to be used at an election in said town:--"Shall the town, in addition to the payment of fifty per cent of a premium for contributory group life and health insurance for employees in the service of the town and their dependents, pay a subsidiary or additional rate?" Section seven shall not apply in any governmental unit which accepts the provisions of this section.

#### Credits

Added by St.1968, c. 100, § 1. Amended by St.1972, c. 641, § 1; St.1973, c. 789, § 1; St.1982, c. 615, § 8.

Notes of Decisions (21)

M.G.L.A. 32B § 7A, MA ST 32B § 7A

Current through the 2018 2nd Annual Session

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title IV. Civil Service, Retirements and Pensions (Ch. 31-32b)

Chapter 32B. Contributory Group General or Blanket Insurance for Persons in the Service of Counties, Cities, Towns and Districts, and Their Dependents (Refs & Annos)

M.G.L.A. 32B § 9

§ 9. Policy provisions

Currentness

The policy or policies of insurance shall provide that upon retirement of an employee, the policy or policies providing at least two thousand dollars of group life insurance and at least two thousand dollars of group accidental death and dismemberment insurance as set forth in section five, except the optional coverage referred to therein, shall be reduced to one thousand dollars of group life insurance, unless the governmental unit has accepted section nine F, and the retired employee shall make payment of the full premium cost, subject to the provisions of section nine A or nine E, whichever may be applicable, of the average group premium as determined by the appropriate public authority for such insurance; and the group general or blanket insurance providing hospital, surgical, medical, dental and other health insurance, as provided under sections four, eleven C, and sixteen as may be applicable, shall be continued and the retired employee shall pay the full premium cost, subject to the provisions of section nine A or section nine E whichever may be applicable of the average group premium as determined by the appropriate public authority for such hospital, surgical, medical, dental and other health insurance.

The policy or policies may provide for group life insurance not to exceed one thousand dollars on the lives of retired employees who, up to the effective date of such policy or policies, were insured under a group life policy purchased pursuant to the provisions of clause (44) of section five of chapter forty.

Prior to retirement, an insured employee who terminates his services with the governmental unit and who has a right to retire but whose retirement is deferred under any applicable law shall for the purpose of this chapter only be deemed to have been granted a leave of absence without pay and may continue all insurance coverages to which he would have been entitled if he had not terminated his services; provided he files an application therefor with the treasurer of the governmental unit and makes payment for the full premium cost of his insurance with no contribution by the governmental unit notwithstanding the provisions of sections nine A or nine E.

The policy or policies shall also provide that upon termination of employment an employee shall be entitled to convert his insurance to an individual type of policy, subject to the provisions of section one hundred and thirty-four of chapter one hundred and seventy-five with respect to life insurance, and subject to the requirements of the appropriate public authority with respect to health insurance coverages provided in this chapter which shall not be less than the minimum hospital, medical, surgical, dental and other health benefits provided in an individual policy regularly issued by the insurance carrier at the time of conversion, except that with respect to the services of a health care organization, the contract made under section sixteen may provide for extension or continuation of coverage in lieu of the right to convert. No employee will be permitted to convert his insurance or extend or continue coverage for services of a health care organization on separation from service more than one time, if such converted or extended insurance would result in a greater amount of insurance than is provided in sections three, five, eleven C or twelve, as the case may be.



**Credits**

Added by St.1956, c. 730, § 1. Amended by St.1961, c. 100; St.1961, c. 334, § 4; St.1965, c. 841, § 5; St.1968, c. 100, § 3; St.1971, c. 946, § 6; St.1972, c. 763, § 1; St.1975, c. 806, §§ 8, 9; St.1986, c. 705, § 3.

M.G.L.A. 32B § 9, MA ST 32B § 9

Current through the 2018 2nd Annual Session

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Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title IV. Civil Service, Retirements and Pensions (Ch. 31-32b)

Chapter 32B. Contributory Group General or Blanket Insurance for Persons in the Service of Counties, Cities, Towns and Districts, and Their Dependents (Refs & Annos)

M.G.L.A. 32B § 9A

§ 9A. Political subdivision; contribution for insurance premiums of retired employees

Effective: July 31, 2003

Currentness

A county, except Worcester county, by vote of the county commissioners, a city having a Plan D or a Plan E charter by majority vote of its city council, any other city by vote of its city council, approved by the mayor, a regional school district by vote of the regional district school committee and a district by vote of the district at a district meeting, may provide that it will pay one-half of the amount of the premium to be paid by a retired employee under the first sentence of section 9. A town shall provide for the payment by vote of the town at a town meeting or if a majority of the votes cast in answer to the following question which shall be printed on the official ballot to be used at an election in said town is in the affirmative:-- "Shall the town pay one-half the premium costs payable by a retired employee for group life insurance and for group general or blanket hospital, surgical, medical, dental and other health insurance?"

**Credits**

Added by St.1959, c. 595. Amended by St.1973, c. 789, § 2; St.1975, c. 806, § 10; St.1982, c. 615, § 10; St.2003, c. 46, § 13, eff. July 31, 2003.

M.G.L.A. 32B § 9A, MA ST 32B § 9A

Current through the 2018 2nd Annual Session

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Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title IV. Civil Service, Retirements and Pensions (Ch. 31-32b)

Chapter 32B. Contributory Group General or Blanket Insurance for Persons in the Service of Counties, Cities, Towns and Districts, and Their Dependents (Refs & Annos)

M.G.L.A. 32B § 9E

§ 9E. Subsidiary or additional rate; payment by political subdivisions;  
premium payment by retired employee; acceptance of section

Currentness

A county, except Worcester county, by vote of the county commissioners; a city having a Plan D or Plan E charter by majority vote of its city council; in any other city by vote of its city council, approved by the mayor; a district, except as hereinafter provided, by vote of the registered voters of the district at a district meeting; a regional school district by vote of the regional district school committee; a veterans' services district by vote of the district board; a welfare district by vote of the district welfare committee; a health district established under section twenty-seven A of chapter one hundred and eleven by vote of the joint committee may provide that it will pay in addition to fifty per cent of a stated monthly premium as described in section seven A for contracts of insurance authorized by sections three and eleven C, a subsidiary or additional rate which may be lower or higher than the aforesaid premium and the remaining fifty per cent of said premium is to be paid by a retired employee under the provisions of the first sentence of section nine. A town shall provide for such payment by vote of the town or if a majority of the votes cast in answer to the following question which shall be printed on the official ballot to be used at an election in said town is in the affirmative:--"Shall the town, in addition to the payment of fifty per cent of a premium for contributory group life, hospital, surgical, medical, dental and other health insurance for employees retired from the service of the town, and their dependents, pay a subsidiary or additional rate?" Section nine A shall not apply in any governmental unit which accepts the provisions of this section. No governmental unit, however, shall provide different subsidiary or additional rates to any group or class within that unit.

Credits

Added by St.1968, c. 100, § 2. Amended by St.1972, c. 641, § 2; St.1973, c. 789, § 4; St.1975, c. 806, § 16; St.1982, c. 615, § 14.

M.G.L.A. 32B § 9E, MA ST 32B § 9E

Current through the 2018 2nd Annual Session

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title IV. Civil Service, Retirements and Pensions (Ch. 31-32b)

Chapter 32B. Contributory Group General or Blanket Insurance for Persons in the Service of Counties, Cities, Towns and Districts, and Their Dependents (Refs & Annos)

M.G.L.A. 32B § 16

§ 16. Optional insurance for services of health care organizations

Currentness

Upon acceptance of this section as hereinafter provided, the appropriate public authority of the governmental unit shall enter into a contract, hereinafter described, to make available the services of a health care organization to certain eligible and retired employees and dependents, including the surviving spouse and dependents of such active and retired employees, on a voluntary and optional basis, as it deems to be in the best interest of the governmental unit and such eligible persons as aforesaid, provided:--

(1) that the total monthly premium cost to be paid by the governmental unit is to be paid under the terms of a contract to a carrier and not paid directly to a health care organization. For purposes of this chapter such a contract shall be deemed to be a contract of insurance;

(2) that the health care organization maintains fair and non-discriminatory formulas for the payment of all vendor's services and that such formulas result in the same relative charges to all fiscal intermediaries or carriers with whom the health care organization has an agreement; provided, however, that any difference in relative charges which may result from the application of a rate of payment approved under section five of chapter one hundred and seventy-six A shall be deemed to comply herewith.

The appropriate public authority shall negotiate such a contract of insurance for and on behalf and in the name of the governmental unit for such a period of time not exceeding five years as it may in its discretion, deem to be the most advantageous to the governmental unit and the persons insured hereunder.

All persons eligible for the insurance provided under section five shall have the option to be insured for the services of a health care organization under this section but shall not be insured for both. Eligible persons, having elected coverage under this section by making application as provided in section six, shall pay a minimum of ten percent of the total monthly premium cost or rate for coverage under this section, and the governmental unit shall pay the remainder of the total monthly premium cost or rate; provided, however, that nothing in this chapter shall preclude the parties to a collective bargaining agreement under chapter one hundred and fifty E from agreeing that such eligible persons shall pay a percent share of such total monthly premium cost or rate which is higher than said ten percent; provided, further, that such eligible persons shall in no event be required to pay more than fifty percent of such total monthly premium cost or rate. Such payment by the insured shall be made to the governmental unit as provided in sections seven, seven A, nine A, nine B, nine C, nine D and nine E, as may be applicable.

The governmental unit shall require under the terms and provisions of such insurance contracts an accounting at least annually of the payments made to providers of services on behalf of each person so insured; and, the extent and range of health care services shall be a matter of continuing analysis and study by the governmental unit for the purpose of

maintaining a reasonable relationship between the total monthly premium cost or rate and the schedule of health care services provided.

Any dividend or its equivalent derived from insurance contracts issued pursuant to this section shall be applied as provided in sections eight or eight A whichever may be applicable.

The appropriate public authority may adopt such rules and regulations as may be necessary for the administration of this section.

This section shall take effect in a county, except Worcester county, city, town or district upon its acceptance in the following manner:--in a county, except Worcester county, by vote of the county commissioners; in a city having a Plan D or Plan E charter by majority vote of its city council, in any other city by vote of its city council approved by the mayor; in a town by vote of the board of selectmen; in a regional school district by vote of the regional district school committee and in all other districts by vote of the registered voters of the district at a district meeting.

#### **Credits**

Added by St.1971, c. 946, § 5. Amended by St.1973, c. 789, § 10; St.1973, c. 843, §§ 8 to 10; St.1976, c. 454, § 2; St.1979, c. 268, § 10; St.1982, c. 615, § 27; St.1989, c. 653, § 37; St.1996, c. 366, § 10.

M.G.L.A. 32B § 16, MA ST 32B § 16

Current through the 2018 2nd Annual Session

Massachusetts General Laws Annotated  
Part I. Administration of the Government (Ch. 1-182)  
Title VII. Cities, Towns and Districts (Ch. 39-49a)  
Chapter 39. Municipal Government (Refs & Annos)

M.G.L.A. 39 § 10

§ 10. Warrant; issuance; contents

Currentness

Every town meeting or town election, except as hereinafter provided, shall be called in pursuance of a warrant, under the hands of the selectmen, notice of which shall be given at least seven days before the annual meeting or an annual or special election and at least fourteen days before any special town meeting. The warrant shall be directed to the constables or to some other persons, who shall forthwith give notice of such meeting in the manner prescribed by the by-laws, or, if there are no by-laws, by a vote of the town, or in a manner approved by the attorney general. The warrant for all town meetings shall state the time and place of holding the meeting and the subjects to be acted upon thereat. The town meeting may be held in one or more places; provided, that if it is held in more than one place, the places are connected by means of a public address system and loud speakers so that the proceedings in all such places may be heard and participated in by all the voters present therein. Whenever the moderator determines that voters are being excluded from the town meeting because there is no room for them in the places provided or that voters in attendance are being deprived of the opportunity to participate therein for any reason whatsoever, he shall either, on his own motion recess the meeting for any period during the day of the meeting or, after consultation with the members of the board of selectmen then present, adjourn the same to another date, not later than fourteen days following the date of said meeting, when places and facilities sufficient to accommodate all voters attending and to enable them to participate therein shall be available. The selectmen shall insert in the warrant for the annual meeting all subjects the insertion of which shall be requested of them in writing by ten or more registered voters of the town and in the warrant for every special town meeting all subjects the insertion of which shall be requested of them in writing by one hundred registered voters or by ten per cent of the total number of registered voters of the town whichever number is the lesser. The selectmen shall call a special town meeting upon request in writing, of two hundred registered voters or of twenty per cent of the total number of registered voters of the town, whichever number is the lesser; such meeting to be held not later than forty-five days after the receipt of such request, and shall insert in the warrant therefor all subjects the insertion of which shall be requested by said petition. No action shall be valid unless the subject matter thereof is contained in the warrant. Two or more distinct town meetings for distinct purposes may be called by the same warrant.

The written requests of registered voters for the insertion of subjects in town meeting warrants shall not be valid unless the required number of registered voters not only sign their names but also state their residence, with street and number, if any. The selectmen shall submit such written requests to the board of registrars of voters or the board of election commissioners who shall check and forthwith certify the number of signatures so checked which are names of voters in the town, and only names so checked and certified shall be counted. A greater number of names than are required in each case need not be certified.

**Credits**

Amended by St.1935, c. 403, § 1; St.1939, c. 182; St.1949, c. 152, § 1; St.1954, c. 32; St.1959, c. 64, § 1; St.1963, c. 169; St.1964, c. 1, § 1; St.1974, c. 28; St.1976, c. 272, § 1; St.1981, c. 34; St.1981, c. 386, § 1; St.1990, c. 526, § 4.

Notes of Decisions (87)

M.G.L.A. 39 § 10, MA ST 39 § 10

Current through the 2018 2nd Annual Session

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**CERTIFICATE OF COMPLIANCE**

**Pursuant to Rule 16(k) of the  
Massachusetts Rules of Appellate Procedure**

I, Erin J. Meehan, hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of reply briefs, including, but not limited to:

Mass. R. A. P. 16 (a)(13) (addendum);  
Mass. R. A. P. 16 (e) (references to the record);  
Mass. R. A. P. 18 (appendix to the briefs);  
Mass. R. A. P. 20 (form and length of briefs,  
appendices, and other documents); and  
Mass. R. A. P. 21 (redaction).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the monospaced font Courier New at size 12 point, contains ten (10) characters per inch, and contains 26, total non-excluded pages.

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**CERTIFICATE OF SERVICE**

Pursuant to Mass. R. A. P. 13(d), I hereby certify, under the penalties of perjury, that on July 31, 2019, I have made service of this Brief and Appendix upon the attorney of record for each party, or if the party has no attorney then I made service directly to the self-represented party, by the Electronic Filing System on:

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