



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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SUZANNE M. BUMP, ESQ.
AUDITOR

July 25, 2011

Mr. Douglas Briggs, Town Administrator
Town of Ashburnham
Town Hall
32 Main Street
Ashburnham, Massachusetts 01430

RE: Apportionment of the Cost of Health Insurance for Certain Retirees, M.G.L. c. 32B, § 9A½

Dear Mr. Briggs:

At the request of Senator Stephen M. Brewer, the State Auditor's Division of Local Mandates (DLM) has reviewed the issue that you raised regarding the Local Mandate Law, M.G.L. c. 29, § 27C, and the above-referenced law. Section 9A½ was added to M. G. L. c. 32B as part of a series of amendments to state pension law contained in the fiscal 2011 state budget. See St. 2010, c. 131, § 29. In relevant part, the new section provides for health insurance cost sharing apportionment among communities in certain situations in which a retiree had worked for more than one local governmental unit during their years in public service. (The term "local governmental unit" includes cities, towns, districts, and counties.) Because the Town of Ashburnham does not presently contribute to the cost of health insurance for its retirees, you express concern that Section 9A½ may potentially impose costs upon the Town contrary to the provisions of the Local Mandate Law. We note that there are as yet no guidelines for interpretation and implementation of this new provision, and that DLM is not authorized to offer a binding interpretation. Nonetheless, for the limited purpose of determining whether the Local Mandate Law applies, it is our opinion that Section 9A½ will have no cost impact upon the Town of Ashburnham. Accordingly, there is no cause for further review of mandate issues at this time. A brief explanation of our review of the question of cost implications follows.

Statutory Context: As you know, M.G.L. c. 32B is a local option law that governs the provision of group life and health insurance benefits for active and retired county, district, and municipal employees. In relation to retirees, an initial vote to accept M.G.L. c. 32B creates an obligation to provide the retiree with access to the municipal group life and health insurance plans, with the retiree paying the full average premium cost. Any community that wishes to pay one half or more of the cost of the premiums for its retired employees must undertake an additional vote to accept M.G.L. c. 32B, § 9A or § 9E. The Town of Ashburnham has voted to accept the general obligations of M.G.L. c. 32B, but did not undertake the additional vote to assume a portion of the cost of health insurance premiums for retirees. Now with the amendment adding Section 9A½ to M.G.L. c. 32B, you question whether the Town of Ashburnham must contribute proportionally to the cost of health insurance for public retirees who worked for the Town at some point in their careers.

M. G. L. c. 32B, § 9A½: The relevant language of Section 9A½ provides -

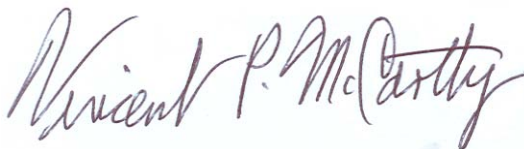
Whenever a retired employee or beneficiary receives a healthcare premium contribution from a governmental unit in a case where a portion of the retiree's creditable service is attributable to service in 1 or more governmental units, the first governmental unit shall be reimbursed in full, in accordance with this paragraph, by the other governmental units for the portion of the premium contributions that corresponds to the percentage of the retiree's creditable service that is attributable to each governmental unit. The other governmental units shall be charged based on their own contribution rate or the contribution rate of the first employer, whichever is lower.

For the Town of Ashburnham, there are two potential scenarios under Section 9A½. Under the first, an employee might retire from another community that contributes one half or more of the cost of health insurance for its retirees. Under Section 9A½, that community would be "the first governmental unit." At some prior point in their career, the individual had worked for the Town of Ashburnham. In this scenario, Ashburnham would be "the other governmental unit." Section 9A½ states: "The other governmental units shall be charged based upon their own contribution rate or the contribution rate of the first employer [governmental unit], whichever is lower." In this instance, since Ashburnham's contribution rate for retiree health insurance is zero, zero would be the lower of the rates. As such, it is our view under this first scenario that Ashburnham would not be obliged to contribute to the retiree's health insurance premium.

Under the second scenario, an employee might retire from the Town of Ashburnham, after working for other towns during the course of their public service. Again, it would appear that there would be no new financial obligation imposed upon the Town of Ashburnham, because Section 9A½ applies "[w]henever a retired employee or beneficiary receives a healthcare premium contribution from a governmental unit . . ." Since Ashburnham has not voted to accept M.G.L. c. 32B, § 9A or § 9E, it is our view that this scenario would not invoke the retiree health insurance cost sharing provisions of Section 9A½.

Conclusion: It is the view of DLM that M.G.L. c. 32B, § 9A½ does not impose costs upon the Town of Ashburnham contrary to the provisions of M.G.L. c. 29, § 27C. However, we encourage you to inform us should factors change in the administration of the new law. Please feel free to contact me or DLM Legal Counsel, Emily Cousens, with questions or comments you may have on this or other matters of concern.

Sincerely,



Vincent P. McCarthy, Esq., Director
Division of Local Mandates

cc: The Honorable Stephen M. Brewer