



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

ONE WINTER STREET, 9th FLOOR
BOSTON, MASSACHUSETTS 02108

TEL (617) 727-0980
TEL (800) 462-COST
FAX (617) 727-0984

SUZANNE M. BUMP, ESQ.
AUDITOR

February 13, 2013

Robin Leal Craver, Town Administrator
Town of Charlton
37 Main Street
Charlton, Massachusetts 01507

**Re: Fees for Certificates of Inspection of Boilers and Pressure Vessels
St. 2011, c. 68, § 104**

Dear Ms. Craver:

This letter is in response to your request relative to the Local Mandate Law, on behalf of the Town of Charlton (the Town) and the newly instituted fees to be charged by the Department of Public Safety (DPS) for issuing certificates of inspection of boilers and pressure vessels. Section 104 of Chapter 68 of the Acts of 2011 added the following new Section 90 to Chapter 146 of the General Laws:

The owner or user of a boiler or air tank or other receptacle inspected by an inspector shall pay a fee to be determined annually by the secretary of administration and finance pursuant to section 3B of chapter 7 for the issuance of a certificate of inspection by the department.

This change in law took effect on July 1, 2011, and you note that, before this change, "inspectors signed off on the inspections at no additional cost" to the community. At the present rate of \$50.00 per certificate, you report that the total annual cost to obtain certificates for the Town's boilers and pressure vessels is \$550.00. Specifically, you ask whether this amendment imposes an unfunded state mandate under the Local Mandate Law, M.G.L. c. 29, § 27C. For the reasons explained below, the Division of Local Mandates (DLM) has reached the opinion that the Local Mandate Law does not apply.

As you know, the Local Mandate Law was adopted as part of Proposition 2½ to protect municipalities from certain state-imposed costs. In relevant part, the Local Mandate Law provides that post-1980 laws and regulations that impose additional costs upon cities and towns must either be fully funded by the Commonwealth, or subject to local acceptance. The law allows municipalities to petition

DLM for a determination of the amount of new costs imposed, and to petition the Superior Court for an exemption from complying with the new mandate until the Commonwealth assumes the cost. However, the Local Mandate Law does not shield cities and towns from every type of state requirement resulting in additional local spending. The Massachusetts Supreme Judicial Court has ruled that Chapter 29, section 27C applies only to state laws and regulations adopted after 1980 that impose cost obligations particularly upon *cities and towns*; it does not apply to generally applicable state requirements that govern public and private sector activities alike. See *Town of Norfolk vs. Department of Environmental Quality Engineering*, 407 Mass. 233 (1990) and *City of Cambridge vs. Attorney General*, 410 Mass. 165 (1991).

The law establishing the new fee is not specifically directed at cities and towns; rather, it applies across the board to all owners and operators of boilers and pressure vessels -- “The owner or user of a boiler or air tank or other receptacle inspected by an inspector shall pay a fee to be determined annually . . . for the issuance of a certificate of inspection by [DPS].” St. 2012, c. 68, § 104. DPS reports that there are an estimated 46,000 boilers and pressure vessels subject to the certificate fee, and that municipalities own a fraction of these. Impacted private sector owners and operators include gas stations with convenience stores, coin-operated laundries and dry cleaners, hydroelectric power generators, natural gas distributors, suppliers of water and irrigation systems, sewage treatment facilities, and steam and air-conditioning suppliers, among others.

Because statutory change imposing the certificate of inspection fees for boilers and pressure vessels is a generally applicable law, DLM concludes that the Local Mandate Law does not apply. Please note, however, that this conclusion is subject to revision in the event you offer factors that we may not have considered that would change this result.

Additionally, this opinion does not prejudice the right of any city or town to seek independent review of the matter in Superior Court in accordance with Section 27C(e) of Chapter 29. I regret that this opinion does not aid your efforts to control local spending. Nonetheless, DLM must apply the Local Mandate Law consistently to each issue, as interpreted by the courts. We thank you for bringing this matter to our attention, and encourage you to contact DLM with further concerns on this or other matters impacting your budget.

Sincerely,

A handwritten signature in black ink, appearing to read "Vincent P. McCarthy". The signature is fluid and cursive, written in a professional style.

Vincent P. McCarthy, Director
Division of Local Mandates

cc: John Patrick Rogers, Chief of Inspections – Mechanical, DPS