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# The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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April 9, 2015

Mr. David Cressman  
Town Administrator  
Town of Dartmouth  
400 Slocum Road  
Dartmouth, Massachusetts 02747

**RE: M.G.L. c. 140, §§ 129B and 131, Relative to Firearms Licensing in the Commonwealth**

Dear Mr. Cressman:

Few issues generate more intense passion and concern than the regulation of firearms, in the Commonwealth and across the nation. Those who argue that they have a constitutional right to bear arms often clash with those who are deeply concerned about the tragic consequences that result when persons intent on causing harm to others possess guns, especially high caliber and automatic weapons. Finding the balance between the constitutional right to bear arms and the public safety concerns about gun violence in our society is a difficult challenge.

Consistent with national trends, the Commonwealth's citizens continue to purchase firearms and renew their firearms licenses at an ever-increasing pace. For example, Massachusetts municipal police departments issued or renewed 52,834 licenses in our state in 2006.<sup>1</sup> According to final 2013 data, the total statewide number of firearms newly licensed or renewed jumped to 112,373, an average increase of 16% annually since 2006.<sup>2</sup> As of September 2014, with a population of approximately 6.7 million residents, there are 347,265 firearms

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<sup>1</sup> Data obtained from the Executive Office of Public Safety and Security, Department of Criminal Justice Information Services (CJIS).

<sup>2</sup> *Id.*

licensed in Massachusetts.<sup>3</sup> The Town of Dartmouth has seen similar rates of growth in new and renewed firearms license applications over the same time period.<sup>4</sup>

This letter is in response to your request on behalf of the Town of Dartmouth to the State Auditor's Division of Local Mandates (DLM). You informed us that recent requests to comply with the time limits to process Firearms Identification Card (FID) applications<sup>5</sup> and License to Carry applications<sup>6</sup> has required the Dartmouth Police Department to assign one full-time police officer to process the applications, but that the fee that municipalities are allowed to retain (\$25 out of the \$100 application fee) does not cover the cost of the assigned police officer's salary. The FID and License to Carry Statutes require local police departments to forward a copy of the application and applicant's fingerprints to the State Police within seven days of the application's receipt and to make a determination whether to approve or deny an application within 40 days from the date the application was submitted to the local police department.<sup>7</sup> Given the Dartmouth Police Department's stated intent, conveyed to the DLM, to issue new or renewed firearms licenses only after a thorough review of each license applicant's background information and a personal interview, DLM understands the adverse fiscal impact that the growing number of applications are imposing on Police Department staff. In that context, State Auditor Suzanne Bump asked that I respond to your request that we determine the fiscal impact of the FID and License to Carry Statutes under the provisions of the Local Mandate Law, M.G.L. c. 29, § 27C.

While we are sensitive to the fiscal concerns that you raised in your petition, DLM concludes that the Local Mandate Law does not provide the remedy that you seek in this case. As explained in the following discussion, this is because there is long-established state law, M.G.L. c. 140, §§ 121-131, which mandates that municipal police departments process applications for new or renewal firearms licenses, and determine, with the assistance of the Massachusetts State

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<sup>3</sup> *Id.*

<sup>4</sup> According to Dartmouth Police Department data, the Department issued 484 new or renewed firearms licenses in 2006, and 1,031 in 2013, an annual average increase of 16% over the time period. In 2014, with a population of 34,448, there were 2,883 licensed firearms in the Town of Dartmouth.

<sup>5</sup> M.G.L. c. 140, § 129B. A FID card permits the license holder to purchase, possess, and carry non-large capacity rifles, shotguns, and ammunition.

<sup>6</sup> M.G.L. c. 140, § 131. At the time of this request, License to Carry was divided into two classes: Class A and B. A Class A license permitted the license holder to purchase, possess, and carry all ammunition, handguns, rifles, shotguns, and feeding devices, both large and non-large capacity. A Class B license permitted the license holder to purchase, possess, and carry all ammunition, non-large capacity handguns, and all rifles and shotguns, both large and non-large capacity. A large capacity firearm is a semi-automatic handgun or rifle that is capable of accepting more than 10 rounds of ammunition, or a shotgun capable of accepting more than five shotgun shells, or an assault weapon.

<sup>7</sup> M.G.L. c. 140, § 129B(2)-(3); M.G.L. c. 140, § 131(e). The requirement to forward a copy of the application and applicant's fingerprints within 7 days of the application's receipt to the State Police was added by St. 1986, c. 481, § 2 for License to Carry and by St. 1998, c. 180, § 29 for FID cards. The statutory time frame in which to make a determination on whether to approve or deny an application was increased from 30 to 40 days in 1998 by St. 1998, c. 180, § 41, for License to Carry, and St. 1998, c. 358, § 4, for FID cards.

Police and other state and national data sources, whether applicants are qualified to own such weapons. Even though certain deadlines that local police departments must meet in the license approval or denial process have been amended over the years, as have the license fees and other provisions of this law, the local police duty concerning firearms registration in their communities has been in effect for decades prior to the January 1, 1981 effective date of the Local Mandate Law. Only new laws and regulations effective on or after January 1, 1981 that impose more than incidental costs on cities and towns invoke the anti-mandate provisions of the Local Mandate Law. In addition, our research shows that there is no evidence that the amount of these statutorily allowed, locally-retained fees, which have been gradually increased over the years from \$2.00 to their current level of \$25.00, is insufficient in covering the local administrative costs resulting from both the increase in those seeking firearms licenses or renewals, and the several deadline changes made to application approval or denial procedures.

This is the second mandate request involving the FID licensing requirements that the Office of the State Auditor has received. The first was a petition by Representative Paul Caron regarding the cost impact of the Gun Control Act of 1998, St. 1998, c. 180 and c. 358, on cities and towns.<sup>8</sup> Prior to the 1998 amendments to the FID statute, an FID card under Section 129B had been valid until it was revoked or suspended by the local police department. Chapter 180 of the Acts of 1998, however, mandated that an FID card had to be renewed every four years. DLM conducted a cost analysis survey of 30 municipal police departments, estimated new statewide costs at nearly \$11 million, and consequently recommended that the Legislature either allow cities and towns to retain the entire \$25 fee as compensation for the new FID card renewal requirement, or increase the fee so that localities could keep a greater portion of these proceeds. The Legislature agreed with DLM's findings and recommendations and, in 2003, increased the FID card fee to \$100, with municipalities retaining \$25, \$50 deposited in the Commonwealth's General Fund, and \$25 going to the state Firearms ID Verification Trust Fund. *See* St. 2003, c. 26, § 428. In addition, Chapter 150 of the Acts of 2004 increased the timeframe that FID cards had to be renewed, from every four years to every six years, in line with the license renewal requirement for Section 131 licenses.

### **Application of the Local Mandate Law to the Firearms Registration Provisions of M.G.L. c. 140, §§ 121-131**

In general terms, the Local Mandate Law provides that any post-1980 state law, rule, or regulation that imposes additional costs upon any city or town must either be fully funded by the Commonwealth or subject to local acceptance. Pursuant to the Local Mandate Law, any community aggrieved by an unfunded state mandate may petition the Superior Court for an exemption from complying with the mandate until the Commonwealth provides sufficient funding. Prior to taking this step, a city or town may request an opinion from DLM as to whether the Local Mandate Law applies in a given case, and, if so, the compliance cost of any unfunded mandate. Pursuant to the Local Mandate Law, DLM's cost determination is *prima facie* evidence of the amount of funding necessary to sustain the local mandate. *See* M.G.L. c. 29, § 27C(e). Alternatively, a community may seek legislative relief.

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<sup>8</sup> Estimated FY 2000 Cost Impact of the Gun Control Act of 1998 on Massachusetts Cities and Towns (Office of the State Auditor Aug. 12, 1999).

To determine whether the anticipated local cost impact of a state law, rule, or regulation is subject to the Local Mandate Law, we apply the framework for analysis developed by the Supreme Judicial Court in *City of Worcester v. the Governor*, 416 Mass. 751 (1994). Of particular relevance to your petition, the challenged law must take effect on or after January 1, 1981, the challenged law must be a new law, and the challenged law must result in a direct service or cost obligation that is imposed by the Commonwealth, not merely an incidental local administration expense. *Id.* at 754-755.

Applying this analysis to the issues that you raised, we have determined that the changes to the FID and License to Carry Statutes that you asked us to consider do not implicate the provisions of the Local Mandate Law. The following discussion highlights the findings that lead to our determination.

First, there is a long-standing statutory duty of municipal police departments to regulate firearms ownership in their city or town. Since at least 1934, municipal police departments have had the statutory power to either deny or issue firearms licenses or FID cards to residents after a criminal background check. Similar to state law relative to FID cards, the duty of municipal police chiefs to regulate Section 131 licenses in their communities has been in existence for many years prior to the enactment of the Local Mandate Law. Local police departments were required to issue a Section 131 license upon submission of an application if the applicant appeared suitable to obtain such license. Thus, there is a long-established state law requiring municipal police to grant or deny licenses to residents seeking gun ownership. It is true that, over the past decades, the Legislature amended relevant provisions of M.G.L. c. 140 in efforts to balance the rights of gun owners with public safety concerns. Other changes also increased the amount of new and renewed license revenues that cities and towns can retain to administer firearms licensing requirements. In all, however, the fundamental statutory duty of municipal police to regulate firearms possession in their communities is established in pre-1980 state law, and thus outside the scope of the Local Mandate Law.

Second, the application fees appear to be sufficient to cover the local administrative costs, especially when accompanied by an increase in the renewal period. While it is true that the seven-day deadline for FID cards and License to Carry firearms was mandated in 1998 and 1986, after the effective date of the Local Mandate Law, the license and renewal fees have also increased over time, to the extent that cities and towns now retain \$25 of the \$100 fee. The locally retained application fee for an FID card has increased over the years from \$2.00 in 1968 to \$25 in 2003. Moreover, subsequent legislative amendments increased the renewal period from every four to every six years and granted more time for local police chiefs to issue or deny an FID card by changing the deadline from 30 to 40 days from receipt of application. *See* St. 2004, c. 150, § 5; St. 1998, c. 358. Again, similar to FID cards, the non-refundable fee charged for new or renewal License to Carry has steadily increased over the years from \$2.00 prior to 1972 to \$100 as of 2003, of which \$25 is kept by cities and towns. In addition, the Legislature has periodically amended the length of time that these licenses are valid, from five years under St. 1972, c. 415; to four years effective in 1986; to not more than six years pursuant to St. 2004, c. 150, § 11.

Based on our review of the information submitted, the municipal portion of the application fee (\$25) appears to be sufficient to cover the local administrative costs of the FID and License to Carry application. Moreover, while there has been an increase in the number of applications that police departments must consider, the application period has increased from every four years to every six years, which means the police departments have to process renewal applications less frequently.

## **Conclusion**

Given the above findings, it is obvious that firearms registration is an important issue in the Commonwealth and throughout the country. Numerous changes in applicable state laws have been enacted to amend License to Carry and FID card requirements before and after the enactment of the Local Mandate Law, all in an effort to ensure gun ownership rights, address public safety concerns, and lessen administrative expenses imposed on municipal police departments. The provisions of M.G.L. c. 140, §§ 121-131 have again been amended, most recently by Chapter 284 of the Acts of 2014, most of which was effective as of January 1, 2015. Among other changes, the Class B category of firearms has been eliminated, and now municipal police chiefs who have denied approval of an FID card application, for reasons other than statutory disqualifiers, have the burden of proof in district court to provide evidence for a denial based on the "unsuitability" of the applicant.

With respect to the concern that you raised regarding the seven-day deadline to submit required information to the State Police for FBI analysis, we have found that the Local Mandate Law does not provide the relief you seek. The municipal retained revenue for these licenses has been increased to \$25, resulting in additional income for cities and towns to offset associated administrative expenses imposed on local police staff.

Also, in our analysis of the FID and License to Carry Statutes we did not find that new and renewal license fees retained by municipalities are intended to fund a full-time police officer position assigned to process gun license applications and issue or deny these licenses. The new and renewal fees retained by municipalities are intended to offset the local cost of administering the firearms licensing program. The information provided to DLM indicates that the retained fees are sufficient to offset the local administrative costs. The Dartmouth Police Department informed DLM that the firearms licensing process, without the personal interview, which is not statutorily required, takes approximately 40 to 50 minutes from beginning to end and renewal applications take significantly less time. The retained fees that Dartmouth receives is a little over \$17,500 per year, which is about 37% of the Dartmouth Police firearms license administrator's most recent annual salary, not including employment benefits. Nevertheless, the retained fee income was never intended to reimburse the cost of a full-time municipal police personnel dedicated to administering these licenses, which is apparent from the \$2.00 fee in place before being raised, over the years to \$25.00. DLM views the \$25 retained fee as sufficient to compensate police departments for the cost of processing and making a determination on firearms license applications.

In our follow-up meeting with the Dartmouth Police Department, we were impressed with the level of effort the Department puts forth in reviewing firearms applicants to ensure they

are qualified to possess firearms. For example, the Department conducts a careful and thorough review of records and information contained in local and state electronic crime and mental health databases. The Dartmouth Police Department, unlike other local police departments, also requires that applicants undergo a personal interview with their staff, allowing for further assessment of suitability for gun ownership. In addition, based on the informational charts you submitted along with your request for a mandate review, DLM is aware of the great progress the Dartmouth Police Department made in 2013 to significantly reduce the length of time taken to submit firearms license applications and the required fingerprints to the State Police.

Please be aware that this initial opinion is subject to revision in the event that you offer factors that we may not have considered that would change the 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 of Chapter 29. Also, the Town of Dartmouth's Legislative delegation may be able to assist in enacting amendments to the relevant sections of M.G.L. c. 140 that would further increase the amount of the license fees that can be retained by cities and towns.

Thank you for bringing this issue to our attention, and we encourage you to contact DLM with further concerns you may have on this or other matters impacting local finance.

Sincerely,

A handwritten signature in black ink that reads "Vincent P. McCarthy". The signature is written in a cursive, flowing style.

Vincent P. McCarthy, Director  
Division of Local Mandates

cc: Dartmouth Select Board  
Dartmouth Police Chief Timothy Lee  
The Honorable Mark Montigny  
The Honorable Christopher Markey  
John Robertson, MMA Legislative Division Director  
Michaela Dunne, Director of Law Enforcement Services, CJIS