



# The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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April 17, 2013

Peter M. Jankowski, Town Administrator  
71 West Main Street  
Dudley, MA 01571

**Re: M.G.L. c. 70, § 6 -- Minimum Required Local School Contributions  
M.G.L. c. 74, § 7C -- Vocational School Non-Resident Tuitions  
M.G.L. c. 74, § 8A – Non-Resident Vocational School Transportation**

Dear Mr. Jankowski:

State Auditor Suzanne Bump asked that I respond to your January 7, 2013 request, on behalf of the Board of Selectmen of the Town of Dudley, for a determination by the State Auditor's Division of Local Mandates (DLM) regarding the Local Mandate Law, M.G.L. c. 29, § 27C, and its effect, if any, on certain provisions of state law governing public education. The first such provision is the M.G.L. c. 70, § 6 requirement that cities and towns make minimum local contributions to the support of public schools each year. The second provision is the M.G.L. c. 74, § 7C obligation that a community that does not maintain the type of vocational education that a student may wish to pursue must pay the tuition fee for the student to receive that type of vocational education in another school district. Finally, in the course of discussions with you on this matter, a third issue arose: pursuant to M.G.L. c. 74, § 8A, in addition to the tuition obligation, communities must also pay to transport eligible students to out-of-town vocational programs. You request an opinion as to whether these changes in law and educational expenses are unfunded state mandates subject to the Local Mandate Law. As explained below, I have concluded that M.G.L. c. 70, § 6, M.G.L. c. 74, § 7C, and M.G.L. c. 74, § 8A do not impose unfunded state mandates within the meaning of the Local Mandate Law.

In relevant part, the Local Mandate Law provides that any post-1980 law or regulation that imposes more than incidental administration expenses upon any city or town shall be effective only if it is locally accepted or fully funded by the Commonwealth. 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. Even though this establishes the general rule that the state must pay for mandate compliance, the State Supreme Judicial Court (SJC) has ruled that the General Court is free to supersede or override the Local Mandate Law. In *School Committee of Lexington v. Commissioner of Education*, 397 Mass. 593, 596 (1986), the SJC wrote: "Proposition 2½ [including the Local Mandate Law] is not a constitutional amendment, and although its genesis was in initiative and referendum, it enjoys a legal status no different from any other statute." While it is clear that both M.G.L. c. 70, § 6 and M.G.L. c. 74, § 7C impose local cost obligations, the Legislature superseded the Local Mandate Law with respect to both requirements. The

transportation obligations imposed by M.G.L. c. 74, § 8A are not subject to the Local Mandate Law because the same obligations existed before 1981, when the Local Mandate Law went into effect.

### **M.G.L. c. 70, § 6 -- Minimum Required Local Contributions**

Among other things, the Education Reform Act of 1993 rewrote M.G.L. c. 70 (Chapter 70), which governs school finance. *See* St. 1993, c. 71. Section 6 of the revised Chapter 70 requires cities and towns to appropriate a “minimum required local contribution” plus delineated state and federal aid to support local and regional schools. For fiscal year 2013, this requirement was further defined in the state budget to, among other things, advance achievement of the levels of local contributions to support public schools required by Chapter 70. *See* St. 2013, c. 139, § 3. As a result of the statutory formulae, the Town of Dudley must make a minimum contribution from local resources of \$4,506,710 to the Dudley-Charlton Regional School District, and \$454,214 to the Southern Worcester County Regional Vocational Technical School District. According to the State Department of Elementary and Secondary Education (DESE) data, these amounts represent approximate increases of 3.9% and 14.4% over the fiscal year 2012 required minimums.

Prior to the Education Reform Act, local appropriating authorities had more discretion to determine the allocation of local resources to public schools. In fact, M.G.L. c. 71, § 34 provides that “no city or town shall be required to provide more money for the support of the public schools than is appropriated by vote of the legislative body of the city or town.” Even though this statement remains in state law today, the revised M.G.L. c. 70, §15 provides: “This chapter shall apply to all cities, towns, and regional school districts, notwithstanding section twenty-seven C of chapter twenty-nine, and without regard to any acceptance or appropriation by a city, town or regional school district or to any appropriation by the general court.” Moreover, in relevant part, the provisions of the fiscal year 2013 state budget relative to this matter specify that its provisions apply “[n]otwithstanding section 2 of chapter 70 of the General Laws or any other general or special law to the contrary.” St. 2013, c. 139, § 3. These “notwithstanding” clauses override the Local Mandate Law and any other contrary law with respect to minimum required local contributions. As explained in the *Lexington* decision, this is a legitimate exercise of legislative prerogative. *See School Committee of Lexington v. Commissioner of Education*, 397 Mass. at 596. Note that DLM issued similar opinions to the Towns of Sturbridge and Raynham on a related matter. *See* DLM 2004-04 and DLM 2008-06 (Local Mandate Law does not apply to increases in minimum local contributions resulting from application of the Chapter 70 “municipal revenue growth factor” due to “notwithstanding” clauses).

### **M.G.L. c. 74, § 7C -- Vocational School Non-resident Tuitions**

Also in 1993, the Legislature rewrote state law governing the payment of non-resident tuition at vocational schools, providing that municipalities must pay tuition fees for students admitted to certain programs in other school districts under M.G.L. c. 74, § 7. *See* St. 1993, c. 110, §129 (adding § 7C to M.G.L. c. 74). Upon approval of the state Commissioner of Education, Section 7 allows a school-aged resident of a community that does not offer the type of occupational, agricultural, or vocational program desired by the resident to attend school in another community that does offer the program. You report that the tuition for one such resident of your town attending a program as a non-resident in an out-of-town school is \$22,594. You also expect that another student may enroll in another out-of-town program in the next school year, potentially doubling these costs.

As noted above, the Local Mandate Law is prospective, and applies to obligations imposed by the state after the Local Mandate Law was enacted in 1980. The requirement to pay non-resident vocational

school tuition can be traced back as far as 1908. *See* St. 1908, c. 572. Granted, that law provided, subject to appropriation, for fifty percent state reimbursement of local costs. Nonetheless, the local obligation existed, regardless of the level of state appropriation. “. . . [T]he Commonwealth has no obligation under Proposition 2 ½ to reimburse the cities and towns for the expenses of obligations imposed prior to January 1, 1981. . .” *See School Committee of Lexington*, 397 Mass. at 596. Accordingly, the Local Mandate Law does not apply to obligations to students attending vocational programs in other communities under M.G.L. c. 74, § 7C. Additionally, the 1993 revision of the law provides that the tuition obligations imposed by M.G.L. c. 74, § 7C apply “[n]otwithstanding the provisions of section twenty-seven C of chapter twenty-nine.” Again, this is a legitimate exercise of legislative prerogative, as explained in the *Lexington* decision.

You should be aware that a further amendment to the law taking effect on July 1, 2013 provides that, if a municipality is a member of a regional vocational school district, the regional district must pay the tuition fee. St. 2012, c. 139, § 89, *amending* M.G.L. c. 74, § 7C. Although municipal members will continue to bear the cost indirectly through the regional school assessments, this provision, as well, was enacted “[n]otwithstanding section 27C of chapter 29 or any other general or special law to the contrary.” *See* St. 2012, c. 139, § 89.

#### **M.G.L. c. 74, § 8A – Non-Resident Vocational School Transportation**

M.G.L. c. 74, § 8A requires a municipality to provide transportation for an eligible student to attend an out-of-town program when the type of vocational education that the student may wish to pursue is not offered locally, and the destination is one and one-half miles or more from the student’s residence. This obligation can be traced back at least as far as 1950. *See* St. 1950, c. 622. Following a number of amendments over time, a provision of the so-called Municipal Relief Act of 2003 changed the law so that it was no longer mandatory to provide such transportation. *See* St. 2003, c. 46, § 84. Approximately one and one-half years later, the Legislature further amended the law so that it was once again mandatory to provide such transportation, and this amendment provided for state reimbursement of the full cost, subject to appropriation. *See* St. 2004, c. 393.

Had the Legislature continuously funded this statutory entitlement, M.G.L. c. 74, § 8A would be a funded requirement, and not an issue under the Local Mandate Law. This requirement, however, has not been fully funded since fiscal year 2009. Information from DESE indicates that the fiscal year 2013 appropriation of \$250,000 is sufficient to fund only 10% of the estimated fiscal year 2012 statutory entitlement of \$2.5 million statewide. *See* St. 2012, c. 139, § 2 (item 7035-0007). To the extent that state funding does not fully assume the cost of M.G.L. c. 74, § 8A transportation, the question arises as to whether the Local Mandate Law applies to a local obligation that existed in a pre-1981 law that was repealed and subsequently reinstated by laws enacted after 1980.

Although this question has not been addressed by a state court, it is my opinion that St. 2004, c. 393, reinstating the obligation to transport an eligible student to an out-of-town program when the type of vocational education the student may wish to pursue is not offered locally, and the destination is one and one-half miles or more from the student’s residence, is not a state mandate subject to the Local Mandate Law. My opinion relies upon relevant court interpretations and the apparent “legislative intent” of the Local Mandate Law, i.e. the intent of the voters who approved Proposition 2 ½--including the Local Mandate Law-- at the November 1980 state election. *See* St. 1980, c. 580.

Cases decided under the Local Mandate Law have examined the cost of complying with the law at issue in relation to the cost of complying with law in effect before January 1, 1981. *See, for example, City of Worcester v. the Governor*, 416 Mass. 751, 755-760 (1994). Each issue in the *Worcester* decision involved a law or a regulation that had been consistently in effect, in one form or another, since before 1981 to the time of litigation. In contrast, the pre-1981 version of the M.G.L. c. 74, § 8A local transportation obligation lapsed into a voluntary option with enactment of St. 2003, c. 46, § 84, and re-emerged as a mandatory obligation with enactment of St. 2004, c. 393.

St. 2004, c. 393 is a “law taking effect on or after January first, nineteen hundred and eighty-one.” The statute imposes cost obligations that did not exist under the prior law. Like the laws reviewed in the *Worcester* case, however, c. 393 does not impose a greater cost obligation than had existed under the pre-1981 version of the law. *Id.* The purpose of the Local Mandate Law was to stabilize the fiscal position of local governments in the face of new limitations on their ability to raise revenue brought about by Proposition 2 ½, not to enhance local revenues. This is clear from the overall purpose and immediate impact of Proposition 2 ½.

Survey evidence indicates that the voters’ primary intent in enacting Proposition 2 ½ was eliminating inefficiency and lowering property taxes, not changing who paid for services.<sup>1</sup> As for the impact, “[m]ore than half the communities in the state were required to reduce property taxes in the first year after Proposition 2 1/2 passed. This resulted in a loss of about \$490 million in local tax revenues in 1982, and only about half of that was replaced by state revenue sharing that year.”<sup>2</sup> Therefore, I believe that the intent of the Local Mandate Law is to soften the impact of Proposition 2 ½ on municipal budgets rather than to increase state funding for local governments.

This interpretation is further supported by the *Lexington* case, which implies that 1981 is the relevant comparison date for cost obligations by discussing whether the law at issue was a new, post-1980 obligation or a restoration of “the status quo” which had existed in 1980. *See Town of Lexington v. Commissioner of Education*, 393 Mass. 693, 697 (1985).

On these bases, mandate analysis must focus on whether a cost or service obligation existed in the pre-1981 version of a law, rather than at the time the new law was passed. The transportation obligations imposed by M.G.L. c. 74, § 8A existed prior to 1981. Accordingly, I have concluded that the Local Mandate Law does not apply.

## Conclusion

In summary, I have reached the conclusion that the Local Mandate Law does not apply to M.G.L. c. 70, § 6 relative to minimum required local contributions, to M.G.L. c. 74, §7C relative to vocational school non-resident tuitions, or to M.G.L. c. 74, § 8A relative to transportation of certain students to out-of-town vocational schools.

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<sup>1</sup> Helen F. Ladd & Julie Boatright Wilson, *Why Voters Support Tax Limitations: Evidence From Massachusetts’ Proposition 2 ½*, Department of Education, Education Resources Information Center (Jan. 1982), available at [http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?\\_nfpb=true&\\_ERICExtSearch\\_SearchValue\\_0=ED306640&ERICExtSearch\\_SearchType\\_0=no&accno=ED306640](http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?_nfpb=true&_ERICExtSearch_SearchValue_0=ED306640&ERICExtSearch_SearchType_0=no&accno=ED306640).

<sup>2</sup> Dave Denison, *The Odd Proposition*, *Commonwealth Magazine* (Aug. 1, 1996), <http://www.commonwealthmagazine.org/Article-Import-Latest/1996/Summer/The-Odd-Proposition.aspx>.

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, reading "Vincent P. McCarthy". The signature is written in a cursive style with a large, stylized initial "V".

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