



A. JOSEPH DeNUCCI
AUDITOR

The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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October 29, 2008

Ms. Ann H. Banash, Clerk
Board of Selectmen
Town of Gill
325 Main Road
Gill, Massachusetts 01354

**RE: Towns of Gill and Montague – Request for a Mandate Determination
Concerning G. L. 71, § 16B**

Dear Ms. Banash:

Auditor DeNucci asked that I respond to your request, on behalf of the Gill Board of Selectmen, cosigned by the town Finance Committee and officials from the Town of Montague, regarding the G. L. c. 71, § 16B provisions for so-called 1/12 budgets in instances where the members of a regional school district do not agree on an operating budget for the district. Among other things, section 16B authorizes the Commissioner of the Massachusetts Department of Elementary and Secondary Education (MDESE) to determine the amount "...sufficient for the operation of the district..." and to order the member communities to appropriate 1/12 of their apportioned shares each month until an accord is reached. If no agreement is approved by December first of the school year, the law provides that the Department must assume operation of the district, with funding deducted from local aid otherwise due to the member towns. You report that the MDESE has issued a 1/12 budget order to the Towns of Gill and Montague, resulting in annualized increases in the amounts the towns must pay to the Gill-Montague Regional School District that exceed all of the new revenues available to the towns this fiscal year.

Specifically, you ask that the Auditor's Division of Local Mandates (DLM) determine whether the section 16B 1/12 budget process violates the provisions of the Local

Mandate Law, G. L. c. 29, § 27C. After reviewing your argument, information from the MDESE, and court precedent, DLM has reached the opinion that the Local Mandate Law does not apply in this case. This is because the costs at issue are the result of a local option law, whereby the municipal members of a regional school district vote to accept and abide by the provisions of G. L. c. 71, §§ 16 – 16I and the specific regional school district agreement written for the communities joining a given district. Additionally, we conclude that the current law imposes no greater obligation upon the towns than pre-1981 law. The following further explains this conclusion.

In relevant part, the Local Mandate Law provides that any post-1980 law that imposes more than incidental administrative cost obligations on any community will be effective only if the city or town votes to accept the law, or if the General Court appropriates sufficient monies to assume local compliance costs. The Supreme Judicial Court has recognized that this language allows that communities may voluntarily accept the terms of an unfunded (or underfunded) state law, without creating financial obligations for the Commonwealth under the Local Mandate Law. See *Town of Lexington v. Commissioner of Education*, 393 Mass. 693 (1985).

The state law authorizing the establishment of regional school districts is explicitly a local option law, effective only in cities and towns that vote to accept it. G. L. c. 71, § 15 specifically provides that the decision to join a regional school district shall be determined by a vote of the electorate of the potential member communities at annual or special town meetings by a warrant question phrased substantially as follows:

Shall the town accept the provisions of sections sixteen to sixteen I, inclusive, of chapter seventy-one of the general laws providing for the establishment of a regional school district, together with the towns of _____ and, _____ etc., and for construction, maintenance and operation of a regional school by said district in accordance with the provisions of a proposed agreement filed with the selectmen?

In relevant part, the agreement between the towns of Gill and Montague, ratified pursuant to G. L. c. 71, § 15, provides for adoption of an annual operating budget for the regional school and apportionment of the costs among the member communities, "...in accordance with sections 16 and 16B of Chapter 71 of the General Laws *as amended*." (Agreement Between the Towns of Montague and Gill With Respect To The Formation Of A Regional School District, Section V(C), emphasis added) The italicized phrase is a recognition of the fact that the general laws will be amended from time to time, and that the member communities agreed to abide by amendments that may be enacted.

We note that it was a 1991 amendment that established the current process for state intervention when the members of a two-town regional school district do not agree on a budget for the district. See St. 1991, c. 138, § 374. This 1991 amendment was the last in a ten-year series of enactments to establish procedures for adoption of regional school district budgets following the Proposition 2 ½ repeal of school committee fiscal autonomy. As such, it may appear that this is a post-1980 law imposing additional costs upon the towns within the meaning of the Local Mandate Law.

However, prior to Proposition 2 ½, local and regional school committees had “autonomy” to require cities and towns to provide whatever amounts they deemed necessary for the support of the public schools; and cities and towns were obligated to appropriate those amounts. G. L. c. 71, § 34, as in effect prior to St. 1980, c. 580.

The sum ordered by the MDESE to sustain the district through this period of budget impasse would amount to an annualized total of approximately \$16.8 million, about a 4% increase over the fiscal 2008 allowance. It is clear that this amount exceeds what the town officials consider affordable and reasonable. Yet, this amount is less than the amount originally requested by the Gill-Montague Regional School District Committee for fiscal 2009, approximately \$17.1 million, more than 5% over the 2008 budget. Under the pre-Proposition 2 ½ rule of school committee fiscal autonomy, the Towns would have been obliged to appropriate the greater amount originally requested by the regional school committee. Accordingly, in the case at hand, it cannot be found that the Towns of Gill and Montague are obligated to provide greater amounts for the support of their regional school district than they were by pre-1981 law.

In conclusion, it is DLM’s opinion that the Local Mandate Law does not apply to the G. L. c. 71, §16B 1/12 budget process, because the Towns voted to establish the regional school district and abide by the terms of G. L. c. 71, §§ 16 – 16I, as amended. Additionally, the facts in this case do not support a finding that the current law imposes a greater financial obligation upon the towns than pre-1981 law. Nonetheless, please be aware that this opinion does not prejudice your right to seek judicial review of the issues pursuant to G. L. c. 29, § 27C(e).

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I respect your commitment to providing necessary public services in this tough economic period. Although this opinion does not aid your efforts, I urge you to contact me any time you feel that we may be of assistance.

Sincerely,

A handwritten signature in cursive script that reads "Emily D. Cousens". The signature is written in black ink and is positioned above the typed name and title.

Emily D. Cousens, Esq., Director
State Auditor's Office
Division of Local Mandates

cc: The Honorable Stanely C. Rosenberg
The Honorable Stephen Kulik
The Honorable Christopher J. Donelan
MDESE Associate Commissioner Jeff Wulfson
Interim Superintendent Kenneth M. Rocke