



A. JOSEPH DeNUCCI
AUDITOR

The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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April 28, 2010

Robert Powilatis, Chairman
Matthew Moore, Vice Chairman
Paul Currie, Clerk
Richard McGaughey, Associate
Brinsley Fuller, Associate
Holbrook Board of Selectmen
50 North Franklin Street
Holbrook, Massachusetts 02343

RE: Change in the State Human Resources Division Civil Service Procedures

Dear Members of the Board:

Auditor DeNucci asked that I respond to your request regarding the Local Mandate Law, G. L. c. 29, s. 27C, and the shifting of responsibility for certain civil service appointment and promotion procedures from the state Human Resources Division (HRD) to cities and towns. As a result, town officials expect to incur new costs for purchasing pre-printed cards, labels, postage, as well as personnel time for preparation of notices to eligible candidates, and handling telephone inquiries. Specifically, you ask whether these new duties and costs are unfunded state mandates within the meaning of the Local Mandate Law.

In short, it is our opinion that the answer to this question is no, the Local Mandate Law does not apply to this delegation of duties. This is primarily because participation in the civil service system is a matter of local option, whereby communities vote to accept G. L. c. 31 and abide by its provisions and the rules of the Civil Service Commission administered by the HRD.

In a 1990 Supreme Judicial Court decision regarding a challenge to costly landfill regulations, the Court specifically addressed the applicability of the Local Mandate Law to matters of local discretion. The Court wrote, "In our view, [the Local Mandate Law] applies to regulatory obligations in which the municipality has no choice but to comply and pay the costs. It is from these mandatory obligations which Proposition 2 ½ grants relief." *Town of Norfolk v. Department of Environmental Quality Engineering*, 407 Mass. 233, 239 (1990). The Court observed that there was no state law that required municipalities to operate landfills, and

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suggested that one way the Town of Norfolk could avoid the cost of the regulation was by closing its landfill. Concluding that compliance with the regulation was not “mandatory,” the Court determined that it did not *impose* costs upon the Town within the meaning of the Local Mandate Law.

By way of analogy, we note that state law does not require communities to participate in the civil service system. Rather, municipalities choose civil service by vote of the local appropriating authority. Additionally, cities and towns are free to rescind acceptance of the Civil Service Law. In light of the *Norfolk* precedent, these facts lead to the conclusion that costs that may result from the HRD delegation of certain civil service procedures are not imposed upon the Town of Holbrook within the meaning of the Local Mandate Law.

At any rate, in my discussions with staff at the HRD, it appears that the extent and thereby cost of the delegation of these duties to cities and towns may not be as great as originally anticipated. I encourage town officials to follow-up with Ms. Regina Caggiano at the HRD for clarification and guidance. She may be reached at 617-878-9747.

In closing, please be advised that this opinion is subject to revision in the event you raise additional factors that would require a different result. Moreover, this opinion does not prejudice your right to seek judicial review of the issues pursuant to G. L. c. 29, s. 27C(e). Please contact me with any further concerns you may have with this or other matters impacting local spending, and we thank you for bringing this matter to our attention.

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.

Emily D. Cousens, Esq.
Director, Division of Local Mandates