



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

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BOSTON, MASSACHUSETTS 02108

A. JOSEPH DE NUCCI
AUDITOR

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August 4, 2006

Paul W. Blazar, Executive Assistant
Town of Hudson
78 Main Street
Hudson, Massachusetts 01749

**RE: Death Benefits for Survivors of Certain Volunteer Public Safety Personnel,
St. 2005, c. 125**

Dear Mr. Blazar:

Auditor DeNucci asked that I respond to your request, on behalf of the Town of Hudson, relative to the Local Mandate Law, G. L. c. 29, s. 27C, and the above-captioned Act. Among other things, this law requires cities, towns, and districts that use “volunteer emergency service providers” to provide one of three types of financial benefits to surviving spouses or minor children of such volunteers who die in the line of duty. In your letter, you note that you do not question the merits of this law, but do question whether it may amount to an unfunded legislative mandate.

Chapter 125 mandate issues might arise under either the Local Mandate Law or under Article 115 of the Amendments to the Massachusetts Constitution. Both of these provisions limit the circumstances where the state may impose new costs upon cities and towns. With respect to both provisions, however, in enacting Chapter 125, the Legislature addressed the applicability of the Local Mandate Law and Article 115. For this reason, neither of these standards applies in this case. The following discussion further explains these procedures.

In relevant part, the Local Mandate Law provides that any post-1980 law “imposing any direct service or cost obligation upon any city or town shall be effective” only in communities that vote to accept it, unless the Commonwealth provides for state assumption of the cost. This standard applies to laws governing most fields of local government activity, but not to law regulating municipal labor relations. (See discussion below.) Nonetheless, in apparent recognition that Local Mandate Law may apply to

Chapter 125, the Legislature included language to provide that those obligations would be imposed upon cities and towns “Notwithstanding section 27C of chapter 29 of the General Laws...”. If there were any question, this text clearly overrides the Local Mandate Law in this case. The Supreme Judicial Court has recognized this procedure as a legitimate exercise of legislative prerogative, ruling that the Legislature is free to supersede or override the Local Mandate Law with respect to any particular enactment. See *Lexington v. Commissioner of Education*, 393 Mass. 693 (1985).

By its specific terms, Article 115 allows that the state may impose costs in the field of municipal employment law, but only by a supermajority vote.

No law imposing additional costs upon two or more cities or towns by the regulation of the compensation, hours, status, conditions or benefits of municipal employment shall be effective in any city or town until such law is [locally] accepted...*unless such law has been enacted by a two-thirds vote of each house of the general court present and voting thereon*, or unless the general court, at the same session in which such law is enacted, has provided for the assumption by the commonwealth of such additional cost.

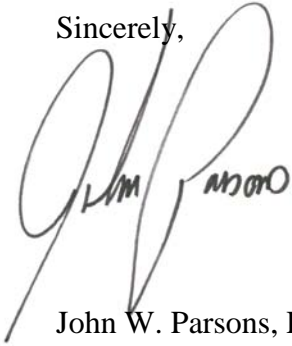
Both the House and Senate enacted House No. 4369, the bill that is now Chapter 125, by unanimous roll call votes. See Journals of the House and Senate for November 3, 2005. These actions negate any state funding questions that might arise under Article 115.

We regret that this opinion does not aid your efforts to control municipal spending. Nevertheless, since the Local Mandate Law is not a constitutional amendment, the Legislature is free to suspend its operation, as with any other law. Even though Article 115 is a constitutional limit on legislative authority, it provides a procedure to override that limit, and that procedure was utilized in the passage of Chapter 125.

Mr. Paul W. Blazar
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I hope that this explanation addresses your inquiry. Please call Attorney Emily Cousens at the Division of Local Mandates (1-800-462-2678) with further questions or comments you may have on this or other matters.

Sincerely,

A handwritten signature in black ink, appearing to read "JWP" with a stylized flourish extending upwards and to the right.

John W. Parsons, Esq.
Deputy Auditor

cc: Senator Pamela P. Resor
Representative Patricia A. Walrath