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AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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February 6, 2015

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Member
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RE: Department of Veterans' Services District Guidelines and Reduction of Veterans' Benefit Reimbursements to Municipalities

Dear Members of the Leverett Select Board:

In 1861, the Massachusetts Legislature enacted its first military aid statute, creating a partnership between the Commonwealth and its municipalities to provide assistance to indigent veterans and their families. St. 1861, c. 222. To this day, the Commonwealth and its municipalities have continued to provide assistance to veterans and their families pursuant to the Veterans' Benefits Statute, M.G.L. c. 115 *et seq.*, with much of the direct service work being performed by municipal veterans' service offices (VSO).

This is the third recent mandate determination petition involving the Veterans' Benefits Statute that the Office of the State Auditor has received. The first was a petition by the Town of Framingham regarding the processing of emergency hotel and motel stays for homeless veterans and their families.¹ The second was a petition by the Town of Marshfield regarding a staffing level recommendation in the certification of the Town's Department of Veterans' Services.² Regarding the Framingham petition, the State Auditor determined that the Department of Veterans' Services (DVS) advisory letter was not a new law, rule, or regulation that imposed additional costs on municipalities, but, instead, was merely a clarification of an existing law that

¹ Town of Framingham: Processing of Emergency Hotel/Motel Stays to Prevent Homelessness Department of Veterans' Services Letter #13-004 (Office of the State Auditor Feb. 19, 2014), *available at* <http://www.mass.gov/auditor/docs/dlm-mandate/2014/021914-framingham-emergency-hotel-motel-stays.pdf>.

² Town of Marshfield: Marshfield Department of Veterans' Service (Office of the State Auditor May 21, 2014), *available at* <http://www.mass.gov/auditor/docs/dlm-mandate/2014/052114-marshfield-department-of-veterans-services.pdf>.

was in existence before the effective date of the Local Mandate Law. Even though the State Auditor did not determine that the DVS advisory letter was an unfunded mandate, the State Auditor responded to the Town of Framingham's concerns that DVS might not fully reimburse the Town for the cost of providing emergency shelter for homeless veterans and their families. As a result, DVS clarified its original advisory letter and provided assurance that DVS would fully reimburse affected communities for the hotel and motel costs resulting from such emergency placements. In the Marshfield petition the State Auditor determined that the Local Mandate Law did not apply to the DVS recommendation that Marshfield hire a full-time administrative assistant, because a recommendation does not constitute a mandate.

This letter is in response to your request on behalf of the Town of Leverett to the State Auditor's Division of Local Mandates (DLM) to determine whether the DVS guidelines for veterans' service districts, which set staffing levels based on a district's population, trigger the anti-mandate provisions of the Local Mandate Law, M.G.L. c. 29, § 27C. The guidelines in question can be found in *A Guide for Establishing Veterans' Service Districts Under Chapter 115* (DVS District Guidelines).³ You estimated that, to meet the staffing levels outlined in the DVS District Guidelines, the Central Franklin County District's budget would increase from \$96,439 in FY 2015 to \$142,325 in FY 2016. You also expressed concern that, if the Central Franklin County District does not comply with DVS District Guidelines, the Commonwealth will withhold 25% of the 75% veterans' benefit reimbursement that the Commonwealth provides to municipalities. In preparation for this response, DLM staff met with you, Mark Fitzpatrick, VSO for Central Franklin County District, and Timothy Niejadlik, Director of Veterans' Service for the Greenfield Area Veterans' Service District. DLM also spoke with the General Counsel for DVS, Claudia B. McKelway.

Although we understand that increasing the staffing levels of the Central Franklin County District to comply with the DVS District Guidelines is a significant concern for the Town, DLM concludes that the Local Mandate Law does not apply to the issue that you raised. Municipalities are given the option, but are not required to form or join a district with adjoining municipalities, and requirements pertaining to a voluntary decision fall outside the scope of the Local Mandate Law. Additionally, DLM concludes that the Local Mandate Law does not apply to the reduction of veterans' benefit reimbursements. The reduction of reimbursements does not impose an additional cost upon a municipality since the reduction in reimbursement from 75% to 50% does not decrease the reimbursement level below the 1980 reimbursement level.

Application of the Local Mandate Law to the DVS District Guidelines

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

³ The Massachusetts Department of Veterans' Services, *A Guide for Establishing Veterans' Services Districts Under Chapter 115*, 11 (2011), available at <http://www.mass.gov/veterans/docs/district-formation-guide-2011.pdf>.

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.

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 changing an existing 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. Moreover, the Legislature, in enacting the challenged law, must not have expressly overridden the Local Mandate Law. *Town of Lexington v. Commissioner of Education*, 393 Mass. 693, 698 (1985); *School Committee of Lexington v. Commissioner of Education*, 397 Mass. 593, 595 (1986).

Applying this analysis to the issue that you raised, DLM has determined that the DVS District Guidelines do not fall within the scope of the Local Mandate Law. The formation of a district is voluntary and the requirements that pertain to a voluntary action cannot be deemed mandatory. Section 10 of Chapter 115 grants two or more adjoining municipalities the authority to form a district to provide information, advice, and assistance to veterans and their families. However, municipalities are not required to form or join a district.

The Supreme Judicial Court made clear in *Norfolk v. the Department of Environmental and Quality Engineering* that the Local Mandate Law applies only in situations where the Commonwealth has imposed an involuntary direct service or cost obligation on a city or town. *Norfolk*, 407 Mass. 233, 239 (1990). The Court in *Norfolk* stated that the Local Mandate Law “applies to regulatory obligations in which the municipality has no choice but to comply.” *Id.* At issue in *Norfolk* was an environmental regulation requiring the installation of an impervious liner at the base of a sanitary landfill. *Id.* at 234. The Court found that because there was no requirement that municipalities operate landfills, Norfolk had voluntarily chosen to participate in the activity and had to assume the costs of regulation. *Id.* at 239.

In the current case, Leverett voluntarily decided to form a district with other surrounding municipalities as allowed under Section 10 of Chapter 115. While municipalities are obligated to follow the DVS District Guidelines when forming or certifying a district, the requirements regarding staffing levels of veterans' service districts fall outside the scope of the Local Mandate Law because the requirements stem from a voluntary action.

Application of the Local Mandate Law to the Reduction of Veterans' Benefit Reimbursements to Municipalities

Section 3B of Chapter 115 provides that, if a VSO fails to comply with the training and certification requirements established in Section 3B, the reimbursement allowance, paid by DVS under Section 6, will be reduced from 75% to 50%. M.G.L. c. 115, § 3B(d). Section 3B also

provides a means for a municipality to seek reinstatement of the withheld benefit reimbursements. *Id.* Section 3B further provides that DVS will hold any reduction in the reimbursement in a trust account until the municipality has come into compliance with Section 3B and that DVS will add the withheld amount to subsequent reimbursements made to the municipality under Section 6. *Id.* § 3B(e). Section 3B only authorizes the reduction of veterans' benefit reimbursements for a VSO's failure to comply with his or her training and certification obligations.

The Local Mandate Law prohibits the Commonwealth from imposing an additional direct service or cost obligation upon a municipality that is more than an incidental local administrative expense through statute, regulation, or rule enacted after 1980. In the current case, the reduction of veterans' benefit reimbursements to municipalities does not impose an additional cost upon municipalities. Prior to the enactment of the Local Mandate Law, DVS reimbursed municipalities for 50% of the veterans' benefits paid to veterans by the city or town. In 1987, after the enactment of the Local Mandate Law, the Commonwealth increased the reimbursement to municipalities from 50% to 75%. St. 1987, c. 628, §§ 1 and 2. The changes to Section 3B do not impose any additional costs upon municipalities, because the reduction of benefits reimbursements from 75% to 50%, under Section 3B of Chapter 115, does not decrease the reimbursement level below the 1980 reimbursement level.

Additionally, prior to the enactment of Section 3B in 2014, DVS offered optional training to VSOs. While DVS required VSOs to pay a registration fee to ensure a place at the training, DVS reimbursed municipalities for the cost of the registration fee and the VSO's travel, food, and lodging expenses at the current state reimbursement rate. General Counsel McKelway confirmed that DVS intends to continue reimbursing municipalities for the cost of registering VSOs for the mandated training and the VSO's travel, food, and lodging expenses. Moreover, General Counsel McKelway assured DLM that DVS views the reduction of veterans' benefit reimbursements as a last resort to ensure compliance with the provisions of Section 3B. Section 3B provides DVS wide latitude to work with municipalities to create a plan for the certification of VSOs. Consequently, because DVS reimburses municipalities for the cost of certifying a VSO and the withheld veterans' benefit reimbursements are held in a trust fund for the municipality, the provisions in Section 3B do not impose a direct service or cost obligation upon a municipality as envisioned by the Local Mandate Law.

Conclusion

Providing assistance to veterans and their families is an important obligation of the Commonwealth's cities and towns. Many communities across the Commonwealth have seen an increase in demand for assistance because of the return of veterans from the wars in Iraq and Afghanistan. We realize that municipalities are facing difficult fiscal decisions and staffing and reimbursement levels have a financial impact on budgets.

Nevertheless, DLM concludes that the DVS District Guidelines do not implicate the Local Mandate Law. As discussed above, municipalities are not required to form veterans' service districts, therefore any requirements in the formation and certification of a veterans'

service district are voluntary within the meaning of the Local Mandate Law. Additionally, DLM concludes that the reduction of veterans' benefit reimbursements to municipalities falls outside the scope of the Local Mandate Law. Section 3B of Chapter 115 does not impose any additional costs upon municipalities, because the reduction in reimbursement from 75% to 50% does not decrease the reimbursement level below the 1980 reimbursement level. Moreover, the withheld reimbursements are held until compliance is reached and municipalities are then reimbursed for the cost of compliance.

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(e) of Chapter 29. Although we are sympathetic to the fiscal constraints facing all cities and towns, 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, appearing to read "Vincent P. McCarthy". The signature is written in a cursive, flowing style.

Vincent P. McCarthy, Director
Division of Local Mandates

cc: Francisco Urena, Secretary, Mass. Department of Veterans' Services
Claudia B. McKelway, General Counsel, Mass. Department of Veterans' Services
Marjorie McGinnis, Town Administrator, Town of Leverett
Mark Fitzpatrick, Veterans' Service Officer, Central Franklin County District
Timothy Niejadlik, Director of Veterans' Service, Greenfield Area Veterans' Service District