



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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SUZANNE M. BUMP, ESQ.
AUDITOR

June 28, 2013

Mr. Richard P. Brazeau, Chairman
Mr. Peter d'Errico, Member
Ms. Julia Shively, Member
Leverett Board of Selectmen
9 Montague Road
Leverett, Massachusetts 01054

RE: Reporting of Other Post-Employment Benefits -- St. 2011, c. 68, § 57

Dear Chairman Brazeau, Mr. d'Errico, and Ms. Shively:

This letter is in response to your request to the State Auditor's Division of Local Mandates (DLM) regarding the costs incurred by the Town of Leverett (the Town) to comply with the reporting requirements of M.G.L. c. 32B, § 20(d), as amended by Section 57 of Chapter 68 of the Acts of 2011. Specifically, you reference the annual requirement that local government entities must submit to the Public Employee Retirement Administration Commission (PERAC) "a summary of its other post-employment benefits [OPEB] cost and obligations and all related information required under Government Accounting Standards Board standard 45." *See* M.G.L. c. 32B, § 20(d). You state that the audit and software necessary to comply with this requirement will increase the Town's budget by \$750 every three years, and you ask whether this cost obligation is an unfunded state mandate within the meaning of the Local Mandate Law, M.G.L. c. 29, § 27C. DLM has reached the conclusion that the Local Mandate Law does not apply to this amendment, primarily because it has a relatively minor impact on the cost of providing OPEB for Town retirees, and the Town voluntarily incurs OPEB expenses as a result of local option votes to do so. The basis for this conclusion is further explained below.

In relevant part, the Local Mandate Law provides that any post-1980 law imposing additional costs upon any city or town must be subject to local acceptance, "unless the general court, at the same session in which such law is enacted, provides, by general law and by appropriation, for the assumption by the commonwealth of such cost, exclusive of incidental local administration expenses." Any

municipality aggrieved by a law or regulation adopted contrary to these standards may petition the Superior Court to be exempted from compliance, until the Commonwealth assumes the cost. Prior to taking this step, a city or town may request an opinion from DLM as to whether the Local Mandate Law applies in a given case, and if so, to determine the amount of the cost imposed by the law or regulation at issue. DLM's determination of the amount of the compliance cost shall be prima facie evidence of the amount of state funding necessary to sustain the mandate. *See* M.G.L. c. 29, § 27C(a), (d), and (e).

By explicit terms, the Local Mandate Law provides that the Commonwealth is not obliged to assume the cost of state mandates that impose no more than "incidental administration expenses." *See* M.G.L. c. 29, § 27C(a) and (c). The Supreme Judicial Court defines this term as "relatively minor expenses related to the management of municipal services . . . subordinate consequences of a municipality's fulfillment of primary obligations." *City of Worcester v. the Governor*, 416 Mass. 751, 758 (1994). In the *Worcester* decision, the Court did not further define "relatively minor expenses," but did conclude that the cost of a parental notice requirement that averaged approximately \$28,000 per year for the Worcester school department fell within this "relatively minor" parameter. *Id.* In your letter, you indicate that compliance with the Section 20(d) reporting requirement adds \$750 to the Town's budget every three years. This amounts to an annualized cost of \$250. In light of the *Worcester* decision, DLM has concluded that this new requirement, while an unfunded mandate, constitutes incidental administrative expenses.

Moreover, this "relatively minor" cost is a "subordinate consequence" of the primary duty to contribute to the cost of health insurance premiums for retirees. The Town of Leverett voluntarily undertook this obligation as a result of a town meeting vote to accept M.G.L. c. 32B, § 9A in April of 2004; this vote was subsequently ratified by Town election. *See* Town of Leverett Annual Town Meeting Minutes (April 24, 2004).

We note that an initial vote to accept M.G.L. c. 32B authorizes a community to provide group health insurance, as well as other types of coverage, for active employees. This authorization requires that retirees be allowed to maintain participation in the group health insurance plan, provided that each retiree pays the total average premium cost. An additional vote to accept M.G.L. c. 32B, § 9A allows a community to pay fifty percent of the cost for retirees. Finally, a third vote to accept M.G.L. c. 32B, § 20 is required to authorize a community to establish an OPEB Liability Trust Fund to segregate resources dedicated to support OPEB costs. The Town of Leverett voted to establish an OPEB Liability Trust Fund in April of 2011. *See* Town of Leverett Annual Town Meeting Minutes (April 30, 2011).

As indicated above, the Local Mandate Law applies to post-1980 state laws that *impose* new costs upon municipalities. The Supreme Judicial Court has suggested that the state does not impose costs upon cities and town by further regulating a function that communities voluntarily undertake. *See* *City of Cambridge v. Attorney General*, 410 Mass. 165, 171 (1991) (referring to its prior decision in *Town of Norfolk v. Department of Environmental Quality Engineering*, 407 Mass. 233 (1990), the Court wrote "Since the Town of Norfolk chose to operate a landfill and expand it, the costs resulting from the environmental regulation were not 'imposed' according to the meaning of G. L. c. 29, § 27C"). Relative to municipal group insurance plans, the Court also wrote, "the fact that G. L. c. 32B is irrevocable once accepted does not affect the voluntariness of the acceptance." *Cambridge, id.* at 172. *See also* DLM Decision 04-10. (November 24, 2004) (statutes requiring that health insurance policies must cover new

categories of care did not *impose* costs within the meaning of the Local Mandate Law, as communities voluntarily incur expense of employee health insurance by voting to accept M.G.L. c. 32B.)

In light of this precedent, it is the opinion of DLM that the Local Mandate Law does not apply to M.G.L. c. 32B, § 20(d), because the reporting requirements result in no more than incidental administration expenses related to a program of retiree health insurance that the town undertook on a voluntary, local option basis. We regret that this opinion does not aid your efforts to control local spending. Nonetheless, we must apply the Local Mandate Law consistently to each issue, as interpreted by the courts. *See* DLM Decision 13-5 (June 24, 2013) (Local Mandate Law does not apply to costs of conducting fingerprint-based criminal background checks of certain school employees, as requirements are expected to impose no more than incidental administration expenses). Please be aware that this opinion is subject to revision in the event that you offer information that we may not have considered. Additionally, 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.

In closing, Auditor Bump asked that I convey her intent, as a statutory member of PERAC, to continue to use her position to mitigate the local financial effect of matters within the purview of the Commission. We thank you for bringing this issue to our attention, and encourage you to contact us with further concerns you may have on this or other matters impacting local finance.

Sincerely,

A handwritten signature in black ink, appearing to read "Vincent P. McCarthy". The signature is fluid and cursive, with the first name "Vincent" being the most prominent.

Vincent P. McCarthy, Director
Division of Local Mandates

cc: Marjorie McGinnis, Leverett Town Administrator
John Parsons, PERAC General Counsel