



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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SUZANNE M. BUMP, ESQ.
AUDITOR

May 21, 2014

Rocco J. Longo
Town Administrator
Town of Marshfield
870 Moraine Street
Marshfield, MA 02050

RE: Marshfield Department of Veterans' Services

Dear Town Administrator Longo:

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' services offices. As a consequence of the wars in Afghanistan and Iraq, a heavy burden has been placed on cities and towns to attend to the needs of veterans and their families. The Town of Marshfield is acutely aware of this burden, serving approximately 262 veterans and their families.

This is the second 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 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 imposes additional costs on municipalities, but, instead, was merely a clarification of an existing law and regulations that were 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.

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>.

This letter is in response to your request on behalf of the Town of Marshfield to the State Auditor's Division of Local Mandates (DLM) to determine whether the DVS recommendation that Marshfield hire a full-time administrative assistant -- in a letter dated March 3, 2014 certifying the Marshfield Department of Veterans' Services in accordance with M.G.L. c. 115 (the DVS Certification Letter) -- triggers the anti-mandate provisions of the Local Mandate Law, M.G.L. c. 29, § 27C. You expressed concern that DVS's recommendation that Marshfield hire a full-time administrative assistant for Marshfield's Department of Veterans' Services, in accordance with the minimum staffing requirements for veterans' services districts with a population of over 20,000,² may be an unfunded mandate on the Town. This was of particular concern to you because, in order to balance the Town's budget for Fiscal Year 2015, the Town has cut numerous positions in municipal departments, including the police, fire, school, and public works departments. In preparation for this response, DLM staff met with you and William Dodge, Director of the Marshfield Department of Veterans' Services, on April 15, 2014. DLM also spoke with the General Counsel for DVS, Claudia B. McKelway.

Although we understand that hiring a full-time administrative assistant for the Marshfield Department of Veterans' Services is a significant concern for the Town during these difficult fiscal times, DLM concludes that the Local Mandate Law does not apply to the issue that you raised because DVS recommended, but did not require, that Marshfield hire a full-time administrative assistant and a recommendation does not constitute a mandate.

Application of the Local Mandate Law to the DVS Recommendation

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 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 rule must take effect on or after January 1, 1981, and the rule must result in a direct service or cost obligation that is imposed by the Commonwealth, not voluntarily undertaken at the local level. *Id.* at 754.

Applying this analysis to the issue that you raised, DLM has determined that the DVS recommendation does not constitute a new law, rule, or regulation that imposes additional costs on Marshfield. Rather, the DVS recommendation constitutes a voluntary suggestion that does not trigger the anti-mandate provisions of the Local Mandate Law.

Section 2 of Chapter 115 of the Massachusetts General Laws grants DVS broad authority to adopt regulations "necessary to insure the proper administration of the provisions" of Chapter 115 and to

² 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>.

provide guidance, in the form of directives, to municipal veterans' service officers (VSOs).³ In 2011, DVS used this authority to establish minimum personnel staffing requirements and guidelines for veterans' services districts. In its guidance, DVS provided that districts with a population between 20,001 to 35,000 were required to have one full-time district director and one full-time clerical staff. According to the 2010 U.S. Census, Marshfield has a population of 25,132.⁴

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 v. the Department of Environmental and Quality Engineering*, 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.

The DVS Certification Letter to Marshfield states,

The current level of administrative support for the VSO obstructs him from his daily duties to manage the case load and submit for proper reimbursement and manage the veterans affairs documentation needed to maintain the office. Our recommendation is to have a full time Administrative Assistant assigned to the Veterans' Service Office. This recommendation is consistent with the minimum personnel staffing requirements of a district with a population of more than 20,000 which are a Full Time District Director and a Full Time Clerical Staff.

The DVS Certification Letter only recommends that the Marshfield Department of Veterans' Services hire a full-time administrative assistant; it does not require that Marshfield hire a full-time administrative assistant, nor does the letter indicate that there will be any repercussions if Marshfield does not comply with the recommendation. Viewing the recommendation in light of the *Norfolk* decision, this recommendation does not constitute a mandate under the Local Mandate Law, because the recommendation is voluntary. While the recommendation is consistent with the DVS guidelines for veterans' services districts, Marshfield is not a veterans' services district. A veterans' services district consists of two or more adjoining municipalities that have been approved by DVS to consolidate the administration of their veterans' services offices. M.G.L. c. 115, § 10. Marshfield administers its veterans' services department solely for Marshfield. While DVS has been granted broad authority to adopt regulations necessary to insure the proper administration of Chapter 115, DVS has not promulgated any regulations or guidance with regard to minimum staffing requirements for municipal veterans' services offices. Thus, the recommendation that Marshfield comply with the guidelines for veterans' services districts is not compulsory for Marshfield, because Marshfield is not a veterans' services district.

Moreover, Director Dodge confirmed with Evan Makrinikolas, Compliance Director for DVS, that DVS did not intend its recommendation to be a binding obligation on Marshfield. Additionally, when DLM contacted DVS, General Counsel McKelway confirmed that the DVS Certification Letter was meant as a suggestion based on a concern that Marshfield not fall behind on the deadlines for

³ Section 2 of Chapter 115 was originally added in 1946 by St. 1946, c. 584, § 1.

⁴ U.S. Census, *Profile of General Population and Housing Characteristics: 2010*, http://factfinder2.census.gov/bkmk/table/1.0/en/DEC/10_DP/DPDP1/0600000US2502338855

reimbursement and potentially miss out on reimbursement funds. In short, the DVS recommendation constitutes a voluntary suggestion, and thus, it is not a new law, rule, or regulation that would trigger the anti-mandate provision of M.G.L. c. 29, § 27C.

In our meeting on April 15, 2014, Director Dodge informed DLM that the Marshfield Department of Veterans' Services currently employs a full-time VSO and a part-time VSO. Director Dodge also informed us that he sought and obtained approval at the Town Meeting to increase the part-time VSO's hours from nineteen hours per week to twenty-seven hours per week to assist with the increased demand for services. DLM was encouraged to hear that the Marshfield Department of Veterans' Services has considered DVS's recommendation and sought to increase the hours of its part-time VSO. Marshfield's response to the increased demand for services is a testament to the Town's willingness to help veterans and their families.

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 levels have a financial impact on budgets.

Nevertheless, DLM has concluded that the DVS recommendation that Marshfield hire a full-time administrative assistant for the Marshfield Department of Veterans' Services does not implicate the Local Mandate Law. As discussed above, the DVS recommendation does not constitute a new law, rule, or regulation that would trigger the anti-mandate provision of the Local Mandate Law. The DVS recommendation constitutes a voluntary suggestion to Marshfield, and thus, is not a mandate within the meaning of the Local Mandate Law.

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: Coleman Nee, Secretary, Ma. Department of Veterans' Services
Claudia B. McKelway, General Counsel, Ma. Department of Veterans' Services
William C. Dodge, Director of Veterans' Services, Town of Marshfield