



A. JOSEPH DeNUCCI
AUDITOR

The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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June 24, 2010

Mr. Theodore D. Kozak
Town Manager
Town of Northbridge
7 Main Street
Whitinsville, Massachusetts 01588

RE: Extended Unemployment Benefits

Dear Mr. Kozak:

Auditor DeNucci asked that I respond to your request relative to the State extension of the time period for payment of unemployment compensation to individuals who were laid off from public and private sector positions. (St. 2009, c. 30, § 45) You explain that the federal government reimburses the Commonwealth for extended benefits paid to persons who lost private sector jobs, but provides no reimbursement for such benefits paid to persons who lost public sector jobs. Accordingly, the state Division of Unemployment Assistance has billed the Town of Northbridge to recoup extended benefits paid to eligible former employees. As town officials had no role in the decision to extend these benefits, you question whether this cost is an unfunded state mandate.

It is the opinion of the Division of Local Mandates that the municipal obligation for extended unemployment compensation benefits is not an unfunded state mandate within the meaning of the Local Mandate Law, G. L. c. 29, § 27C. As you know, the Local Mandate Law provides that any post-1980 law that imposes more than incidental administration expenses 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 that increases the cost of benefits of municipal employment.

The Local Mandate Law does not apply to laws that increase the cost of the benefits of municipal employment, because this field of legislative activity is governed by Article 115 of the Amendments to the Massachusetts Constitution. A limited anti-mandate provision, Article 115 was approved by the voters at the same general election as Proposition 2 ½ and the Local Mandate Law in 1980. The Division of Local Mandates has no specific authority to determine when the standards of Article 115 apply; rather, such questions may be definitively addressed in

Mr. Theodore D. Kozak, Northbridge Town Manager

Page Two

the state courts. Nonetheless, in light of our experience with analogous provisions of the Local Mandate Law, we offer the following observations for your consideration.

Article 115 provides:

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.

In an Article 115 case addressing the validity of laws requiring certain new types of health insurance coverage (to the benefit of private and public sector employees), the Supreme Judicial Court recognized that the Article limits the Legislature's authority to enact laws that impose costs on local governments by the regulation of the benefits of municipal employment. "... [H]owever, it did not limit the Legislature's ability to enact laws for the general welfare." *City of Cambridge v. the Attorney General*, 410 Mass. 165, 170 (1991). In this context, the Court considered its prior analysis of the Home Rule Amendment (Article 89, § 8) to be applicable to Article 115.

We do not interpret [the Article] as precluding the Legislature from acting on matters of State, regional, or general concern, even though such action may have special effect upon one or more individual cities and towns. If the predominant purposes of a bill are to achieve State, regional, or general objectives, we think that...the Legislature possesses legislative power unaffected by the restrictions in art. 89, § 8. *Cambridge*, at 170, citing *Opinion of the Justices*, 356 Mass. 775, 787 – 788 (1969).

In this context, it would appear that the legislative Act to extend unemployment benefits -- and thereby capture federal funding for benefits paid to individuals who were laid off in the private sector -- may be viewed as a law enacted for the general welfare, even though it does have a special financial impact in a number of municipalities. This would be a key element in any further analysis of the applicability of Article 115 to the extended unemployment benefits law.

I hope that this explanation addresses your inquiry. Please call with further questions or comments you may have on this or other matters.

Sincerely,



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