



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

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AUDITOR

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January 21, 2010

Karen L. Nober
Executive Director
State Ethics Commission
One Ashburton Place
Room 619
Boston MA 02108

Dear Ms. Nober:

Please accept this letter as notification to your office that the Division of Local Mandates (DLM) has reached a conclusion relative to the applicability of the Local Mandate Law, G. L. c. 29, s. 27C, to the Ethics Reform Act of 2009 (Act). As explained in detail in the enclosed correspondence, it is DLM's opinion that the Local Mandate Law does not apply in this case, primarily due to the determination that the Act imposes primary obligations on employees and no more than incidental administration expenses upon cities and towns. As you know, the Commonwealth is not obligated to assume the cost of such incidental expenses under the Local Mandate Law.

Nonetheless, as you observed at our meeting on this matter on December 16, 2009, there is a good deal of confusion and concern as to how the requirements of the Act affect implementation of its provisions at the municipal level. More specifically, representatives of the communities in attendance expressed concern that the interplay of local factors indirectly related to the Act will prove to be problematic. Among others, these include: obligations under various collective bargaining agreements that may require minimum overtime pay for any additional training; grievances that may follow for refusal to pay overtime, and the potential costs of defending those grievances; the cost of substitute staff to cover work duties while others take the training; the inability of many employees to speak and read English fluently, and the inability of many employees to access and operate a personal computer; the fact that the training test questions are currently geared to state not municipal employees; technical problems that prevent multiple users at a single computer; and the fact that certain small towns do not have internet access.

Even though DLM concluded that the Local Mandate Law is not the vehicle for this relief, we would like to ask you to work with us to determine whether there may be additional administrative or legislative means to ease and thereby enhance compliance with this important law at the local level. Specifically, we are suggesting that your office consider actions which fall into the following two categories:

- (1) While maintaining your statutory obligation to enforce its provisions, employ a more flexible approach to the implementation of the current law at the local level, and,
- (2) Work with our office to craft statutory amendments relative to Chapter 28 of the Acts of 2009, to address the concerns of the cities and towns without compromising the overall legislative intent of the law.

An initial bullet point list of specific ideas relative to this two-pronged approach is detailed below. Please understand that the ideas listed are intended to be a starting point for discussion rather than a comprehensive solution to the issue.

Flexible approach to implementation

- Delay the training deadline for municipal employees beyond April 2, 2010.
- Finalize the city/town focused training criteria prior to the deadline rather than requiring municipal employees to take the state employee focused training. As of this date your web site indicates that your staff is working on this issue.
- Address the computer access technical issues thus allowing multiple users of the same terminal. Many cities and towns are very limited as to the number of computers their employees can access compounded by the fact that many employees do not own personal computers.
- Provide the test in more than one language and give those non-English speaking employees an extended deadline for completion.

Possible statutory amendments

- Consider amendments to refocus the training requirement from every state and municipal employee to only those who exercise governmental authority, and those who participate in or have responsibility for governmental decision-making, contracting, hiring, investigation or any other discretionary governmental action. Perhaps a similar, but somewhat broader, standard to the one currently in use for those state employees who must file an Annual Statement of Financial Interest could be considered.
- Consider an amendment allowing for an alternative to the requirement that training be completed on-line, by providing a paper version as an acceptable means of completion. As noted above, many employees are not computer literate.

I would like to thank you for participating in the December meeting we convened on this matter, and for your ongoing attention to municipal concerns. The Office of the State

Auditor looks forward to working with you and your staff to identify ways to ease the burden of compliance with this very important law on cities, towns, and their employees in a way that accomplishes the desires and intent of the Administration and the Legislature.

Sincerely yours,



James F. Driscoll
General Counsel