



A. JOSEPH DeNUCCI  
AUDITOR

# The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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March 24, 2008

Mr. Maurice M. DePalo, Chair  
Board of Selectmen  
Town of Shrewsbury  
Municipal Office Building  
100 Maple Avenue  
Shrewsbury, Massachusetts 01545-5398

**RE: St. 2006, c. 58 An Act Providing Access to Affordable, Quality, Accountable  
Health Care**

Dear Chairman DePalo:

Auditor DeNucci asked that I respond to the request of the Shrewsbury Board of Selectmen relative to G. L. c. 29, s. 27C, the Local Mandate Law, and the above-captioned Act, known as the Health Care Reform Law. Specifically, in your letter you cite the cost of complying with bookkeeping and other administrative requirements, as well as costs associated with the establishment of a so-called Section 125 Plan (allowing employees to contribute to the cost of a health insurance plan on a pre-tax basis.) Additionally, during a meeting with Division of Local Mandates (DLM) staff, your Town Manager explained the cumulative effect of these and other health insurance-related requirements that have been enacted over the years. Although we appreciate your concerns, it is the opinion of DLM that this Act and the resulting compliance costs are not “mandates” within the meaning of the Local Mandate Law. This is primarily because Chapter 58 imposes obligations that are generally applicable to both public and private sector employers; the obligations are not directed particularly at cities and towns. The following discussion further explains this conclusion.

As you know, the Local Mandate Law was adopted as part of Proposition 2 ½ to protect municipalities from state imposed costs. However, it does not shield municipalities from every type of state requirement resulting in additional local spending. The courts have ruled that G. L. c. 29, s. 27C applies only to state laws and regulations adopted after 1980 that impose cost obligations upon *cities and towns*; it does not apply to generally applicable state law or regulation.

In *Town of Norfolk vs. Department of Environmental Quality Engineering*, the State Supreme Judicial Court (SJC) addressed the question of financial responsibility for

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landfill design standards under G. L. c. 29, s. 27C. 407 Mass. 233 (1990). In its decision, the SJC concluded that "... [the local mandate law] does not exempt municipalities from laws or regulations of general applicability governing activities engaged in by private businesses..."

While the *Norfolk* decision centered on post-Proposition 2½ landfill standards, it is analogous in application to the requirements you cite under the Health Care Reform Law. For example, Chapter 58 is replete with references to "employers," but there is no distinction between municipal or private sector employers. In many aspects, the law applies generally across the board to *all* employers. Although there are provisions that apply only to those that employ more than ten individuals, again, these provisions make no distinction on the basis of public or private sector status. See the *Commonwealth Connector Employer Handbook*, November 1, 2007. Examples of provisions that apply only to employers of ten or more individuals include the health insurance responsibility disclosure forms (Chapter 58, section 42), and the so-called Section 125 plans (Chapter 58, section 48.)

All of this considered, DLM concludes that The Health Care Reform Law is a law that is generally applicable across the private and public sectors. In light of this fact and the *Norfolk* precedent, it is DLM's opinion that the Local Mandate Law does not apply in this case. Nonetheless, please be advised that this opinion would not prejudice the right of any city or town to seek direct relief from the courts pursuant to G. L. c. 29, s. 27C(e).

We regret that this opinion does not aid the Town's efforts to control the cost of administering employee health benefits programs. However, DLM must apply the Local Mandate Law consistently to each issue, as interpreted by the courts. Please let me know if there are factors we may have not considered that would change this conclusion, and please call with further questions or comments you may have.

Sincerely,



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