



# The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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May 24, 2011

Mr. Christopher G. Timson, Chairman  
Walpole Board of Selectmen  
Town Hall  
135 School Street  
Walpole, Massachusetts 02081

**RE: Massachusetts Department of Correction Mitigation Payments for MCI Cedar Junction**

Dear Mr. Timson:

This letter is in response to your request regarding the Local Mandate Law, G. L. c. 29, § 27C, and correspondence from the Department of Correction (DOC) indicating that it would not make its “mitigation” payment to the Town of Walpole for fiscal year 2010. At least as far back as fiscal year 2002, the annual state budget has included funds earmarked to mitigate the local financial impact on communities hosting state correctional facilities. Among other things, these financial impacts may include the cost of providing fire, police, and ambulance services at the facilities.

Had the earmarks continued, DOC staff indicates that the fiscal year 2010 state payment to the Town of Walpole for this purpose would have been approximately \$62,470, a significant reduction from prior annual allotments of \$750,000. However, since fiscal year 2009, DOC has not made mitigation payments due to budget constraints. In your letter, you ask that the State Auditor determine that the termination of mitigation payments is an unfunded state mandate. Although we share your concern for the impact of this type of revenue loss, the Division of Local Mandates (DLM) concludes that this particular type of cut in state payments is beyond the scope of the Local Mandate Law. The following discussion explains this conclusion.

In general terms, the Local Mandate Law provides that post-1980 laws and regulations that impose additional cost or service obligations upon cities and towns must either be fully funded by the Commonwealth, or subject to local acceptance. A community aggrieved by a state law, rule, or regulation adopted contrary to this standard may petition superior court for an exemption from compliance. G. L. c. 29, § 27C (a), (c), and (e). Court authority has established that the Commonwealth is not obligated to fund state mandates, but instead, that communities may be freed from the obligation to comply by court order. See *City of Worcester v. the Governor*, 416 Mass. 751 (1994).

Because the remedy under the Local Mandate Law is an exemption from compliance, as a threshold matter, a community must show that there is a law or regulation from which the court could waive compliance. After considerable research into the law related to your inquiry, DLM has not been able to identify a state law, regulation, or agency rule that requires the Town of Walpole to provide emergency response at MCI Cedar Junction. We note that Chapter 591 the Acts of 1953 authorized the creation of the state prison at Walpole, which was later re-named MCI Cedar Junction. There is no language in the 1953 Act, or any known agreement executed between the state and the Town of Walpole that requires the Town to service the facility. Similarly, there is no language in the Act or any known agreement that obligates the Commonwealth to provide state funding to defray the cost of such service. Accordingly, there appears to be no requirement from which a court could exempt the Town of Walpole under the Local Mandate Law. For these reasons, it is DLM's opinion that the termination of mitigation payments in this case is beyond the scope of the Local Mandate Law.

In closing, please be advised that this opinion is subject to revision in the event you raise additional factors that would require a different result. I thank you for bringing this issue to our attention, and welcome further questions or comments on this or other matters of concern to you and your community.

Sincerely,

A handwritten signature in cursive script that reads "Emily D. Cousens". The signature is written in dark ink and is positioned above the typed name.

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

cc: The Honorable Daniel B. Winslow  
Kyra L. Silva, DOC Budget Director