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The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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August 2, 2006

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RE: Department of Public Safety (DPS) Elevator Regulations 524 CMR 17.16 (24)

Dear Attorney Donahue:

This letter is in response to your request, on behalf of the Town of West Springfield, relative to the Local Mandate Law, G. L. c. 29, s. 27C, and the above-captioned regulations. According to your petition, a 2003 amendment to these regulations will mandate over \$30,000 in new spending for deconstruction and reinstallation of required elevator safety equipment in a town office building. Specifically, you request a determination that the regulations in question are not effective in the Town of West Springfield until the Commonwealth makes an appropriation to fund these additional costs, pursuant to the Local Mandate Law.

However, as explained in earlier correspondence, the Office of the State Auditor does not have authority to suspend operation of state law. G. L. c. 29, s. 27C provides that a community aggrieved by an unfunded state mandate may seek an exemption from compliance in superior court. It is the role of the State Auditor's Division of Local Mandates (DLM) to issue an opinion as to whether the Local Mandate Law applies in a given case, and if so, to determine the amount of the cost imposed by the law or regulation at issue. In the matter that you have raised, DLM has reached the conclusion that 524 CMR 17.16 (24) does not impose "mandates" within the meaning of the Local Mandate Law. This is primarily because the regulations impose elevator safety obligations that are generally applicable to both the public and private sectors; they are not directed particularly at cities and towns. The following discussion 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 landfill design standards under G. L. c. 29, s. 27C. 407 Mass. 233 (1990). In its decision, the SJC stated 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 SJC decision centered on post-Proposition 2½ landfill standards, it is analogous in application to elevator safety law and regulations. For example, G. L. c. 143, ss. 62-71G, in effect since at least 1950, grants the Commissioner of DPS supervision of the installation, alteration, maintenance, inspection and approval of *all* elevators in *all* buildings and structures in the Commonwealth. The law further specifies that *all* owners of buildings that operate elevators must comply with inspection and safety test requirements. In pertinent part, 524 CMR 1.00 – 35.00, in effect since at least 1978, also imposes testing and inspection responsibilities on owners of *all* buildings with elevators to ensure that all equipment is maintained in a safe operating condition. No distinction in the law or regulations is made between public or private buildings, or between public or private building owners. In fact, G. L. c. 143, s. 2A specifically states that the inspection and safety provisions apply to all buildings, whether privately or publicly owned.

Finally, DPS data indicates that the state elevator safety provisions govern a field that is dominated chiefly by the private sector. The DPS Elevator Inspection Division Supervisor, Lenny Chase, reports that of the approximately 30,000 elevators in Massachusetts, the majority (about 80%) are located in privately owned buildings, with the remainder controlled by state, county, and municipal governments. All of this considered, DLM concludes that 524 CMR 17.16 (24) is a regulation 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.

Attorney James T. Donahue
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In closing, I would like to convey that during our conversations with DPS Supervisor Chase, he indicated that DPS is willing to explore with the Town of West Springfield possibilities to establish compliance time frames and additional extensions to bring the elevators up to state code. He may be reached at 978.851.9813.

We regret that this opinion does not aid the Town's efforts to deal with budget constraints. Nonetheless, we 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,

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

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

cc: Mr. Larry Chase, DPS Elevator Inspection Division