

No. 2026-P-0235

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT OF MASSACHUSETTS

WILIAM P. O'DONNELL, in his capacity as REGISTER OF DEEDS FOR
NORFOLK COUNTY,

Plaintiff/Appellee,

v.

JOSEPH P. SHEA, PETER H. COLLINS and RICHARD R. STAITI, in their
capacity as the BOARD OF COUNTY COMMISSIONERS FOR THE
COUNTY OF NORFOLK, and ADVISORY BOARD ON COUNTY
EXPENDITURES FOR THE COUNTY OF NORFOLK

Defendants/Appellants.

On Appeal from a Final Judgment of the Superior Court

BRIEF OF DEFENDANTS/APPELLANTS

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STATEMENT OF ISSUES

1. Whether the Superior Court erred in granting summary judgment on appellee's M.G.L. c. 64D claim based on a disputed factual record?
2. Whether the Superior Court erred in granting summary judgment on appellee's M.G.L. c. 64D claim?
3. Whether the Superior Court erred by declaring that appellee's claim regarding the appointment of a Chief Information Officer was not rendered moot by that officer's subsequent resignation?
4. Whether the Superior Court erred by declaring that defendant County Commissioners exceeded their authority by voting to appoint appellee's recommended candidate to a full-time temporary position with full benefits where their decision was permitted by and consistent with the long-standing rules of the County Personnel Board?

STATEMENT OF THE CASE

This appeal arises out of disputes between plaintiff/appellee, William P. O'Donnell, ("plaintiff/appellee" or "O'Donnell") in his capacity as Register of Deeds for the County of Norfolk, and defendants/appellants County Commissioners for the County of Norfolk ("Commissioners") and the Advisory Board for the County of Norfolk ("Advisory Board")(collectively "defendants/appellants").¹

Specifically, O'Donnell alleged that defendants/appellants violated Massachusetts law by (i) underfunding the Registry of Deeds; and (ii) refusing to approve the hiring of a new county employee as a permanent employee for the position of Chief Information Officer ("CIO"). Both issues are questions of first impression in the Commonwealth.

PROCEDURAL BACKGROUND

On July 14, 2021, plaintiff/appellee filed a Verified Complaint against defendants/appellants County Commissioners in the Superior Court seeking declaratory judgment, mandamus, and injunctive relief for the

¹ This case was subsequently consolidated with *William P. O'Donnell v. John J. Cronin*, Norfolk Superior Court Civil Action No. 22-01001. The Superior Court (Cahillane, J.) previously entered summary judgment in favor of plaintiff in that case and the Court's decision was affirmed on appeal. See Supreme Judicial Court Docket No. SJC-13699 (February 14, 2025).

Commissioners' refusal to approve his request to hire a new county employee for the position of Chief Information Officer ("CIO claim"). Record Appendix Volume I 6 ("R.A.I.").

On April 12, 2022, defendants/appellants filed a motion for summary judgment on the CIO Claim. R.A.I. 6. On May 5, 2022, plaintiff/appellee filed an unopposed motion to continue his opposition to the County Commissioners' motion for summary judgment pursuant to Mass. R. Civ. P. 56(f). R.A.I. 9. On May 18, 2022, the Superior Court granted plaintiff/appellee's motion and extended the filing of an opposition to August 10, 2022. R.A.I. 9.

On September 7, 2022, plaintiff/appellee filed an unopposed motion to amend his complaint. R.A.I. 9. On September 9, 2022, the Court granted the unopposed motion to amend. On September 16, 2022, plaintiff-appellee filed his Amended Complaint. R.A.I. 10. Plaintiff/Appellee's Amended Complaint alleged, in addition to the CIO claim, that defendants/appellants failed to provide the funding required by M.G.L. c. 64D, §§ 12(a) and 12(b) ("64D claim").²

²Plaintiff/Appellee's Amended Complaint also included a claim against defendants/appellants arising out of the County's consolidation of the County's technology department with the Registry of Deeds' technology department. However, plaintiff/appellee dismissed this claim prior to the entry of final judgment in this matter. R.A.I. 18.

The case was stayed from December 8, 2022, until May 31, 2023, while the parties attempted to mediate the case with the assistance of the Honorable Paul Chernoff (Ret.) before his unexpected death. R.A.I. 11-12.

On February 15, 2024, the parties filed cross motions for summary judgment on the CIO claim and the funding claims.³ R.A. _____. On June 28, 2024, the Superior Court (Cloutier, J.) granted plaintiff/appellee's motion for summary judgment. R.A.I. 15.

In her Memorandum of Decision and Order on Cross-Motions for Summary Judgment, Judge Cloutier declared that defendants violated M.G.L. c. 64D, § 12 by (i) not providing the Norfolk County Registry of Deeds ("Registry") a continuing amount of expenditure of not less than 102.5 percent of the amount expended for the Registry's automation, modernization, and operation in the preceding fiscal year ("County Mandate"); (ii) requiring that the Registry's share of funds in the deeds excise fund ("Registry's Share") be expended before spending or accounting for the County Mandate; (iii) using funds from the Registry's Share towards the County Mandate; and (iv) taking or retaining any portion of the Registry's

³ Defendants/appellants' cross-motion for summary judgment on O'Donnell's 64D claim was limited to jurisdictional and venue grounds. Defendants/appellants did not file a cross motion for summary judgment on O'Donnell's funding claims because material facts were in dispute. R.A.I. 909.

Share. The Court did not explain how she reached these conclusions but did acknowledge that the “exact amounts of some of the relevant figures are disputed.” R.A.II 588-589, 593.

Judge Cloutier further declared that defendant County Commissioners exceeded their authority by voting against appointing the Registry's candidate for the approved, budgeted, and essential Registry chief information officer position on a temporary basis. R.A.II. 593. The Court reasoned that “[e]ven if the Commissioners’ actions regarding the CIO position were consistent with the Rules and Regulations on their face, the court is unpersuaded that the Commissioners acted within their authority.” R.A.II. 592. Defendant/Appellant’s cross-motion for summary judgment on the CIO claim was denied. R.A.II. 593.

On February 27, 2025, plaintiff/appellee filed a Motion for Separate and Final Judgment and a Motion to Dismiss his claims related to the County’s consolidation of the Information Technology department. R.A.I. 16. After a hearing by the Court on May 8, 2025, the Court (Leighton, J.) granted plaintiff’s Motion for Separate and Final Judgment and entered a final judgment in the form proposed by defendants/appellants on October 1, 2025. R.A.I. 18.

On October 3, 2025, defendants/appellants filed their Notice of Appeal of the Final Judgment entered by Judge Leighton. R.A.I. 19.

FACTUAL BACKGROUND

1. Chief Information Officer (“CIO”)

On June 24, 2021, plaintiff/appellee sent defendant/appellant County Commissioners a "Norfolk County Personnel Status Form" for the position of Chief Information Officer (“CIO”) in the Registry of Deeds pursuant to M.G.L. c. 35, §§ 48-56 and the rules and regulations approved thereunder (“First Blue Sheet”). The form stated the “Appointment/Intent” to hire a new county employee for a permanent, full time, position as Chief Information Officer with an effective date of July 6, 2021, at a salary of \$129,067.40 per annum. R.A.II. 426.

On June 30, 2021, Defendants held a meeting in which they decided not to approve the blue sheet. R.A.I. 81-84. The Commissioners’ discussion prior to their vote is set forth in the Meeting Minutes. R.A.I. 81-84. Specifically, at the time of the County Commissioners’ decision, they were waiting for an operational analysis report from an outside consultant, the Abrahams Group. *Id.* Noting that a final report was expected in late July, 2021, the Commissioners voted 2-1 not to approve the appointment as proposed. R.A.I 84.

Plaintiff/Appellee filed this civil action on July 14, 2021. R.A.I. 6. Plaintiff/Appellee's Verified Complaint requested the Court to: (1) enjoin the County Commissioners from interfering with or otherwise hindering the Register's hiring of personnel for the Norfolk County Registry of Deeds; and (2) order the County Commissioners to approve the blue personnel paper for the Registry's CIO position.⁴ R.A. I. 29-30.

On July 16, 2021, plaintiff/appellee sent defendant/appellant County Commissioners a second "Norfolk County Personnel Status Form" for the position of CIO in the Registry of Deeds. ("Second Blue Sheet"). The form stated the "Appointment/Intent" to hire a new county employee for a permanent, full time, position as Chief Information Officer with an effective date of July 26, 2021, at a salary of \$129,067.40 per annum. R.A.II. 429.

On July 21, 2021, defendant/appellant County Commissioners approved the CIO appointment as a temporary employee at the rate of \$129,067.40 per annum. The reasoning for their decision is set forth in the Meeting Minutes. R.A.II. 464. Specifically, the Commissioners decided to approve the CIO appointment as a temporary employee because they were

⁴ Plaintiff/Appellee also filed a Motion for a Preliminary Injunction that was denied after a hearing. The Court (Wilson, J.) denied the motion "solely for lack of irreparable harm because the hiring has now been approved by Defendants for a one-year temporary position." R.A.I. 7.

waiting for the final operational analysis report from the consulting firm, the Abrahams Group. R.A.II. 465. On January 14, 2022, the employee hired for the CIO position resigned. R.A.II. 464-465.

2. County Appropriations for Registry of Deeds

The General Laws authorize defendant/appellant Advisory Board to review and adopt a county budget for each fiscal year. M.G.L. c. 35, § 28B. “Sums appropriated in appropriation acts for counties” ... are based on detailed schedules approved by the Advisory Board. M.G.L. c. 35, §§ 32 & 28B. “Except as provided by such acts or except as otherwise provided by law, no liability may be incurred, and no expenditure shall be made in excess of the amount available in an existing appropriation...” *Id.* at § 32.

M.G.L. c. 64D, § 11 provides, in pertinent part, that “there shall be established upon the books of each county ... a fund, maintained separate and apart from all other funds and accounts of each county, to be known as the Deeds Excise Fund.” M.G.L. c. 64D, § 12, provides two funding sources for the Registry of Deeds: the Deeds Excise Fund (§ 12(a)) and the County Mandate (§ 12(b)).

M.G.L. c. 64D, § 12 provides:

(a) Notwithstanding any general or special law to the contrary, of that portion of the amounts deposited in the Deeds Excise Fund for each county from revenues collected pursuant to this chapter which represents 10.625 per cent of the taxes collected: (1) not

more than 60 per cent of the deposits shall be disbursed and expended for meeting the costs of the operation and maintenance of the county; and (2) not less than 40 per cent shall be disbursed and expended for the automation, modernization and operation of the registries of deeds.

(b) Notwithstanding any general or special law to the contrary, with respect to funds appropriated for the purposes designated in clause (2) of subsection (a) and which are not dedicated to the Deeds Excise Fund in each county under section 11, the county budget shall provide a continuing amount of expenditure of not less than 102.5 per cent of the amount expended for that purpose in the preceding fiscal year.

In May 2020, due to the impact of COVID-19, the revenue projections from the Registry of Deeds were down substantially. R.A.II. 224. Recording fees projections at the Registry were downgraded by \$100,000, interest earnings were down and internet revenues projections were reduced by \$130,000.00. R.A.II. 224. In total, revenue projections were down at the Registry of Deeds by approximately \$755,000. R.A.II. 225.

Prior to May 2020, the County Mandate was incorrectly calculated to be not less 102.5 per cent of the preceding fiscal year's appropriation. According to Assistant Treasurer Joseph D'Auria ("D'Auria"), the County Mandate calculation was changed after the County Commissioners hired Daniel P. Matthews as County Director. Previously, Mr. Matthews was O'Donnell's Executive Assistant. R.A.II. 292.

In 2007, Mr. Matthews, a Massachusetts attorney, instructed D'Auria that, in his opinion, the County Mandate should be calculated as 102.5 per

cent of the amount appropriated for the County Mandate in the preceding fiscal year.⁵ R.A.II. 292. D'Auria disagreed with Mr. Matthews and argued that the County Mandate should only be based on the amount actually expended by the Registry in the preceding fiscal year because M.G.L. c. 64D, § 12 provides that the “county budget *shall* provide a continuing amount of expenditure of not less than 102.5 per cent of the *amount expended for that purpose in the preceding fiscal year.*” (emphasis added). R.A.II. 292. Notwithstanding the unambiguous language in § 12(b), Mr. Matthews calculated the County Mandate based on the amount appropriated in the prior fiscal year during the years he was the County Director. R.A.II. 292. Moreover, prior to May 2020, the funds appropriated for the County Mandate were spent by the County before the funds appropriated for the Deeds Excise Fund were spent. R.A.II. 292.

Between 2007 and June 2020, the budgetary impact resulting from calculating the County Mandate based on the prior year’s appropriation and using the County Mandate to pay Registry expenses before using the Deeds Excise Fund, was a substantial unexpended surplus in the Deeds Excise Fund

⁵ M.G.L. c. 35, § 16 provides, in pertinent part, that “[t]he fiscal year of each county shall be the year beginning July first and ending with the following June thirtieth; but the treasurer shall, until July tenth, enter in his books the items for payment of bills incurred and salaries earned during the previous fiscal year.”

budget line at each year end. R.A.II. 292. Over time, this unexpended surplus in the Deeds Excise Fund increased substantially.

During the FY 2021 budget process, D'Auria also informed former County Director Michael Mullen that for many years the Registry's budget included hundreds of thousands of dollars in salary appropriations that O'Donnell did not spend. R.A.II. 293. Indeed, during the four-year period between FY 2017 and FY 2020, O'Donnell overestimated his salary lines by \$2,674, 155.00. R.A.II. 301.

In addition, during the same 4-year period, O'Donnell did not spend approximately \$920,526.00 the Advisory Board appropriated for non-salary expense lines. R.A.II. 303. Thus, during the 4-year period between FY 2017 and FY 2020, O'Donnell overestimated and failed to spend nearly \$3.6 million dollars appropriated by the defendant/appellant Advisory Board in salary and non-salary budget lines. R.A.II. 303.

Finally, between the period from FY 2007 and FY 2019, the unspent appropriation balance in the Deeds Excise Fund reported as of April 30, 2020, had grown from \$1,901,896.00 in 2007 to \$4,427,451.00 in 2019. R.A.II. 305. In contrast, D'Auria noted the Plymouth Registry's unexpended balance at the end of FY 2023 was approximately \$100,000.00. R.A.II. 305.

In May 2020, during the FY 2021 budget process, the County was faced with approximately \$755,000 in decreased revenue from the Registry due to the impact of COVID-19. As a result, defendants/appellants revisited the County Mandate issue.

Specifically, defendants/appellants correctly concluded that the County Mandate should be calculated based on the amount expended for the Registry's automation, modernization, and operation in the preceding fiscal year from funds other than from the Deeds Excise Fund as stated in M.G.L. c. 64D, §12(b). Beginning in FY 2021, the County Treasurer also began to expend the Deeds Excise Fund before spending the funds appropriated for the County Mandate because M.G.L. c. 64D, § 12(a) requires "not less than 40 per cent" of the Deeds Excise Fund "shall be disbursed and expended for the automation, modernization and operation of the registries of deeds." R.A.II. 294.

On May 27, 2020, near the end of FY 2020, the Advisory Board voted to reduce the FY 2020 County Mandate from \$4,100,233 to an amount equal to the Registry's FY 2020 actual expenses. R.A.II. 233. In FY 2019, \$1,054,113.12 of the Deeds Excise Fund were used to cover Registry expenses. R.A.II. 293. Calculating the County Mandate based on the amount disbursed and expended from the Deeds Excise Fund in FY 2019 (instead of

the amount appropriated in FY 2019) from funds other than the Deeds Excise Fund resulted in a decrease in the County Mandate for FY 2020 from \$4,100,233 to \$3,558,790.62. R.A.II. 293-294. However, even with this reduction, the County Mandate still exceeded 102.5 per cent of the amount expended for the Registry's automation, modernization, and operation from the Deeds Excise Fund in FY 2019. R.A.II. 293-294.

Specifically, in FY 2019, \$1,054,113.12 of the Deeds Excise Fund was used to cover Registry's expenses. R.A.II. 293. As a result, the FY 2020 appropriation for the County Mandate should have been \$2,760,751.92 instead of \$4,100,233.⁶ R.A.II. 293. Moreover, when the Advisory Board voted to reduce the County Mandate to the Registry's actual expenses in FY 2020, or \$3,558,790.62, the Advisory Board still budgeted \$798,038.70 more than required by § 12(b)⁷ for the County Mandate. R.A.II. 293. Of

⁶ In FY 2019 the Registry's Department Expenses totaled \$3,747,529.63. In FY 2019, \$1,054,113.12 of the Deeds Excise funds were used to cover some expenditures. As a result, the FY 2020's appropriation for the County Mandate should have been \$2,760,751.92 (\$3,747,529.63 less \$1,054,113.12=\$2,693,416.51). $\$2,693,416.51 \times 102.5\% = \$2,760,751.92$ and not the \$3,841,217.87 alleged by the Register. R.A.II. 293.

⁷ When the Norfolk County Advisory Board voted to reduce the County Mandate to the Registry's actual expenses in FY 2020, the County Mandate for FY 2020 was reduced to \$3,558,790.62. Therefore, the Advisory Board budgeted \$798,038.70 more than required by c. 64D, § 12 (\$3,558,790.62 less \$2,760,751.92 = \$798,038.70). R.A.II. 293-294.

course, this also meant that in every prior year since 2007 the County had appropriated a Mandate larger than required by § 12(b). R.A.II. 293. Nevertheless, O'Donnell disputed these amounts and maintained that the County Mandate should have been \$3,841,217.87. R.A.II. 293. However, O'Donnell now agrees that the Mandate should be calculated based on the prior year's expenses rather than the prior year's appropriation.

At no time did the County use funds from the Registry's Share of the Deeds Excise Fund to pay the County Mandate. R.A.II. 294-295. Moreover, contrary to O'Donnell allegations and the Superior Court's decision, the Registry has never received less than 40% of the Deeds Excise Fund. R.A.II. 295. Also, contrary to O'Donnell's allegations and the Superior Court's decision, the County has never received more than 60% of the Deeds Excise Fund. Both of these material facts are disputed. R.A.II. 295. Notwithstanding these disputed material facts, the Superior Court ruled in O'Donnell's favor.

On July 10, 2023, the Advisory Board voted to transfer \$3,825,529.22 from the Deeds Excise Fund to the County General Fund pursuant to M.G.L. c. 35, § 28B(h). R.A.II. 237. M.G.L. c. 35, § 28B(h) provides, in pertinent part, that:

At the closing of the treasurer's books on July tenth, the balance to the credit of each appropriation shall become a part of the general unappropriated balance in the county treasury, but no appropriation voted for special, non-operating purposes, shall

lapse until the work for which it has been made has been completed. Such appropriation, however, may not be carried forward for more than one extra fiscal year.

The Superior Court ruled that § 28(h) concerns county appropriations and that neither the Deeds Excise Fund nor the County Mandate are appropriations subject to § 28(h). R.A.II. 588.⁸

SUMMARY OF ARGUMENT

The Superior Court erred in granting summary judgment on plaintiff/appellee's 64D claim. Specifically, the Court found that defendants/appellants underfunded the County Mandate in FY 2020 even though defendants/appellants submitted admissible evidence showing that they exceeded the amount required by § 12(b) for the County Mandate and the Court acknowledged that "genuine issues of facts remain with respect to various figures at issue." R.A.II. 588.

The Court compounded its error by holding that defendants/appellant further violated § 12 by conduct that was either disputed by defendants/appellants or is not prohibited by § 12. For example, the Court held that defendants/appellants used funds from the Deed Excise Fund to

⁸ The Superior Court did not explain how the Deeds Excise Fund or the County Mandate could be spent by the Registry if they were never appropriated by the Advisory Board during the budgeting process.

pay for the County Mandate even though defendants/appellants denied this material fact. The Court also held that defendants/appellants violated § 12 by returning unspent county appropriations to the general fund even though M.G.L. c. 28B(h) specifically requires unspent county appropriations to be returned to the general fund at each fiscal year end.

The Superior Court also erroneously held that defendants/appellants exceeded their authority by voting against plaintiff/appellee's request to hire a Chief Information Officer (CIO) and by hiring him as a temporary employee instead of a permanent employee even though the defendant/appellant County Commissioners are solely and exclusively responsible for hiring county employees. Indeed, the Court found that this issue was not moot even though the person hired for the position resigned after plaintiff/appellee filed his complaint.

As a result, this Court should reverse the Superior Court's summary judgment decision and remand the case for further proceedings on the 64D claim and enter summary judgment in favor of defendant/appellant County Commissioner on plaintiff/appellee's CIO claim.

ARGUMENT

I. STANDARD OF REVIEW

This appeal challenges decisions made on summary judgment. “An appellate court reviewing a grant of summary judgment examines its allowance de novo and from the same record as the motion judge.” *Meyer v. Veolia Energy N. Am.*, 482 Mass. 208, 211, 121 N.E.3d 1221 (2019). “Summary judgment is appropriate where there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law.” *Barron Chiropractic & Rehabilitation, P.C. v. Norfolk & Dedham Group*, 469 Mass. 800, 804, 17 N.E.3d 1056 (2014). Questions of statutory interpretation are “pure question[s] of law,” and reviewed de novo (citation omitted). *Plymouth Retirement Bd. v. Contributory Retirement Appeal Bd.*, 483 Mass. 600, 603-604, 135 N.E.3d 702 (2019).

II. THE SUPERIOR COURT ERRED IN GRANTING SUMMARY JUDGMENT ON APPELLEE’S 64D CLAIMS.

Massachusetts General Laws sets forth the annual budget process for counties in significant detail. M.G.L. c. 35, § 28B. This law details the process by which the County’s annual budget is adopted and approved by the Advisory Board. M.G.L. c. 35, § 28B(a)(“In every county other than Suffolk and Nantucket, there shall be an advisory board on county expenditures”).

The Advisory Board is the legislative body of the County that is responsible for reviewing the annual budget proposed by the County Commissioners, and has the discretion to “increase, decrease, alter and revise the proposed budget.” *Id.* § 28B(b). Following a public hearing on the proposed budget, the Advisory Board, “may further increase, decrease, alter, and revise the proposed itemized budget . . . [which] shall be finally adopted by a . . . resolution . . . of the advisory board.” *Id.* § 28B(c), (d). Critically, M.G.L. c. 35, § 28B(g) provides that, “the approved budget shall govern the expenditures of the county” and that, “[n]o expenses may be incurred in excess of those shown in the approved budget, but the budget may be from time to time amended by the preparation and submission of a proposed supplementary budget by the county commissioners to the advisory board.”

In addition, the statute provides that: “[n]o new or unusual expense shall be incurred, or permanent contract made, or salary increased, until an appropriation sufficient therefor has been made by the advisory board on county expenditures.” M.G.L. c. 35, § 34. Moreover, the statute provides that at “the closing of the treasurer’s books on July tenth, the balance to the credit of each appropriation shall become a part of the general unappropriated balance in the county treasury. M.G.L. c. 35, § 28B (h). Thus, the annual budget and appropriation process for the County goes through a carefully

thought-out process which provides discretion to the Advisory Board, and the Advisory Board's budgetary decisions are final. *Id.* § 28B(e).

A. The Superior Court Erred By Granting Summary Judgment on Appellee's 64D Claim Based On A Disputed Factual Record.

Summary judgment is only appropriate when “pleadings, depositions, answers to interrogatories, and responses to requests for admission ... together with affidavits ... show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Mass. R. Civ. P. 56(c). The moving party bears the burden of proving: (1) the absence of controversy over every material fact; and (2) that he is entitled to judgment as a matter of law. *See Highlands Ins. Co. v. Aerovox Inc.*, 424 Mass. 226, 232 (1997). When deciding motions for summary judgment, the court must determine “whether, viewing the evidence in the light most favorable to the *nonmoving party*, all material facts have been established, and the moving party is entitled to judgment as a matter of law.” *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991)(emphasis added).

In this case, O'Donnell, as the party with the burden of proof at trial, failed to establish that in FY 2020 the County did not provide the Registry of Deeds with a continuing amount of expenditure of not less than 102.5 percent of the amount expended by the Registry for automation,

modernization, and operation in the preceding fiscal year. Specifically, the Court found that in fiscal year 2020, the County reduced the 2020 County Mandate to an amount “equal to the Registry’s fiscal year 2020 expenditures.” Moreover, the Court found that “some of the relevant figures are disputed.” However, the Court failed to explain how it could enter judgment in favor of O’Donnell on the County Mandate issue when the “relevant figures are disputed.” In addition, the Court failed to explain how it could declare that “defendants have violated G.L. c. 64D § 11 and 12 by: (i) not providing the Norfolk County Registry of Deeds (“Registry”) a continuing amount of expenditure of not less than 102.5 percent of the amount expended ... in the preceding fiscal year (“County Mandate”)” when the “relevant figures are disputed.”

In his sworn affidavit, County Assistant Treasurer Joseph D’Auria stated that:

[I]n FY 2019 the Registry’s Department Expenses totaled \$3,747,529.63. In FY 2019, \$1,054,113.12 of the Deeds Excise funds were used to cover some expenditures. As a result, the FY ’20’s appropriation or County Mandate should have been \$2,760,751.92 (\$3,747,529.63 less \$1,054,113.12=\$2,693,416.51) $\$2,693,416.51 \times 102.5\% = \$2,760,751.92$ and not the \$3,841,217.87 alleged by the Register. R.A.II 293.

And he further stated:

When the Norfolk County Advisory Board voted in 2020 to reduce the County Mandate to the Registry's actual expenses in FY 2020, the County Mandate for FY 2020 was reduced to \$3,558,790.62. Therefore, the Advisory Board budgeted \$798,038.70 more than required by c. 64D, § 12 (\$3,558,790.62 less \$2,760,751.92 = \$798,038.70). R.A.II. 293-294.

Thus, the Court's decision to grant partial summary judgment for plaintiff not only ignored well-settled summary judgment law, but it also failed to view the evidence in the light most favorable to the nonmoving party, to wit, the defendants/appellants. As a result, O'Donnell was not entitled to partial summary judgment as a matter of law and the Court should, therefore, vacate the Superior Court's decision.

B. The Superior Court's Conclusion That The County Violated G.L. c. 64D, §§ 11 And 12 By Not Providing The Registry With A Continuing Amount of Expenditure Not Less Than 102.5 Per Cent Of The Amount Expended For The Registry's Automation, Modernization and Operation in the Preceding Fiscal Year Is Clearly Erroneous and Should Be Vacated.

The Court granted plaintiff/appellee's motion for summary judgment by finding that defendants violated G.L. c. 64D, §§ 11 and 12. Because the Court's conclusion is clearly erroneous, it should be vacated.

Where the text of a statute is clear and unambiguous, courts must apply its ordinary meaning. *Bronstein v. Prudential Ins. Co. of Am.*, 390 Mass. 701, 704 (1984), citing *Hashimi v. Kahl*, 388 Mass. 607, 610 (1983). Courts "look

to the language of the entire statute, not just a single sentence, and attempt to interpret all of its terms 'harmoniously to effectuate the intent of the Legislature.'" *Commonwealth v. Hanson H.*, 464 Mass. 807, 810 (2013), quoting *Commonwealth v. Raposo*, 453 Mass. 739, 745 (2009). So long as it yields a "logical and sensible result," courts will not interpret a statute so as to render any portion of it meaningless. *Adamowicz v. Ipswich*, 395 Mass. 757, 760 (1985), quoting *Lexington v. Bedford*, 378 Mass. 562, 570 (1979).

The text of Mass. Gen. Laws c. 64D, § 12 is clear and unambiguous. It provides:

- (a) Notwithstanding any general or special law to the contrary, of that portion of the amounts deposited in the Deeds Excise Fund for each county from revenues collected pursuant to this chapter which represents 10.625 per cent of the taxes collected: (1) not more than 60 per cent of the deposits shall be disbursed and expended for meeting the costs of the operation and maintenance of the county; and (2) not less than 40 per cent ***shall be disbursed and expended*** for the automation, modernization and operation of the registries of deeds.
- (b) Notwithstanding any general or special law to the contrary, *with respect to **funds appropriated** for the purposes designated in clause (2) of subsection (a)* and which are not dedicated to the Deeds Excise Fund in each county under section 11, the county budget shall provide *a continuing amount of expenditure of not less than 102.5 per cent of the **amount expended for that purpose in the preceding fiscal year.*** (Emphasis added).

The ordinary meaning of Section 12 cannot be determined in isolation. For example, § 12 does not define the phrase "Deeds Excise Fund." Rather, it

is necessary to "look to the language of the entire statute" and "attempt to interpret all of its terms 'harmoniously to effectuate the intent of the Legislature." *Hanson H., supra* at 810.

Specifically, Mass. Gen. Laws, c. 64D, § 11 provides, in pertinent part, that:

[T]here shall be established upon the books of the county... a fund, maintained separate and apart from all other funds and accounts of each county, to be known as the Deeds Excise Fund.

Section 11 further provides, in pertinent part, that:

Notwithstanding any general or special law to the contrary, ... on the first day of each month, 10.625 per cent of the taxes collected in the county ... under this chapter shall be transmitted to the Deeds Excise Fund for each county ... and shall be retained by such county.

Thus, § 11 clearly and unambiguously provides that a Deeds Excise Fund shall be established on the "books of the county" "separate and apart from all other funds and accounts of each county." Moreover, § 11 clearly and unambiguously states the 10.625 per cent of the [excise] taxes collected in each county "shall be retained by such county." Accordingly, there can be no dispute that the 10.625 per cent of excise taxes are county funds and not registry funds.

In addition, Mass. Gen. Laws, c. 64D, § 3 sets forth the government official who is responsible for accounting for the Deed Excise Funds received

by each county. Section 3 provides, in pertinent part, that:

Each register of deeds shall on or before the tenth day of each month account to the commissioner [of revenue] on a form prescribed and furnished by him for all sales made by said register during the preceding calendar month and shall turn over to the commissioner all moneys received from said sales, less any adjustments approved by him.

Moreover, § 3 permits each register of deeds to retain the interest earned on the Deeds Excise Funds and sets forth the approval process for any expenditure of said interest. Section 3 provides, in pertinent part:

Each register of deeds, *with the approval of the advisory board on county expenditures and the county commissioners, shall* for the purposes of purchasing equipment or services relative to electronic reporting, indexing, computers and systems designed to modernize and maintain registry records, retain interest earned on the deposit of excise stamp fees.

Finally, § 3 requires the register of deeds to provide the county treasurer with an accounting of these additional county funds. Section 3 provides, in pertinent part, that:

Each such register shall, annually, furnish to the county treasurer a financial report regarding such interest and the expenditure thereof in accordance with accepted accounting procedures.

Thus, § 3 clearly and unambiguously requires the register of deeds to account to the commissioner of revenue for the Deeds Excise Funds received each month. However, even the interest earned on the Deeds Excise Funds cannot be spent by the register of deeds without the approval of the advisory

board on county expenditures and the county commissioners. *Id.* Thus, even with respect to the interest earned on the Deeds Excise Funds, it is clear that said interest earned is county money and that the register of deeds is required to provide the county treasurer with a financial report in accordance with generally accepted accounting procedures. *Id.*

It is against this statutory background that the plain and ordinary meaning of § 12 becomes unambiguously clear. The plain and ordinary meaning of subsection (a) is that "of the portion of the amounts deposited" in the Deeds Excise Fund, to wit, the 10.625 per cent, "not more than 60 per cent" shall be disbursed and expended for the operation of the County and "not less than 40 per cent" shall be disbursed and expended for the Registry's operations. Using simple math, the plain and ordinary meaning of subsection (a) is that of the 10.625 per cent received by the County from the deeds excise tax, 6.375 per cent ($10.625 \times 60\%$) must be disbursed and expended for the operating expenses of the County and 4.25 per cent ($10.625 \times 40\%$) per cent must be disbursed and expended for the operating expenses of the Registry. Indeed, the use of the word "shall" by the Legislature requires that these amounts must be spent each year. *Skawski v. Greenfield Investors Property Development LLC*, 473 Mass. 580, 588 (2016)(the expression of

one thing in a statute is an implied exclusion of other things not included in the statute).

Similarly, the plain and ordinary meaning of subsection (b) is also unambiguously clear. The first operative phrase of subsection (b) begins: "with respect to funds appropriated for the purposes designated in clause (2) of subsection (a)". This phrase refers to §12(a)(2), which limits the purposes for which funds can be disbursed and expended to "the automation, modernization and operation of the registries of deeds." So, the plain meaning of this first part of subsection (b) is "with respect to funds appropriated for the purposes" of automation, modernization and operation of the registries of deeds."

Section 12(b) also makes clear that the 40% received each year must be appropriated. Indeed, without an appropriation by the Advisory Board, the 40% collected cannot be spent. M.G.L. c. 35, § 32 (sums appropriated in appropriation acts for counties ... shall be based upon detailed schedules approved by the county advisory boards).

The next phrase in subsection (b) begins with the word "and" which is followed by the phrase "which are not dedicated to the Deeds Excise Fund in each county under section 11." Thus, the plain meaning of this phrase are that additional County funds, other than funds from the Deeds Excise Fund, must

be appropriated. Thus, the plain and ordinary meaning of these phrases taken together refer to funds appropriated by the County for the Registry's operation that are not from the Deeds Excise Fund.

The importance of this plain meaning becomes apparent because these two phrases precede the final text of subsection (b) which provides: "the county budget shall provide a continuing amount of expenditure of not less than 102.5 per cent of the amount expended for that purpose in the preceding fiscal year." First, it should be noted that this provision refers to the "county budget" and not the Registry's budget. Second, the text requires a continuing amount of expenditure of not less than 102.5 per cent *of the amount expended for that purpose in the preceding fiscal year.* (emphasis added). Thus, the plain meaning of this phrase is that the County's budget shall provide for a continuing amount of expenditure that is not less than 102.5 per cent of the amount expended for that purpose in the preceding year from funds other than the Deeds Excise Fund.

Thus, when all three phrases are read together, the plain and ordinary meaning of subsection (b) is, that with respect to funds appropriated for the purpose of the Registry's operations that are not from the Deed Excise Fund, each year the County's budget shall include a continuing amount of expenditure that is not less than 102.5 per cent of the amount expended for

the Registry's operation from the Deeds Excise Fund in the preceding year. Thus, with respect to funds appropriated from non-Deeds Excise funds, §12(b) requires the County to appropriate not less than 102.5 per cent of the amount expended from the Deeds Excise fund in the preceding fiscal year. Section 12(b) is also referred to as the County Mandate.

In this case, the Superior Court correctly observed that the use of the word “shall” in § 12(a)(2) and 12 (b) makes clear that the Registry’s share of the Deeds Excise Fund and the County Mandate are mandatory. Thus, the plain meaning is that both the funds appropriated from the Deeds Excise Fund and funds appropriated from the non-Deeds Excise Fund sources for the County Mandate “shall be disbursed and expended” each year.

However, the Court ignored the entire text of the statute when it erroneously concluded that there is “no temporal limitation of the Registry’s use of these two sources of funding.” Indeed, the Court’s conclusion ignored the key phrases “disburse and expend” and “the preceding fiscal year.” *Lexington, supra* at 570 (courts will not interpret a statute so as to render any part meaningless). By doing so, the Superior Court effectively amended § 12. *Acme Laundry Co. v. Secretary of Environmental Affairs*, 410 Mass. 760, 780 (1991); *see also, Care and Protection of Walt*, 478 Mass. 212, 223-224 (2017)(“where the meaning of the statutory language is plain and

unambiguous, and where a literal construction would not ‘yield an absurd or unworkable result’”). Thus, contrary to the Court’s conclusion that there is “no temporal limitation” on the Registry’s use of these two sources of funding, the plain and ordinary meaning of § 12(b)(2) makes clear that both the Deeds Excise Funds and the County Mandate require an appropriation and both appropriations shall be “disbursed and expended” each fiscal year.

Thus, the Court’s conclusion that the County violated G.L. c. 64D, §§ 11 and 12 in FY 2020 by “not providing the Norfolk County Registry of Deeds (“Registry”) a continuing amount of expenditure of not less than 102.5 percent of the amount expended for the Registry’s automation, modernization, and operation in the preceding fiscal year (“County Mandate”)” is clearly erroneous and should be vacated.

C. The Superior Court Erred By Declaring that M.G.L. c. 35, § 28B (h) Does Not Apply to the Unspent Appropriations Required by M.G.L. c. 64D, § 12.

M.G.L. c. 64D § 12 is silent on the issue of unspent appropriations. However, O’Donnell’s failure to “expend” the 40% appropriated by the Advisory Board each year from the Deeds Excise Fund is contrary to the plain meaning of § 12(a)(2). More importantly, his failure to expend these appropriated funds requires that they be returned to the County’s general fund. M.G.L. c. 35, § 28B(h).

However, the Superior Court concluded that M.G.L. c. 35, § 28B(h), which concerns county appropriations, did not apply to the funding sources in § 12 because they are “not appropriations subject to G.L. c. 35, § 28B(h).” R.A.II. 588. In reaching this conclusion, the Court reasoned that “A general law that direct funds be used for a specific purpose is not an appropriation” citing *Mazzone v. Attorney General*, 432 Mass. 515, 523 (2000). While the Superior Court is correct that § 12 is not an “appropriation” statute, the Court’s statutory analysis ignores the fact that both the Deeds Excise Fund and the County Mandate cannot be spent until they are approved and appropriated by defendant/appellant Advisory Board during the County’s annual budget process. See M.G.L. c. 35, §§ 28B & 32.

In *Mazzone*, the plaintiff argued that an initiative petition was invalid under Art. 48, The Initiative, Part II, § 3, of the Amendments to the Massachusetts Constitution because it “makes a specific appropriation of money from the treasury of the commonwealth.” The petition at issue created a new drug treatment trust fund to be used by the Commissioner of Public Health for drug rehabilitation purposes under G.L. c. 111E, § 10.

In *Mazzone*, the plaintiff’s argument rested on the incorrect assumption that M.G.L. c. 94C, § 47(d) was an appropriation. Section 47(d) provided, in pertinent part, that:

All such monies and proceeds received by any prosecuting district attorney or attorney general shall be deposited in such a *trust fund* and shall then be expended *without further appropriation* to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or such other law enforcement purposes as the district attorney or attorney general deems appropriate. (emphasis added).

The *Mazzone* Court held that general laws like § 47(d), that “specify that funds be directed to particular purposes, are not appropriations” *citing Milton v. Commonwealth*, 416 Mass. 471, 473 (1993).

The *Mazzone* Court’s reasoning supports defendants/appellants argument. Unlike § 12 here, the language in § 47(d) stating that the distribution of the forfeited assets shall be made “without further appropriation” did not imply that § 47(d) made an appropriation. Rather, the Court reasoned that this language “indicates that law enforcement agencies have already received the necessary legislative authorization to use whatever funds they may be able to obtain under the chapter without further legislative action.” *Mazzone, supra* at 524.

Thus, under the proposed § 47(d), monies received would be received “on account” of the Commonwealth while the director of the division of drug rehabilitation would be the designated custodian of the trust fund. “The fund would be used only for the purpose specified but remain ‘subject to appropriation.’” *Id.* at 524. Finally, the Court reasoned that the legislation

proposed by the petition “neither makes a specific appropriation nor usurps the Legislature’s authority to make specific appropriations.” *Id.*

Unlike the legislation proposed in *Mazzone*, the Deeds Excise Funds collected pursuant to § 12, are not held in a “trust fund.” Rather, they are held on “the books of each county” in a “fund, maintained separate and apart from all other funds and accounts of each county.” *See* M.G.L. c. 64D, § 11.

However, § 12 does not state that the funds collected can be distributed “without further appropriation.” Rather, § 12(b) states that “*with respect to funds appropriated* for the purpose designated in clause (2) of subsection (a) ... the county budget shall provide a continuing amount of expenditure of not less than 102.5 of the amount expended for that purpose in the preceding year.” (Emphasis added). Obviously, the words “with respect to funds appropriated” clearly refer to the Advisory Board’s powers to appropriate. *Opinion of the Justices*, 323 Mass. 764, 766 (1948)(“subject to appropriation” clearly refers to Legislature’s powers to appropriate). As such, both the Deeds Excise Fund, held pursuant to § 12(a), cannot be spent without further appropriation by the Advisory Board and the County Mandate, required by § 12(b), cannot be funded without further appropriation by the Advisory. *Compare, Milton supra* at 473 (Appropriations are made, not in the General Laws, but through the

operation of the annual budget and appropriation process described in art. 63 of the Amendments to the Constitution of the Commonwealth); *Opinion of the Justices, supra* at 766 (To appropriate is “to set apart from the public revenue a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and for no other.”); *Associated Industries of Massachusetts vs. Secretary of the Commonwealth*, 413 Mass. 1, 8 (1992)(same).

D. The Superior Court Erred By Declaring that M.G.L. c. 35, § 28B (h) Does Not Permit the Advisory Board to transfer funds into the general unappropriated balance at the closing of the treasurer’s books at the fiscal year end.

M.G.L. c. 35, § 28B(h) provides that “At the closing of the treasurer’s books on July tenth, the balance to the credit of each appropriation shall become a part of the general unappropriated balance in the county treasury.” Thus, it follows that if the Legislature wanted to prevent the transfer of the unspent Deeds Excise Fund appropriations, it would have said so. *Meyer supra* at 214-215 quoting *Insurance Rating Bd. v. Commissioner of Ins.*, 356 Mass. 184, 188-189 (1969)(“Where the Legislature uses the same words in several sections which concern the same subject matter, the words must be presumed to have been used with the same meaning in each section”); see also *Rossiter v. Middlesex County*, 308 Mass. 458, 463 (1941) (no expense

should be incurred until sufficient appropriation has been made). As a result, the Superior Court's conclusion that §28B(h) does not apply to the appropriations required by §12(a) and (b) is clearly erroneous and should be vacated.⁹

III. THE SUPERIOR COURT ERRED BY HOLDING THAT APPELLEE'S CLAIM REGARDING THE APPOINTMENT OF A CIO WHO RESIGNED AND WHOSE POSITION WAS SUBSEQUENTLY ELIMINATED WAS NOT MOOT.

An actual controversy arises:

[W]here there is 'a real dispute caused by the assertion by one party of a legal relation, status or right in which [that party] has a definite interest, and the denial of such assertion by another party also having a definite interest in the subject matter, where the circumstances attending the dispute plainly indicate that unless the matter is [adjudicated] such antagonistic claims will almost immediately and inevitably lead to litigation.'

Libertarian Ass'n of Mass. v. Secretary of the Commonwealth, 462 Mass. 538, 546-547 (2012), quoting *School Comm. of Cambridge v. Superintendent of Sch. of Cambridge*, 320 Mass. 516, 518 (1946). Not only did the plaintiff/appellee have no definite interest in the

⁹ Defendants/Appellants note that the Superior Court's interpretation would also lead to absurd results. Specifically, without an appropriation of the funds necessary to cover the Registry's expenses, neither the Deeds Excise Fund nor the County Mandate would be funded. Moreover, if unspent appropriations for the Deeds Excise Fund cannot be returned to the general fund at the end of each fiscal year, then millions of dollars in taxpayer money will be wasted. Both of these results are absurd and contrary to the Legislature's intent in G.L. c. 64D and G.L. c. 35, § 32 & 28B(h).

subject matter after the CIO resigned, but O'Donnell's requested relief is no longer feasible. The result is mootness and a lack of an actual case or controversy and the Superior Court decision to the contrary is erroneous.

The facts are simple - the Plaintiff wanted to permanently hire an individual that has since resigned. While there are some exceptions to the mootness doctrine, this is not a controversy in which plaintiff continues to "have a personal stake in its outcome," *Blake v. Massachusetts Parole Bd.*, 369 Mass. 701, 703 (1976) or is "capable of repetition, yet evading review," *Lockhart v. Attorney General*, 390 Mass. 780, 782 (1984). Rather, this particular controversy, which focuses on the hiring of a *specific* candidate, that is no longer viable.¹⁰ The candidate whom this lawsuit is based upon voluntarily left the CIO position, and did not state any circumstances under which he would return.¹¹

¹⁰ There is no possibility that the case at hand could constitute a recurring question, because the County has consolidated and reorganized its information technology department and O'Donnell no longer has a CIO who reports directly to him.

¹¹ In some instances, courts have been willing to resolve dead disputes if there was a good likelihood that the same disputes would recur between the same parties. See *Reilly v. School Comm. of Boston*, 362 Mass. at 689, 694—695 (1972); *Marchand v. Director, United States Probation Office*, 421 F.2d 331, 333—334 (1st Cir. 1970); cf. *McLaughlin v. Board of Appeals of Harwich*, 359 Mass. 416, 419 (1971); *Wellesley College v. Attorney Gen.*, 313 Mass. 722, 731 (1943). That is simply not the case here.

While courts have, on occasion, answered a question in moot cases where the issue is of public importance, fully argued, and capable of repetition, yet evading review, (*Commonwealth v. Yameen*, 401 Mass. 331 (1987), *cert. denied*, 486 U.S. 1008 (1988)), courts are *particularly* reluctant to do so where the parties no longer have a personal stake in the outcome. *Wolf v. Commissioner of Pub. Welfare*, 367 Mass. 293, 298 (1975) (among reasons courts decline to hear moot cases is that “it is feared that the parties will not adequately represent positions in which they no longer have a personal stake”); *see also In Re: Sturtz*, 410 Mass 58, 59 (1991).

A. Plaintiff/Appellee has no personal stake in the outcome of the case, and his desired outcome is no longer viable.

It is well known that, if a plaintiff's circumstances change such that he or she no longer has a personal stake in the outcome of the case, the case becomes moot. *LaChance v. Commissioner of Correction*, 475 Mass. 757, 766 (2016). *See also Blake*, *supra* at 701 (where prisoner had been unconditionally released from custody during pendency of his appeal from trial court's ruling that he was not entitled to appear personally before parole board in support of application for early parole, the appeal was moot). In the matter at issue, plaintiff/appellee no longer has a personal stake in the outcome because the candidate that he was endorsing is no longer viable.

The law is quite straightforward, as demonstrated by significant precedent. *Kane v. Commissioner of Correction*, 395 Mass. 1002 (1985) is also instructive. In *Kane*, a prisoner sought (and was awarded) a court order preventing his transfer from one prison to another. *Id.* The defendants appealed the injunctive order, but before the Supreme Judicial Court of Massachusetts could entertain the appeal, the plaintiff-prisoner was released. *Id.* The Court then dismissed the appeal, stating “[t]his is not a controversy in which the plaintiff continues to ‘have a personal stake in its outcome’ or is ‘capable of repetition, yet evading review.’” *Id.* (Citations omitted). Like the matter in *Kane*, the CIO is now moot. The candidate that O’Donnell wanted the County Commissioners to hire to permanently fill the CIO position has resigned. O’Donnell, therefore, has no personal stake in the outcome of this matter, and there is no case or controversy. As such, defendants were entitled to summary judgment.¹²

¹² See also *In re Subpoena to Comm. on Pro. Resp. for Clerks of Cts.*, 440 Mass. 1022 (2003) (petition filed to produce records subpoenaed by Defendant in criminal case was moot because the case proceeded without the production of the requested records and the defendant was acquitted while the petition was pending); *Lockhart, supra* at 780 (challenge to Attorney General's refusal to certify initiative petition as proper was moot where proponents of initiative measure failed to collect sufficient signatures to qualify their initiative petition for submission to general court). O’Donnell’s CIO claim parallel these particularized controversies because they are solely regarding the hiring of one individual who has subsequently resigned.

If the court were to decide this case, it would “only, at best, be an academic exercise and would have no real effect on the parties...” *Town of Tewksbury Bd. of Selectmen v. Jenkins*, No. 07-0614-L-1, WL 5113318 (Mass. Super. Aug. 27, 2008). As a result, the Superior Court should have granted summary judgment in favor of defendants/appellants on the CIO claim as there is no genuine issue of material fact and defendants/appellants are entitled to judgment as a matter of law.

IV. EVEN IF THE CIO CLAIM IS NOT MOOT, THE SUPERIOR COURT’S CONCLUSION THAT THE COMMISSIONERS’ DECISION WAS UNLAWFUL IS CLEARLY ERRONEOUS.

The County Personnel Rules for Norfolk County apply to hiring decisions of every county employee except those elected to public office and members of collective bargaining units. This has been true since at least October 1987. R.A.II. 365.

The County Personnel Rules clearly and unambiguously set forth the hiring procedure for county employees. Rule 3 provides that once the appointing authority (in this case, plaintiff/appellee) wishes to fill a vacancy, the County Commissioners “*may approve the proposed action, disapprove it, or approve it with modifications.*” (emphasis added). R.A.II. 378. Thus, the decision to hire a county employee rests solely and exclusively within the Commissioners’ discretion. As a result, the Commissioners had the

discretion to reject plaintiff's first blue paper, and the discretion to later hire the same candidate on a temporary basis.

Moreover, pursuant to the County Personnel Rules and Mass. Gen. Laws. c. 35, § 51 & 52, employees who are aggrieved by the classification of their positions or other action may appeal in writing to the County Personnel Board. R.A.II. 376-377. Therefore, if O'Donnell was unsatisfied with the Commissioners' decision, he had a remedy. However, O'Donnell's unhappiness with the Commissioners' discretionary decision does not give him a legal basis for his lawsuit. *Dukes Cty. v. New Bedford, Woods Hole, Martha's Vineyard & Nantucket S.S. Auth.*, 333 Mass. 405, 409 (1956).

A. The Commissioners properly fulfilled their duties.

Defendant/Appellant Commissioners properly exercised their discretion in rejecting plaintiff's initial blue paper for the CIO position and was not required to provide plaintiff/appellee with any additional information regarding their deliberations. However, the meeting minutes are a matter of public record and demonstrate that their decision was reasonable under the circumstances.

Moreover, while O'Donnell alleged that defendant/appellant County Commissioners exceeded their authority - and the Superior Court agreed - it is clear that defendants exercised their discretion pursuant to the aforementioned regulations and statutes, and further appeased O'Donnell by hiring his candidate as a temporary employee with all of the same benefits as an employee hired as a permanent employee.

B. Where defendant/appellant's hiring decision was within their statutory authority and in compliance with the County Personnel Board Rules and Regulations, the Superior Court's conclusion that they were unlawful even if they were consistent with the Rules and Regulations is clearly erroneous.

Defendant/Appellant Commissioners submit that their decision not to hire the candidate as a full-time permanent employee was prudent, reasonable, and proper. *See Massachusetts Med. Soc. v. Comm'r of Ins.*, 402 Mass. 44, 62 (1988) ("Where the Commissioner's statutory interpretation is

reasonable, and his findings are supported by substantial evidence, the court should not supplant his judgment.”); *see also Serv. Emps. Int'l Union, Loc. 509 v. Auditor of Commonwealth*, 476 Mass. 80, 93 (2016) (finding that the Auditor’s reliance on contractual obligations meant that her judgment was reasonable). Categorizing defendants’ decision as arbitrary or capricious would require this Court to conclude that the decision was made on a whim. Such a conclusion is not supported by the record and is inconsistent with the reasons set forth in the minutes of the meetings at issue.

In a similar case, the Court explained:

We cannot say judicially that the conduct of the authority has been in its nature arbitrary, capricious, or without proper cause, as alleged. There may of course be room for differences of opinion as to the wisdom of the course adopted, but all that is alleged seems to us to fall within the area of business judgment. The allegations that the members of the authority have acted ‘knowingly’ and ‘contrary to their own best judgment’ are at most only allegations of bad faith.

Dukes Cty. supra at 409.

Also, it is well established that when the acts of a public board are within the scope of its authority and are not in themselves inherently unreasonable, a court will seldom, if ever, inquire into the states of mind of members of the board. *Id.*¹³ Massachusetts courts will interfere with this type

¹³*See also Povey v. School Committee of Medford*, 333 Mass. 70 (1955); *Despatchers' Cafe v. Somerville Housing Authority*, 332 Mass. 259 (1955); *Kelley v. School Committee of Watertown*, 330 Mass. 150

of discretion only on rare occasions to prevent an abuse of discretion. *Steele v. Kelley*, 46 Mass. App. Ct. 712, 735 (1999)(conduct must actually be arbitrary, capricious, dishonest, or fraudulent before a court will intervene). Clearly there was no abuse of discretion involved in the case at hand.

Nevertheless, the Superior Court reasoned that the Rules and Regulations cannot empower defendant/appellant Commissioners to act beyond their statutory authority and that their actions were unlawful even if they “were consistent with the Rules and Regulations.” The Superior Court’s conclusion is clearly erroneous for three reasons.

First, M.G.L. c. 34, § 14 empowers the Commissioners with the “authority to represent their county, and to have the care of its property and the management of its business and affairs in cases where not otherwise expressly provided.” As such, only County Commissioners have the authority to hire county employees and put them on the county payroll. Moreover, the Register of Deeds has no authority to hire county employees and the Superior Court’s decision fails to mention or even reference any such authority.

(1953); *Bushway-Whiting Ice Cream Co. v. Mayor and Aldermen of Somerville*, 308 Mass. 148 (1941); *Gibney v. Mayor of Fall River*, 306 Mass. 561 (1940); *Downey v. School Committee of Lowell*, 305 Mass. 329 (1940).

Indeed, the Register of Deeds cannot even pay his own clerical staff from county funds without the Commissioners' approval. *See* M.G.L. c. 36, § 38.

Second, the Rules and Regulations specifically provide that the Commissioners have the power to hire new county employees. Specifically Rule 3 provides that if an appointing authority (in this case, plaintiff) wishes to fill a vacancy, the County Commissioners “*may approve the proposed action, disapprove it, or approve it with modifications.*” (emphasis added). R.A.II. 378. In this case, the Commissioners approved the request but modified the position from permanent to temporary with full benefits.

Third, the Superior Court ignored the well-settled rule that courts have long and consistently accorded “substantial deference to a reasonable interpretation of a statute by the administrative agency charged with its administration and enforcement. *Molly A. v. Commissioner of Department of Mental Retardation*, 69 Mass. App. Ct. 267, 280 (2007), *quoting Commerce Ins. Co. v. Commissioner of Ins.*, 447 Mass. 478, 481 (2006). Moreover, the burden was on plaintiff/appellee to show that the Rules and Regulations, in force since the 1980s, were invalid. *See Massachusetts State Pharmaceutical Ass'n v. Rate Setting Comm'n*, 387 Mass. 122, 126 (1982).

The Superior Court ruled that “Even if the Commissioners' actions regarding the CIO position were consistent with the Rules and Regulations

on their face, the court is unpersuaded that the Commissioners acted within their authority.” The Court’s decision begs the question – why not?

Specifically, the Court reasoned that nothing in M.G.L. c. 35, §§ 48-56 confers upon the Commissioners the authority to decide not to hire a candidate for an approved and budgeted position that is essential to the Registry’s operations whose proposed salary is consistent with that approved in the budget. The Court further reasoned that the statutes do not confer upon the Commissioners the authority to hire such a candidate on a temporary basis where the Register wishes to hire the candidate permanently. Finally, the Court reasoned that “By doing so here, the Commissioners, acting as the county personnel board, in effect eliminated the full-time CIO position and intruded upon the Register’s authority over Registry personnel matters. This exceeded their statutory authority.” R.A.II. 593. The Superior Court reasoning is erroneous on each point.

While the Court is correct that nothing in M.G.L. c. 35, §§ 48-56 gives the County Commissioners the authority to hire county employees, M.G.L. c. 34, § 14 does give them the authority to manage its “business affairs in cases where not otherwise provided.” Moreover, notably absent from the Court’s analysis is any reference or citation to any statute or regulation that provides the Register with the authority to hire any county employee.

The Court is also correct that there is no statutory authority giving the County Commissioners the authority to change the classification of a county employee from a permanent to a temporary employee. However, there is also no statute that gives the Register the authority to hire any county employee whether permanent or temporary.

The Court also reasoned that the Commissioners, acting as the county personnel board, in effect eliminated the full-time CIO position and “intruded upon the Register’s authority over Registry personnel matters.” However, if the County Commissioners were acting in their capacity as the County Personnel Board, they could have eliminated the position of CIO altogether. M.G.L. c. 35, § 49 (authority to classify positions whose salary is payable from the county).

In sum, because the Commissioners’ decision was within their authority under M.G.L. c. 34, § 14 and the Rules and Regulations of the County Personnel Board, the Superior Court decision is clearly erroneous and should be vacated. Accordingly, the Court should enter summary judgment in favor of defendant/appellant County Commissioners on the CIO claim.

CONCLUSION

For all of the foregoing reasons, this Court should reverse the Superior Court's summary judgment decision and remand the case for further proceedings on plaintiff/appellee's 64D claim and enter summary judgment in favor of defendant/appellant County Commissioners on plaintiff/appellee's CIO claim.

Respectfully submitted,
For Defendants/Appellants,
Board of County Commissioners
for the County of Norfolk and the
Advisory Board on County
Expenditures for the County of
Norfolk,
By their attorney,

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Dated: March 31, 2026

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure I, Scott P. Lopez, hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to:

- Mass. R. A. P. 16(a)(13) (addendum);
- Mass. R. A. P. 16(e) (references to the record);
- Mass. R. A. P. 18 (appendix to the briefs);
- Mass. R. A. P. 20 (form and length of briefs, appendices, and other documents); and
- Mass. R. A. P. 21 (redaction).

I further certify that the foregoing brief complies with the applicable length limit in Mass. R. App. P. 20 because it is produced in proportional font “Georgia” at size 14 and contains 10,867, total non-excluded words as counted using the word count feature of Microsoft Word (version 2603).

/s/ Scott P. Lopez
Scott P. Lopez BBO #549556

CERTIFICATE OF SERVICE

Pursuant to Massachusetts Rule of Appellate Procedure 13(d), I hereby certify, under the penalties of perjury, that on this 31st day of March, 2026, I made service of a copy of the Appellant’s Brief and of the two volume Record Appendix by electronic service upon:

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66.D

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NORFOLK COUNTY
6/28/24

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 21-00653¹

WILLIAM P. O'DONNELL²

vs.

JOSEPH P. SHEA³ & others⁴

**MEMORANDUM OF DECISION AND ORDER
ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

This case arises out of a dispute between the plaintiff William P. O'Donnell, the Register of Deeds for the County of Norfolk ("Register"), and the defendants County Commissioners for the County of Norfolk ("Commissioners") and the Advisory Board for the County of Norfolk ("Advisory Board"). The Register brings claims against the defendants for declaratory judgment, relief in the nature of mandamus, and injunctive relief regarding funding for the Norfolk County Registry of Deeds ("Registry") and personnel matters with respect to its technology department. The case is before the court on the parties' cross-motions for summary judgment.⁵ For the reasons set forth below, the plaintiff's motion is **ALLOWED** in part and **DENIED** in part, and the defendants' motions are **DENIED**.

¹ This case has been consolidated with *William P. O'Donnell v. Joseph J. Cronin, et al.*, Norfolk County Superior Court Civil Action No. 22-01001. The court (Cahillane, J.) previously entered summary judgment in favor of the plaintiff in that case.

² As Register of Deeds for the County of Norfolk

³ As County Commissioner for the County of Norfolk

⁴ Peter H. Collins and Richard R. Staiti, as County Commissioners for the County of Norfolk, and the Advisory Board for the County of Norfolk

⁵ The plaintiff filed a motion for summary judgment (paper no. 59.0) and, in response, the defendants filed a cross-motion for summary judgment (paper no. 59.2). The defendants subsequently filed a separate motion for summary judgment (paper no. 61.0). The plaintiff did not submit a written opposition to that motion, but the papers that he filed in support of his motion for summary judgment effectively serve that purpose.

BACKGROUND

I. Legal Background

The Register is an elected official who operates and manages the Registry under G. L. c. 36. The Commissioners manage county business and affairs under G. L. c. 34, § 14. The Advisory Board is responsible for reviewing and approving county budgets and county appropriations under G. L. c. 35, § 28B and § 32.

General Laws c. 64D, § 1, establishes an excise tax for deeds, instruments, and writings (“Deeds Excise Tax”). General Laws c. 64D, § 11, requires certain counties, including Norfolk County (the “County”), to “establish[] upon the books of [the] county . . . a fund, maintained separate and apart from all other funds and accounts of each county, to be known as the Deeds Excise Fund.” The statute provides that “10.625 per cent of the taxes collected in the county . . . under this chapter [i.e., the Deeds Excise Tax] shall be transmitted to the Deeds Excise Fund” G. L. c. 64D, § 11.

General Laws c. 64D, § 12, sets forth requirements regarding the disbursement of funds in the deeds excise funds and county expenditures for the registries of deeds. The statute states:

“(a) Notwithstanding any general or special law to the contrary, of that portion of the amounts deposited in the Deeds Excise Fund for each county from revenues collected pursuant to this chapter which represents 10.625 per cent of the taxes collected: (1) not more than 60 per cent of the deposits shall be disbursed and expended for meeting the costs of the operation and maintenance of the county; and (2) not less than 40 per cent shall be disbursed and expended for the automation, modernization and operation of the registries of deeds.

(b) Notwithstanding any general or special law to the contrary, with respect to funds appropriated for the purposes designated in clause (2) of subsection (a) and which are not dedicated to the Deeds Excise Fund in each county under section 11, the county budget shall provide a continuing amount of expenditure of not less than 102.5 per cent of the amount expended for that purpose in the preceding fiscal year.”

G. L. c. 64D, § 12.

II. Factual Background

The following facts are taken from the summary judgment record.

A. Funding for the Registry

The Register is responsible for collecting and disbursing the Deeds Excise Tax that is paid when an instrument is recorded at the Registry. Each month, the Register distributes 10.625 percent of the Deeds Excise Tax collected the previous month to the County treasurer. Of that amount, under G. L. c. 64D, § 12(a), the County has a share of not more than sixty percent, and the Registry has a share of not less than forty percent (the “Registry’s Share”) which accrues in the County’s deeds excise fund. Additionally, pursuant to G. L. c. 64D, § 12(b), the County provides an expenditure for the Registry known as the “County Mandate” each fiscal year.

In the past, the Registry’s budgetary allocations were greater than necessary for its operations. The funds from the Registry’s Share accrued over the years and the Registry accumulated a surplus. The County attributes this in part to its prior practice of calculating its annual appropriation for the County Mandate based on 102.5 percent of the amount *allocated* to the Registry the previous year instead of the amount *expended*, which the County perceives as a misapplication of G. L. c. 64D, § 12(b).

In fiscal year 2020, the County began changing its practices regarding the Registry’s Share and the County Mandate. The defendants reduced the fiscal year 2020 County Mandate to an amount equal to the Registry’s fiscal year 2020 expenditures. Also, the County began to require that the funds from the Registry’s Share be spent before the County spends or accounts for the County Mandate, to use part of the funds from the Registry’s Share towards the County Mandate, and to retain any portion of the funds from the Registry’s Share that the Registry did not spend in the preceding fiscal year.

By July 1, 2023, the funds from the Registry's Share had accumulated over the years to approximately \$4.2 million. On July 10, 2023, the defendants voted to transfer all or some of the funds from the Registry's Share from the deeds excise fund to the County's general fund.

The exact amounts of some of the relevant figures are disputed.

B. The Registry's Chief Information Officer

The Commissioners exercise the functions of the now-dissolved county personnel board governed by G. L. c. 35, § 48 to § 56, according to the county personnel board's rules and regulations ("Rules and Regulations"). The Rules and Regulations apply to all County employees, with some exceptions not relevant here.

The Rules and Regulations provide:

"Whenever any County official, Board or Committee having the power of appointment, wishes to make an appointment, fill a vacancy, transfer, promote or demote, create a new position, or terminate an employee, or make any other personnel transaction not otherwise herein stated, he shall file with the County Commissioners, a County Personnel Status Form (CPS) furnished by the County Personnel Board setting forth the necessary information as contained on said Form."

Defendants' Appendix of Exhibits, Exhibit F at E1.

The aforementioned forms are known as "blue papers" or "blue sheets." The Rules and Regulations provide that upon receipt of a blue paper, the Commissioners "shall make investigation regarding":

- "(a) Compliance with the requirement of law and especially Sections 48 to 56, Chapter 35 of M.G.L.
- (b) The necessity of the office or institution for the position.
- (c) The ability of the office or institution to provide for the position out of funds appropriated.
- (d) Whether the proposed position bears a standard title and whether the proposed salary rate is the minimum of the scale for the position; and if the proposed rate is above the minimum of the scale, whether there is conformance with M.G.L. 35, Section 51B."

Id.

In addition, “[i]f the County Personnel Status Form complies with the pertinent sections of Mass. General Law and with the administrative rules of procedure herein stated, the County Commissioners may approve the proposed action, disapprove it, or approve it with modification(s).” *Id.*

On June 2, 2021, the Commissioners voted to initiate a hiring freeze for non-essential and non-seasonal county personnel until no later than after July 1, 2021.⁶ During the hiring freeze, the Commissioners approved the appointments of candidates for a number of positions.

The budgets for fiscal years 2021 and 2022 included a Registry chief information officer (“CIO”) as an approved and funded position. The CIO position provides essential services according to a March 2020 order by the Governor related to the COVID-19 pandemic.

The Registry’s CIO was set to retire on June 30, 2021. In anticipation of the CIO’s retirement, on June 24, 2021, the Register submitted a blue paper to the Commissioners giving notice of his intent to appoint a candidate for a permanent, full-time CIO position with an effective date of July 6, 2021, and an annual salary of \$129,067.40. The salary listed in the blue paper was consistent with the amount approved in the fiscal year 2022 budget. On June 30, 2021, in a two-to-one vote, the Commissioners voted against approving the appointment.

On June 14, 2021, the Register filed this case. On the same day, he moved for a preliminary injunction ordering the Commissioners to approve the blue paper for the CIO position.

On July 16, 2021, the Register submitted to the Commissioners a second blue paper for the permanent, full-time CIO position with an effective date of July 26, 2021, and an annual

⁶ There is conflicting information in the record as to the exact end date of the hiring freeze.

salary of \$129,067.40. On July 21, 2021, the Commissioners voted to approve the appointment of the Registry's candidate for the CIO position as a temporary employee at the proposed annual salary.

On July 27, 2021, the court (Wilson, J.) denied the Register's motion for a preliminary injunction solely on the ground that there was no irreparable harm because of the hiring of the temporary CIO.

The temporary CIO resigned in January 2022. His letter of resignation stated that the primary reason he chose to look for and accept employment elsewhere was stress and uncertainty caused by the fact that his position was temporary.

Effective July 1, 2022, the Commissioners removed all technology-related personnel and functions from the Registry, including the CIO. The Commissioners consolidated those functions with the County's technology personnel and created a County technology department under the County director's supervision.

DISCUSSION

Summary judgment is appropriate where, "viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law" (quotations and citations omitted). *Hill-Junious v. UTP Realty, LLC*, 492 Mass. 667, 672 (2023). See Mass. R. Civ. P. 56(c). Applying this standard, the court concludes that it has jurisdiction over this case, summary judgment in favor of the Register is appropriate with respect to some aspects of his funding claims and his claims regarding the CIO position, and summary judgment in favor of the defendants is inappropriate.

I. Jurisdiction

The defendants contend that this court lacks jurisdiction over this case under two statutes: G. L. c. 64D, § 6, and G. L. c. 35, § 35. The court disagrees.

First, the defendants argue that under G. L. c. 64D, § 6, the Register “should have sought redress” from the Commissioner of Revenue, not this court. Defendants’ Memorandum in Opposition to Plaintiff’s Motion for Summary Judgment and in Support of their Cross-Motion for Summary Judgment (Paper No. 59.3) at 4. The statute provides:

“The [Commissioner of Revenue] shall administer and enforce the taxes imposed by this chapter. At any time after the making of a conveyance or transfer subject to the excise imposed by this chapter, he may investigate and ascertain whether said excise, in the proper amount, was paid. For this purpose, the commissioner may examine any books, papers, records or memoranda bearing upon the amount of excise payable, and may enforce by mandamus his right to such examination. Whoever refuses to permit the commissioner, or any of his agents or representatives, to inspect such books, papers, records or memoranda, or fails to preserve the same for two years, or alters, cancels or obliterates any part thereof, or makes any false entry therein, shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment for not less than three months nor more than two years, or both.”

G. L. c. 64D, § 6.

Whether the statute deprives this court of jurisdiction is a matter of statutory interpretation. Courts interpretate statutory language according to “its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result” (citation and quotations omitted). *DiMasi v. Secretary of Commonwealth*, 491 Mass. 186, 191 (2023). Where the language of a statute is clear and unambiguous, it is conclusive as to the Legislature’s intent, and the court will enforce the plain wording unless doing so would “yield an absurd or unworkable result.” *Id.* at 191-192.

The plain language of G. L. c. 64D, § 6, provides the Commissioner of Revenue with authority to administer and enforce the taxes imposed by G. L. c. 64D and to investigate whether

such taxes were properly paid. Nothing in the statute grants the Commissioner of Revenue authority to adjudicate disputes like this about the use of Deeds Excise Tax revenues, County expenditures for the Registry, or Registry personnel matters.

Second, the defendants argue that under G. L. c. 35, § 35, only the Supreme Judicial Court has jurisdiction to entertain a case challenging the County budget made under G. L. c. 35, § 32. General Laws c. 35, § 35, provides that “[t]he supreme judicial court, upon the suit of the attorney general or petition of one or more taxable inhabitants of a county, may in law or in equity enforce section[] . . . thirty-two . . . of [G. L. c. 35] . . .”⁷ General Laws c. 35, § 32, sets forth requirements and procedures for county appropriations and expenditures. In this case, the Register does not seek to enforce G. L. c. 35, § 32. Rather, he seeks declaratory, mandamus, and injunctive relief regarding his rights and the defendants’ obligations under G. L. c. 64D, § 11 and § 12, and with respect to Registry personnel matters. Therefore, G. L. c. 35, § 35, does not apply.⁸ Even if it did apply, this court would have jurisdiction because “[a]lthough [G. L. c. 35, § 35] by its terms vests jurisdiction only in the Supreme Judicial Court, that jurisdiction may be exercised concurrently by the Superior Court under the provisions of G. L. c. 213, s 1A.”⁹ *Platt v. Commissioners of Hampshire Cnty.*, 6 Mass. App. Ct. 888, 888 (1978).

Therefore, the court has jurisdiction over this case.

⁷ The statutes relevant to the Commissioners’ actions regarding the CIO position, G. L. c. 35, § 48 to § 56, are not enumerated in G. L. c. 35, § 35. Accordingly, G. L. c. 35, § 35, has no bearing on this court’s jurisdiction over that issue.

⁸ Accordingly, there is no merit to the defendants’ argument that the Register lacks standing under G. L. c. 35, § 35, because he is not the attorney general or a taxable inhabitant of the county but an elected official.

⁹ General Laws c. 213, § 1A, provides:

“Unless otherwise specifically provided, the superior court shall have original jurisdiction, concurrently with the supreme judicial court, of all proceedings, cases and matters of which the supreme judicial court has jurisdiction, excepting those within the appellate jurisdiction of the full court, those provided for under section four of chapter two hundred and eleven, and those which cannot be transferred under section four A of said chapter.”

II. Funding for the Registry

The Register contends that the defendants have violated the funding requirements set forth in G. L. c. 64D, § 11 and § 12. The court agrees.

As previously noted, G. L. c. 64D, § 11, requires the County to establish upon its books a deeds excise fund “maintained separate and apart from all other funds and accounts” of the County and to transmit 10.625 percent of the Deeds Excise Tax collected into that fund. Also, as set forth above, G. L. c. 64D, § 12(a), provides that “not less” than forty percent of the amounts deposited in the deeds excise fund pursuant to G. L. c. 64D, § 11, “shall” be disbursed and expended for the Registry’s automation, modernization, and operation (again, the “Registry’s Share”). Additionally, under G. L. c. 64D, § 12(b), from “funds . . . which are not dedicated to the Deeds Excise Fund” the County’s budget “shall provide a continuing amount of expenditure of not less than 102.5 per cent of the amount expended” for the Registry’s automation, modernization, and operation in the previous fiscal year (again, the “County Mandate”).

The plain language of these statutes clearly establishes two mandatory and distinct sources of funding exclusively for the Registry, with no temporal limitation on the Registry’s use of the funds. The use of the word “shall” in G. L. c. 64D, § 12(a) and § 12(b) makes clear that both the Registry’s Share and the County Mandate are mandatory. See *DiMasi*, 491 Mass. at 192 (“We have recognized the word ‘shall’ as an imperative that indicates the Legislature’s intent to prescribe a mandatory act.”). Also, the language in G. L. c. 64D, § 12(b), that it applies “with respect to . . . funds . . . which are not dedicated to the Deeds Excise Fund . . . under section 11” makes clear that the County Mandate is a requirement that is separate and apart from the Registry’s Share. See *Commonwealth v. James*, 493 Mass. 828, 835 (2024) (court must avoid construction of statute that would render any portion meaningless). Accordingly, each

year the County must provide a County Mandate of at least 102.5 percent of the amount expended for the Registry's automation, modernization, and operation in the previous fiscal year, and may not use funds from the Registry's Share, or wait until the funds from the Registry's Share are expended, to satisfy that obligation. Thus, the defendants' actions to the contrary were unlawful.

Furthermore, the statutes plainly do not permit the County to take any funds from the Registry's Share, even if the Registry has not spent all or part of those funds within a certain amount of time. Interpreting the statutes in a manner that requires the Registry to expend its share within a certain timeframe or be subject to losing it to the County would violate the "basic tenet of statutory interpretation, [that courts] ordinarily do not add language to a statute where the Legislature itself has not done so" (citation and quotations omitted). *Commonwealth v. Mansur*, 484 Mass. 172, 176 (2020). Such an interpretation would also violate the clear requirement in G. L. c. 64D, § 11, that the deeds excise fund be "maintained separate and apart from all other funds and accounts" of the county. In addition, it would run afoul of the requirement in G. L. c. 64D, § 12(a), that not less than forty percent of the amounts deposited in the deeds excise fund be disbursed and expended for the Registry, and not more than sixty percent be disbursed and expended for the County. Therefore, the defendants unlawfully took funds from the Registry's Share.

The defendants contend that their actions were within their authority over the County budget under G. L. c. 35, § 28B. Primarily, they rely on G. L. c. 35, § 28B(h), which provides:

"At the closing of the treasurer's books on July tenth, the balance to the credit of each appropriation shall become a part of the general unappropriated balance in the county treasury, but no appropriation voted for special, non-operating purposes, shall lapse until the work for which it has been made has been completed. Such appropriation, however, may not be carried forward for more

than one extra fiscal year. Any remaining unappropriated balance thereafter, shall become a part of the general unappropriated balance in the county treasury.”

This statute is inapplicable. Both G. L. c. 64D, § 12(a) and § 12(b) plainly provide that their requirements apply “[n]otwithstanding any general or special law to the contrary” Therefore, regardless of any authority that the defendants may have under G. L. c. 35, § 28B(h), or any other statute, they must comply with the requirements of G. L. c. 64D, § 12.

Moreover, G. L. c. 35, § 28B(h), itself has no application to either source of funding required under G. L. c. 64D, § 12. By its plain language, G. L. c. 35, § 28B(h), concerns county appropriations. “A general law that directs that funds be used for a specific purpose is not an appropriation.” *Mazzone v. Attorney Gen.*, 432 Mass. 515, 523 (2000). General Law c. 64D, § 12, is such a law because it directs that funds be used for the specific purpose of the Registry’s automation, modernization, and operation. Therefore, the sources of funding for the Registry required under G. L. c. 64D, § 12, are not appropriations subject to G. L. c. 35, § 28B(h).

Nor can the defendants’ actions be justified as an effort to “correct” their previous calculations of the County Mandate based on amounts previously allocated to the Registry instead of amounts previously expended. General Law c. 64D, § 12(b), requires that the County Mandate be “not less” than 102.5 percent of the preceding year’s expenditures but does not preclude the County Mandate from being greater than that amount. Although previous calculations of the County Mandate based on allocations may have been greater than necessary under the statute, they were not unlawful.

Therefore, the court concludes that the defendants have violated G. L. c. 64D, § 11 and § 12.¹⁰ However, genuine issues of fact remain with respect to various figures at issue. Those

¹⁰ While not dispositive, the court notes that prior to 2020, the County’s interpretation of the statutes was largely consistent with the court’s interpretation.

factual issues must be resolved at trial to afford full relief. Accordingly, the court will enter only partial summary judgment on this issue.¹¹

III. The Registry's CIO Position

The Register contends that he is entitled to appoint Registry staff positions that are approved and budgeted during the County's budget process, and that the Commissioners were required to approve the appointment of the CIO on a permanent basis. The defendants disagree and contend that the Register's claims regarding the CIO position are moot. The court concludes that declaratory relief can and shall be ordered in favor of the Register, but whether the claims for mandamus and injunctive relief are moot involves factual issues that preclude summary judgment on those claims.

"It is a general rule that courts decide only actual controversies . . . and normally do not decide moot cases" (citation and quotations omitted). *Branch v. Commonwealth Employment Relations Bd.*, 481 Mass. 810, 816 (2019), cert. denied, 140 S.Ct. 858 (2020). A claim is moot "when the party who claimed to be aggrieved ceases to have a personal stake in its outcome" and the court "can order no further effective relief" (citations and quotations omitted). *Troila v. Department of Correction*, 490 Mass. 1013, 1014 (2022).

Contrary to the defendants' contention, the Register's claim for declaratory relief regarding the CIO is not moot. Although the Commissioners approved the appointment of a temporary CIO who resigned during the pendency of this case, whether they have power to exercise authority over Registry personnel issues in the manner that they did here remains a live

¹¹ The defendants contend that the Register's claim for relief in the nature of mandamus fails because (i) he failed to exhaust his remedies under G. L. c. 64D, § 6, and G. L. c. 35, § 35, and (ii) mandamus is only available to compel non-discretionary or ministerial acts, not to compel a different decision. However, as previously discussed G. L. c. 64D, § 6, and G. L. c. 35, § 35, do not apply, and at least some of the funding issues in this case involve non-discretionary matters. Relief in the nature of mandamus on those issues ultimately may be unnecessary or inappropriate, but the claim survives for now.

issue in which the Register has a significant interest and definite stake. Accordingly, this is a case or controversy that the court properly may address.¹²

The court turns to the merits of the declaratory judgment claim. The defendants contend that the Commissioners acted within their lawful discretion under the Rules and Regulations. The Rules and Regulations provide that an appointing authority intending to appoint someone for a County employee position must file with the Commissioners a blue paper setting forth information regarding the intended appointment. Upon receipt of the blue paper, the Commissioners must investigate whether the proposed appointment is lawful and procedurally appropriate. If so, the Commissioners “may approve the proposed action, disapprove it, or approve it with modification(s).” Defendants’ Appendix of Exhibits, Exhibit F at E1.

Even if the Commissioners’ actions regarding the CIO position were consistent with the Rules and Regulations on their face, the court is unpersuaded that the Commissioners acted within their authority. “An administrative agency has only the powers and duties expressly or impliedly conferred on it by statute.” *Matter of Elec. Mut. Liab. Ins. Co., Ltd. (No. 1)*, 426 Mass. 362, 366 (1998). An agency has “no inherent authority to . . . promulgate rules that conflict with the statutes or exceed the authority conferred by the statutes by which the agency was created” (citations and quotations omitted). *Atlanticare Med. Ctr. v. Commissioner of Div. of Med. Assistance*, 439 Mass. 1, 14 (2003).

The governing statutes here, G. L. c. 35, § 48 to § 56, “provide[] for a comprehensive system of classification of county salaries, offices and positions” and “provide[] for allocation, reclassification, and other necessary adjustments.” *Dolan v. Suffolk Cnty.*, 310 Mass. 318, 322

¹² Although the Register failed to make an adequate showing of irreparable harm so as to warrant a preliminary injunction because a temporary CIO was hired, that does not necessarily mean that the CIO controversy is moot. The Commissioners’ authority in that regard is an ongoing issue.

(1941). “The primary motive underlying the enactment of the governing statutes was to bring about uniformity and order among county positions and salaries.” *Id.* The statutes authorize the county personnel board to: “pass upon and finally adopt and put into effect, with such modifications, changes and additions as it shall deem proper, the classification and compensation plans and rules for their administration proposed by the director of accounts[,]” amend those plans and rules, “pass upon and finally determine appeals relative to classification,” “perform such other functions and duties as may be imposed upon it” by statute, and “establish and administer uniform rules and regulations governing leaves of absence, shift differentials and overtime for officers and employees” G. L. c. 35, § 51. The statutes further authorize the county personnel board to conduct hearings on certain employee grievances. See G. L. c. 35, §§ 51, 52. In addition, the statutes authorize county commissioners to keep a roster of county officers and employees, receive and make recommendations about certain employee appeals, receive and act upon recommended salary increases, perform other functions and duties that may be imposed upon them by statute, make recommendations to the county personnel board about classification and compensation plans and rules, and be heard by the county personnel board on issues of classification and allocation. See G. L. c. 35, § 53. In sum, “[e]xamination of [G. L. c. 35, § 48 to § 56] shows that the functions and duties of the officers and agencies in charge of the county classification plan consist in investigating, recommending, allocating, classifying, re-classifying and the like.” *Dolan*, 310 Mass. at 322-323.

Nothing in G. L. c. 35, § 48 to § 56, confers upon the Commissioners the authority to unilaterally decide not to hire a candidate for an approved and budgeted position that is essential to the Registry’s operations whose proposed salary is consistent with that approved in the budget. Nor do the statutes confer upon the Commissioners the authority to hire such a

candidate on a temporary basis where the Register wishes to hire the candidate permanently. By doing so here, the Commissioners, acting as the county personnel board, in effect eliminated the full-time CIO position and intruded upon the Register's authority over Registry personnel matters. This exceeded their statutory authority.¹³ See *Dolan*, 310 Mass. at 322-323. Cf. *Norfolk County Commissioners v. Hall*, NO1992-2073, slip op. at 10-11 (Mass. Super. November 25, 1992) (Stearns, J.) (Commissioners lacked authority to order reinstatement of treasurer's employee fired by treasurer). Because the Rules and Regulations cannot empower the Commissioners to act beyond their statutory authority, their actions here were unlawful even if they were consistent with the Rules and Regulations.¹⁴ Accordingly, the court will enter a declaration that the Commissioners exceeded their authority.

The Register's claims for mandamus and injunctive relief regarding the CIO stand on different footing. To the extent that the Register seeks such relief, the controversy over the CIO position may be moot because, due to the consolidation of the Registry's and County's technology departments, the Registry CIO position no longer exists. However, the Register claims that the consolidation was improper, and that the Registry should have its own CIO. If that is so, then it may be that his CIO claims involve a live controversy in which he has a definite stake that the court may properly address.

The summary judgment record contains limited facts about the consolidation, and the parties have not substantively addressed its propriety. On this record, the court is unable to conclude whether the consolidation was proper, and thus the court is unable to conclude whether

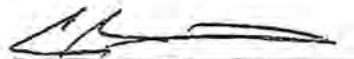
¹³ The Commissioners' actions cannot be justified by the hiring freeze because it was set to expire before the CIO candidate's anticipated start date, and because the CIO position was essential.

¹⁴ "The authority of the [county personnel board] to issue such Rules and Regulations is derived from G. L. c. 35, § 51." *Norfolk County Commissioners*, NO1992-2073, slip op. at 6. The Rules and Regulations cannot provide authority beyond that conferred by the statute. See *Atlanticare Med. Ctr.*, 439 Mass. at 14.

the CIO controversy is moot. Therefore, summary judgment is inappropriate on the Register's claims for mandamus and injunctive relief regarding the CIO position.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the plaintiff's motion for summary judgment (paper no. 59.0) is **ALLOWED** in part as follows. The court hereby **DECLARES** that the defendants have violated G. L. c. 64D, § 11 and § 12 by: (i) not providing the Norfolk County Registry of Deeds ("Registry") a continuing amount of expenditure of not less than 102.5 percent of the amount expended for the Registry's automation, modernization, and operation in the preceding fiscal year ("County Mandate"); (ii) requiring that the Registry's share of funds in the deeds excise fund ("Registry's Share") be expended before spending or accounting for the County Mandate; (iii) using funds from the Registry's Share towards the County Mandate; and (iv) taking or retaining any portion of the Registry's Share. Also, the court hereby **DECLARES** that the defendant County Commissioners for the County of Norfolk exceeded their authority by voting against appointing the Registry's candidate for the approved, budgeted, and essential Registry chief information officer position on a permanent basis and instead voting to appoint the candidate for the position on a temporary basis. The plaintiff's motion is otherwise **DENIED**. The defendants' cross-motion for summary judgment (paper no. 59.2) and the defendants' motion for summary judgment (paper no. 61.0) are **DENIED**.


 Claudine A. Cloutier
 Justice of the Superior Court

Dated: 6/28/24

Rule 56. Summary Judgment, MS R RCP Rule 56

West's Annotated Mississippi Code
 Mississippi Rules of Court State
 Mississippi Rules of Civil Procedure
 Chapter VII. Judgment

M.R.C.P. Rule 56

Rule 56. Summary Judgment

Currentness

(a) For Claimant. A party seeking to recover upon a claim, counter-claim, or cross-claim, or to obtain a declaratory judgment may, at any time after the expiration of thirty days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counter-claim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least ten days before the time fixed for the hearing. The adverse party prior to the day of the hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered on the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matter stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as

Rule 56. Summary Judgment, MS R RCP Rule 56

provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.

(g) **Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) Costs to Prevailing Party When Summary Judgment Denied. If summary judgment is denied the court shall award to the prevailing party the reasonable expenses incurred in attending the hearing of the motion and may, if it finds that the motion is without reasonable cause, award attorneys' fees.

Editors' Notes

ADVISORY COMMITTEE NOTES

It is important to distinguish between a Rule 56 motion for summary judgment, a Rule 12(b)(6) motion to dismiss for failure to state a claim, and a Rule 12(c) motion for judgment on the pleadings. When ruling on a Rule 56 motion for summary judgment, the trial court may “pierce the pleadings” and consider extrinsic evidence, such as affidavits, depositions, answers to interrogatories, and admissions. When ruling on a Rule 12(b)(6) motion to dismiss for failure to state a claim, the trial court may not “pierce the pleadings” and shall only consider the allegations contained in the pleading asserting the claim. Similarly, when ruling on a Rule 12(c) motion on the pleadings, the trial court shall only consider the allegations within the pleadings. If matters outside the pleadings are presented to and considered by the trial court in connection with a motion for judgment on the pleadings or a motion to dismiss for failure to state a claim, the trial court must treat the motion as one for summary judgment and give all parties a reasonable opportunity to present pertinent material. See M.R.C.P. 12(b) and (c).

A trial court need not make findings of fact when ruling on a motion for summary judgment because “a Rule 56 summary judgment hearing is not an action ‘tried upon the facts without a jury’ so as to trigger Rule 52 applicability.” See Harmon v. Regions Bank, 961 So. 2d 693, 700 (Miss. 2007). See also Uniform Rules of Circuit and County Court Practice.

Although the Court has held that an affidavit is not always required to obtain relief under Rule 56(f), a party must “present specific facts why he cannot oppose the motion” and must specifically demonstrate “how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant’s showing.” *Howarth v. M & H Ventures, LLC*, 237 So. 3d 107, 113 (Miss. 2007).

[Advisory Committee Note adopted effective July 1, 2014. Amended effective January 16, 2020.]

Rule 56. Summary Judgment, MS R RCP Rule 56

Notes of Decisions (869)

Rules Civ. Proc., Rule 56, MS R RCP Rule 56

Current with amendments received through March 1, 2026. Some rules may be more current, see credits for details.

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§ 14. Additional powers, MA ST 34 § 14

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Proposed Legislation

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title VI. Counties and County Officers (Ch. 34-38)

Chapter 34. Counties and County Commissioners (Refs & Annos)

M.G.L.A. 34 § 14

§ 14. Additional powers

Currentness

In addition to such powers and duties as may otherwise be conferred or imposed by law, the commissioners may provide for erecting and repairing jails and other necessary public buildings within and for the use of their county, but no money shall be paid or liability incurred therefor in excess of the amount specifically authorized by the advisory boards on county expenditures, except for emergency repairs, and no bills for construction or enlargement of a jail, house of correction or reformatory shall be incurred or paid until the plans therefor have been approved by the commissioner of correction, except as otherwise provided. They shall have authority to represent their county, and to have the care of its property and the management of its business and affairs in cases where not otherwise expressly provided; to sell and convey any real estate of the county by deed, sealed with the county seal, signed and acknowledged by them, or to lease any real estate of the county; to adopt a county seal, which shall be in the custody of their clerk and affixed to all processes requiring it; provided, however, that the sale of any county owned real estate customarily used by the county or sheriff for the housing of prisoners, including any jail, house of correction, or other such facility shall be made at fair market value and the net proceeds of any such sale shall be used for the construction of new jails, jail additions or temporary jail facilities, to reimburse the commonwealth for expenditures for such purposes or to reimburse the commonwealth for loans made to a county for the purpose of maintaining and operating the county; and provided, further, that any real estate offered for sale or lease, by a county shall first be offered for sale or lease to the commonwealth and upon the non-acceptance by the commonwealth of any such offer, shall then be offered for sale or lease to the city or town where such land is located.

At least ninety days prior to contracting for the sale or lease of such real estate, the commissioners shall notify in writing the city council or board of selectmen of the city or town in which such real estate is located; the members of the general court representing said city or town; the advisory board on county expenditures of the county in which such real estate is located; and the regional planning agency of the region in which such real estate is located.

Such notification shall include information as to the real estate's present use; the reason for its sale or lease; the new activity or purpose for which it will be used; and a copy of an independent appraisal done within the past fiscal year. Such appraisal shall be by a qualified appraiser approved by the executive committee of the advisory board on county expenditures of the county in which such real estate is located.

At least forty-five days but not more than sixty days prior to contracting for the sale or lease of said real estate, the commissioners shall cause a public hearing to be held in the town or city in which such real estate is located.

§ 14. Additional powers, MA ST 34 § 14

The commissioners shall publish on at least two occasions, in at least two newspapers serving the city or town in which such real estate is located, the time and place of said hearing. Such publication shall occur at least fourteen days prior to said hearing.

Any contract for the sale or lease of real estate executed in violation of this section shall be voidable; provided, however, that no action for violation of this section may be commenced subsequent to the date of the delivery of the deed conveying such real estate.

Credits

Amended by St.1947, c. 58; St.1978, c. 478, § 18; St.1979, c. 325; St.1981, c. 351, § 140; St.1985, c. 173; St.1989, c. 193, § 1; St.1990, c. 150, § 262.

Notes of Decisions (35)

M.G.L.A. 34 § 14, MA ST 34 § 14

Current through Chapter 11 of the 2026 2nd Annual Session. Some sections may be more current; see credits for details.

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§ 16. Fiscal year, MA ST 35 § 16

[Massachusetts General Laws Annotated](#)[Part I. Administration of the Government \(Ch. 1-182\)](#)[Title VI. Counties and County Officers \(Ch. 34-38\)](#)[Chapter 35. County Treasurers, State Supervision of County Accounts and County Finances \(Refs & Annos\)](#)

M.G.L.A. 35 § 16

§ 16. Fiscal year

[Currentness](#)

The fiscal year of each county shall be the year beginning with July first and ending with the following June thirtieth; but the treasurer shall, until July tenth, enter in his books the items for the payment of bills incurred and salaries earned during the previous fiscal year. Immediately after July first, he shall pay to every officer in his county any salary balance remaining due.

Credits

Amended by St.1969, c. 849, § 5.

[Notes of Decisions \(2\)](#)

M.G.L.A. 35 § 16, MA ST 35 § 16

Current through Chapter 11 of the 2026 2nd Annual Session. Some sections may be more current; see credits for details.

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§ 28B. Advisory board for county expenditures; action on..., MA ST 35 § 28B

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title VI. Counties and County Officers (Ch. 34-38)

Chapter 35. County Treasurers, State Supervision of County Accounts and County Finances (Refs & Annos)

M.G.L.A. 35 § 28B

§ 28B. Advisory board for county expenditures; action on proposed budget; public hearing; capital improvement fund

Effective: October 12, 2016

Currentness

(a) In every county other than Suffolk and Nantucket, there shall be an advisory board on county expenditures consisting of the city manager or his designee, who must be a member of the city council or board of alderman¹ in a Plan D or Plan E city, or the mayor or his designee, who must be a member of the city council or board of alderman¹ in each other city, or any member of the board of selectmen of each town or any member of the town council in a town which does not have selectmen. Each city and town shall have a weighted vote based on that city or town's assessment for expenses of county government. Each city or town's weighted vote will be computed based on the most recent biennial report of the commissioner of revenue submitting the final equalization and apportionment upon the several cities and towns of the amount of property and the proportion by every one thousand dollars of state or county tax which should be assessed upon each city and town and assessment ratios for classes of property in each city and town under section ten C of chapter fifty-eight.

Said vote shall be determined by dividing that city or town's property valuation by the total of the county property value to the nearest one hundredth in accordance with the schedule in the commissioner of revenue's most recent biennial report referenced above. Said vote shall be determined by the director of accounts and delivered in writing to the advisory board thirty calendar days after the biennial report has been accepted by the general court.

A quorum of the advisory board shall consist of that number of persons who represent a majority of the aggregate weighted vote. A majority shall be defined for the purposes of this chapter as a majority of the quorum.

(b) The advisory board on county expenditures, upon receipt of the proposed itemized budget prepared by the county commissioners, together with any supplementary material prepared by the head of each department or institution and each board or other agency, shall review the proposed budget. The advisory board may increase, decrease, alter and revise the proposed budget, provided that:--

(i) The statement of the amount to be expended for any object or purpose for which an expenditure is required to be made by law shall not be reduced below estimated expenditure of the current year unless the advisory board shall enter into its minutes a statement of the basis for the reduction.

§ 28B. Advisory board for county expenditures; action on..., MA ST 35 § 28B

(ii) The advisory board shall enter into its minutes a statement of the basis for any change in any statement of estimated revenues.

(iii) If the advisory board shall make any change in the proposed itemized budget, provision shall be made that the total estimated revenues, together with the amount of county tax to be levied shall equal the total estimated expenditures.

(c) Notwithstanding any other provision of law, before the final adoption of the expenditure resolution, the advisory board on county expenditures shall hold at least one public hearing to inform the residents of the county of its proposed budget and to hear testimony and argument before the adoption of the expenditure resolution. The county commissioners shall cause notice of said hearing to be posted in each city and town hall within the county at least fourteen calendar days prior to the hearing and shall also cause notice thereof to be published in a newspaper of general circulation in the county at least fourteen calendar days prior to the hearing. The notice shall include, but is not limited to, the date, time and place of the hearing, announcement of the citizen's right to provide written and oral comments and suggestions respecting the possible use of funds, a summary of the entire proposed budget, and the place where the proposed budget may be inspected or procured by any interested person during business hours.

(d) After completion of the public hearing required by subsection (c), the advisory board on county expenditures, by resolutions, may further increase, decrease, alter and revise the proposed itemized budget, subject, however, to the conditions and restrictions imposed by subsection (b). The proposed itemized budget as increased, decreased, altered and revised shall be finally adopted by an expenditure resolution by a majority vote of the advisory board as set forth in subsection (a) at a duly called meeting on or before April second and shall be the approved budget.

(e) The advisory board, prior to the submission of any proposed capital facility budget request by the county clerk to the director of accounts, or of any long range capital facilities development plan and budget request to the commissioner of capital asset management and maintenance, shall hold at least one public hearing to discuss the proposed budget request or plan. After such hearing or hearings, the advisory board, by a majority vote determined in accord with the provisions of subsection (a), may delete, add to, alter and revise any line item appearing in said budget request or plan. Said action shall be incorporated into the budget request or plan submitted to the commissioner of capital asset management and maintenance in accord with the provisions of sections seven A, seven B, seven C and seven D of chapter twenty-nine, and shall be binding upon the county.

(f) If the advisory board on county expenditures shall fail to finally adopt an expenditure resolution for the ensuing fiscal year on or before April second, the itemized budget as proposed by the county commissioners together with such changes, alterations and revisions as shall have been made by a majority vote of the advisory board on or before June first, as set forth in subsection (a), shall constitute the approved budget for the ensuing year, and the expenditure resolution shall be deemed to have been passed by the advisory board as of that date.

(g) The approved budget shall govern the expenditures of the county during the fiscal year. No expenses may be incurred in excess of those shown in the approved budget, but the budget may be from time to time amended by the preparation and submission of a proposed supplementary budget by the county commissioners to the advisory board on county expenditures. The advisory board shall, not less than fifteen calendar days, except in emergencies, nor more than thirty calendar days after

§ 28B. Advisory board for county expenditures; action on..., MA ST 35 § 28B

such submission to it, approve or amend any such supplementary budget as provided by subsection (a). A copy of the approved budget and any approved supplementary budget shall be transmitted to the director of accounts within fifteen days of the advisory board's action thereon.

(h) At the closing of the treasurer's books on July tenth, the balance to the credit of each appropriation shall become a part of the general unappropriated balance in the county treasury, but no appropriation voted for special, non-operating purposes, shall lapse until the work for which it has been made has been completed. Such appropriation, however, may not be carried forward for more than one extra fiscal year. Any remaining unappropriated balance thereafter, shall become a part of the general unappropriated balance in the county treasury. Written notification of such balance to be carried forward shall be submitted by the county commissioners to the county treasurer, the advisory board, and the director of accounts on or before the tenth day following the close of the fiscal year for which it was originally appropriated.

The county commissioners shall send written notification of such balance to the county treasurer, the advisory board, and the director of accounts on or before the tenth day following the close of the fiscal year. This subsection shall not apply to funds appropriated for the purposes of construction of buildings.

(i) For the purpose of creating a Capital Improvement Fund the advisory board may appropriate in any year an amount not exceeding ten per cent of the amount raised in the preceding fiscal year by assessment upon the cities and towns or of such larger amount as may be approved by a two-thirds vote. The aggregate amount in the fund at any time shall not exceed ten per cent of the total equalized valuation of the municipalities in the county as defined in section one of chapter forty-four. Any interest shall be added to and become a part of the fund.

The treasurer shall be the custodian of said fund and may deposit the proceeds in national banks or invest the proceeds by deposit in savings banks, cooperative banks or in participation units in a combined investment fund under section thirty-eight A of chapter twenty-nine, or invest the same in such securities as are legal for the investment of funds of savings banks under the provisions of chapter one hundred and sixty-eight or in federal savings and loan associations situated in the commonwealth.

The Capital Improvement Fund may be appropriated by the county commissioners with the approval of the advisory board for any purpose authorized under sections seven and eight of chapter forty-four or for such other county purpose as is approved by a two-thirds vote of the advisory board.

(j) To create and maintain a County Stabilization Fund the advisory board may appropriate in any year an amount as may be approved by a $\frac{2}{3}$ vote of the advisory board. Any interest shall be added to and become part of the fund.

The treasurer shall be custodian of the fund and may deposit the proceeds in national banks or invest the proceeds by deposit in savings banks, cooperative banks or in participation units in a combined investment fund under section 38A of chapter 29, or invest the proceeds in those securities as are legal for the investment of funds of savings banks under chapter 168 or in federal savings and loans associations situated in the commonwealth.

The County Stabilization Fund may be appropriated for any purpose by the county commissioners with the approval of a $\frac{2}{3}$ vote of the advisory board.

§ 28B. Advisory board for county expenditures; action on..., MA ST 35 § 28B

Credits

Added by St.1973, c. 1166, § 1. Amended by St.1974, c. 179; St.1977, c. 959; St.1978, c. 55; St.1980, c. 579, § 34; St.1981, c. 351, § 144; St.1981, c. 806, §§ 1 to 2A; St.1982, c. 244, §§ 1, 3; St.1983, c. 121, § 2; St.1984, c. 453, § 1; St.1989, c. 341, § 16; St.1998, c. 194, § 112; St.2016, c. 151, eff. Oct. 12, 2016.

Notes of Decisions (4)

Footnotes

1

So in enrolled bill; probably should read "aldermen".

M.G.L.A. 35 § 28B, MA ST 35 § 28B

Current through Chapter 11 of the 2026 2nd Annual Session. Some sections may be more current; see credits for details.

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§ 32. Provisions of appropriation acts for counties and county..., MA ST 35 § 32

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title VI. Counties and County Officers (Ch. 34-38)

Chapter 35. County Treasurers, State Supervision of County Accounts and County Finances (Refs & Annos)

M.G.L.A. 35 § 32

§ 32. Provisions of appropriation acts for counties and county hospitals; approved schedules; certification; transfers; purposes; expenditures in excess of appropriations; reserve fund

Currentness

Sums appropriated in appropriation acts for counties and in appropriation acts for the care, maintenance and repair of county hospitals shall be based upon detailed schedules approved by the county advisory boards, copies of which shall be deposited with the director of accounts.

Said director shall file with the county commissioners and the county treasurer of each county a certification of the amounts appropriated as set forth in the approved schedules. Except as provided by such acts or except as otherwise provided by law, no liability may be incurred and no expenditure shall be made in excess of the amount available in an existing appropriation for a function, a main group, a class or a subclass.

Transfers within an appropriation from one main group to another main group may be made upon written request of the authorized official of the organization unit with the written approval of the county commissioners, and copies of said request and approval shall be filed with the county treasurer; provided, however, that no transfer shall be made from the main groups "personal services", "equipment", "structures and improvements" or "improvements to land" to another main group nor shall any transfer be made from any other main group into any of the aforementioned main groups.

Transfers within an appropriation between classes and between subclasses within a main group may be made by the authorized official of the organization unit whenever in his opinion public necessity and convenience so requires; provided, however, that no transfer shall be made within the classes of the main groups "personal services" or "equipment".

Amounts included for permanent positions in such acts for personal services shall be based upon schedules of permanent positions and salary rates as approved by the county advisory boards, and, except as otherwise shown by the files on said boards, a copy of which shall be deposited with the county personnel board, no part of sums so appropriated shall be available for payment of salaries of any additional permanent positions, or for payments on account of upward reallocations of permanent positions, or for payments on account of any change of salary range or compensation of any permanent positions, except that an attendant who becomes a licensed practical nurse and a graduate nurse who becomes a registered nurse may be paid an increased salary rate on account of such promotion, subject to approval by the county personnel board, and a person may receive an increased cash salary in lieu of maintenance formerly received, with like approval.

Moneys appropriated under such acts for the purchase of equipment shall be expended for the purposes specified in the schedules as approved by the county advisory boards, and for no other purpose.

§ 32. Provisions of appropriation acts for counties and county..., MA ST 35 § 32

No expense incurred for mid-day meals by county officers and employees, other than those who receive as part of their compensation a noncash allowance in the form of full or complete boarding and housing, and those county officers and employees who are stationed beyond commuting distance from their homes for a period of more than twenty-four hours, shall be allowed; provided that officers or employees who have charge of juries or who have the care and custody of prisoners, insane persons or other persons placed in their charge by a court or under legal proceedings for transfer to or from court to an institution or from institution to institution and persons certified by a district attorney as engaged in investigation shall be reimbursed for the expense of mid-day meals when necessarily engaged on such duty; and provided, further, that county officers and employees in attendance at meetings and conferences called by or for any group or class on a statewide basis shall be so reimbursed.

Notwithstanding the provisions of the preceding paragraph, not more than two employees of a county may be reimbursed for meals and other expenses incurred in attendance at a meeting or conference called by or for any group or class on a statewide basis.

No moneys appropriated under such acts shall be expended by county officers or employees for monthly telephone service furnished to such officers or employees at places other than regular offices.

The allowance to county officers and employees for expenses incurred by them in the operation of motor vehicles owned by them or by any member of their immediate families and used in the performance of their official duties shall not exceed the rate established for state employees, except in cases where a higher allowance is specifically provided by statute; provided that in the case of commitments of the insane the justice of the court ordering the commitment may order a higher rate but not to exceed forty cents a mile one way. No expenditure shall be made for travel outside the commonwealth for attendance at conferences or conventions.

No county expenditures shall be made or liability incurred, nor shall a bill be paid for any purpose, in excess of the appropriation therefor, except as provided in sections fourteen and thirty-four.

No direct draft against the account known as the Reserve Fund as appearing in advisory board appropriations for counties shall be made, but transfers from such accounts to other accounts may be made to meet extraordinary or unforeseen expenditures upon the request of the county commissioners to and with the approval of the county advisory boards or their designated executive committee; provided, however, that if such county advisory board or its designated executive committee has not acted upon such request within forty-five days after such request has been received by it, then the county commissioner may submit such request to the bureau of accounts. The director of accounts shall be notified of the approval of such transfer by the county commissioner within fifteen days.

Credits

Amended by St.1960, c. 282, § 1; St.1967, c. 62; St.1970, c. 147, § 1; St.1981, c. 351, § 147; St.1984, c. 453, § 2; St.1985, c. 396.

Notes of Decisions (16)

§ 32. Provisions of appropriation acts for counties and county..., MA ST 35 § 32

M.G.L.A. 35 § 32, MA ST 35 § 32

Current through Chapter 11 of the 2026 2nd Annual Session. Some sections may be more current; see credits for details.

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§ 34. Expenses and liabilities incurred prior to appropriations;..., MA ST 35 § 34

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title VI. Counties and County Officers (Ch. 34-38)

Chapter 35. County Treasurers, State Supervision of County Accounts and County Finances (Refs & Annos)

M.G.L.A. 35 § 34

§ 34. Expenses and liabilities incurred prior to appropriations; limitations; exceptions

Currentness

On and after July first in each year and before the regular appropriations have been made by the advisory board on county expenditures, the county commissioners and other officers authorized to incur liabilities payable by the county may incur liability for general maintenance and operation of regular county activities at a rate of expenditure which does not exceed in any month the sum spent for a similar purpose in any one month in the preceding year; provided, that said commissioners or officers may expend in any one month for any office or board created by law an amount not exceeding one twelfth of the estimated cost for said year for said office or board. Payments therefor may be made from any available funds in the county treasury, to be charged to the regular appropriation when made. No new or unusual expense shall be incurred, or permanent contract made, or salary increased, until an appropriation sufficient therefor has been made by the advisory board on county expenditures; except that salary increases in accordance with the salary schedule may be granted as set forth in section fifty-one B, and contracts made by a county for the exercise of its corporate powers or for any purpose as provided in sections fourteen and seventeen of chapter thirty-four may during any fiscal year, at the time of, or after, the making thereof, be extended without an appropriation, upon like or more favorable terms and conditions, for the whole or any part of the next fiscal year up to December thirty-first of that year or up to sixty days after passage of the budget of the next fiscal year, whichever date is later, provided that in no event shall the average monthly liability incurred with respect to the next fiscal year exceed the average monthly liability for such contract during the last six months of the then current fiscal year. Rentals and leases of real property may be entered into for a period not to exceed five years, provided that such limitation shall not apply to leases with the judicial branch of the commonwealth.

Notwithstanding the foregoing limitations upon the authority of the county commissioners and other officers to incur liabilities during said interval, such county commissioners and other officers may incur liabilities and make payments therefor from any available funds in the treasury to such extent as may be necessary for the purpose of contracting and paying for group insurance in accordance with the provisions of chapter thirty-two B.

Credits

Amended by St.1937, c. 36; St.1939, c. 501, § 4; St.1945, c. 158, § 4; St.1948, c. 591, § 3; St.1959, c. 51; St.1965, c. 227; St.1969, c. 849, § 15; St.1975, c. 44; St.1978, c. 478, § 27; St.1981, c. 351, § 148.

Notes of Decisions (11)

§ 34. Expenses and liabilities incurred prior to appropriations;..., MA ST 35 § 34

M.G.L.A. 35 § 34, MA ST 35 § 34

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§ 48. Establishment of board; membership; election; tenure, etc., MA ST 35 § 48

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title VI. Counties and County Officers (Ch. 34-38)

Chapter 35. County Treasurers, State Supervision of County Accounts and County Finances (Refs & Annos)

M.G.L.A. 35 § 48

§ 48. Establishment of board; membership; election; tenure, etc.

Currentness

There is hereby established a county personnel board, in this and the eight following sections called the board, consisting of three county commissioners, one to be elected by and from the county commissioners of Berkshire, Franklin, Hampden and Hampshire counties; one to be elected by and from the county commissioners of Essex, Middlesex and Worcester counties; and one to be elected by and from the county commissioners of Barnstable, Bristol, Norfolk and Plymouth counties, provided that in the election of such member from the last named counties, the chairman of the county commissioners of each of the counties of Nantucket and Dukes County shall be entitled to one vote. The commissioner first elected from the county commissioners of Berkshire, Franklin, Hampden and Hampshire counties shall serve for a term of one year, the commissioner first elected from the county commissioners of Essex, Middlesex and Worcester counties shall serve for a term of two years, and the commissioner first elected from the county commissioners of Barnstable, Bristol, Norfolk and Plymouth counties shall serve for a term of three years. The members first elected as aforesaid shall be elected not later than the first day of September, nineteen hundred and thirty, and their several terms shall run from said date. On or before August first of the year in which the term of a member of the board will expire, his successor shall be elected in the same manner at a time and place, to be designated by the director of accounts, to serve for a term of three years from the first day of the September following. The retirement of any member of the board as a county commissioner shall thereupon create a vacancy in the board. All vacancies in the board shall be filled in the same manner as the original election for the unexpired term, and all commissioners elected to said board shall serve until the qualification of their respective successors. Each member of the board shall receive as compensation the sum of twenty-five dollars for each day's attendance at board meetings, in addition to his salary as county commissioner, and shall be reimbursed for expenses actually incurred in the transaction of the business of the board; provided, that the total amount paid for compensation as aforesaid shall not exceed twelve hundred and fifty dollars annually.

In case of the absence or disability of a member of the board, the other members may designate an acting member from among the county commissioners of the counties represented by such member, to serve during his absence or disability, and such acting member shall receive compensation at the same rate as a member of the board.

Credits

Amended by St.1947, c. 102, §§ 1, 2; St.1949, c. 538; St.1963, c. 801, § 73.

Notes of Decisions (6)

§ 48. Establishment of board; membership; election; tenure, etc., MA ST 35 § 48

M.G.L.A. 35 § 48, MA ST 35 § 48

Current through Chapter 11 of the 2026 2nd Annual Session. Some sections may be more current; see credits for details.

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§ 49. Classification of positions; "salary" defined, MA ST 35 § 49

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title VI. Counties and County Officers (Ch. 34-38)

Chapter 35. County Treasurers, State Supervision of County Accounts and County Finances (Refs & Annos)

M.G.L.A. 35 § 49

§ 49. Classification of positions; "salary" defined

Currentness

Every office and position the salary of which is wholly payable from the treasury of one or more counties, or from funds administered by and through county officials, excluding the offices of county commissioners, the register of deeds and the assistant registers of deeds for the county of Suffolk, the sheriff of the county of Suffolk, and excluding offices and positions filled by appointment of the governor with the advice and consent of the council, and offices and positions payable under chapter twenty-nine A, shall be classified by the board in the manner provided by sections forty-eight to fifty-six, inclusive, and every such office and position, now existing or hereafter established, shall be allocated by the board to its proper place in such classification. Offices and positions in the service of any department, board, school or hospital principally supported by the funds of the county or counties, or in the service of a hospital district established under sections seventy-eight to ninety-one, inclusive, of chapter one hundred and eleven, shall likewise be subject to classification as aforesaid. The word "salary", as used in this section, shall include compensation, however payable; but nothing in sections forty-eight to fifty-six, inclusive, and nothing done under authority thereof, shall prevent any person from continuing to receive from a county such compensation as is fixed under authority of other provisions of law or as is expressly established by law.

Credits

Amended by St.1935, c. 182, § 1; St.1938, c. 347, § 1; St.1939, c. 165, § 1; St.1941, c. 447, § 1; St.1943, c. 136, § 1; St.1945, c. 486, § 2; St.1946, c. 262, § 1; St.1946, c. 512, § 1; St.1947, c. 290, § 1; St.1947, c. 400, § 1; St.1947, c. 469, § 1; St.1948, c. 183, § 1; St.1948, c. 664, § 1; St.1949, c. 774, § 1; St.1951, c. 611, § 2; St.1956, c. 738, § 10; St.1959, c. 609, § 7; St.1960, c. 761, § 1; St.1960, c. 801, § 5; St.1963, c. 841, § 1; St.1966, c. 463, § 1; St.1969, c. 859, § 3; St.1969, c. 867, § 1; St.1970, c. 20, § 1; St.1970, c. 526, § 1; St.1970, c. 769, § 3; St.1971, c. 843, § 2; St.1972, c. 492, § 1; St.1972, c. 731, § 3; St.1978, c. 478, § 28.

Notes of Decisions (6)

M.G.L.A. 35 § 49, MA ST 35 § 49

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§ 50. Repealed, 2016, 218, Sec. 18, MA ST 35 § 50



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Part I. Administration of the Government (Ch. 1-182)

Title VI. Counties and County Officers (Ch. 34-38)

Chapter 35. County Treasurers, State Supervision of County Accounts and County Finances (Refs & Annos)

M.G.L.A. 35 § 50

§ 50. Repealed, 2016, 218, Sec. 18

Effective: November 7, 2016

Currentness

M.G.L.A. 35 § 50, MA ST 35 § 50

Current through Chapter 11 of the 2026 2nd Annual Session. Some sections may be more current; see credits for details.

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§ 51. Personnel board; powers and duties; discharge of employees, etc., MA ST 35 § 51

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Part I. Administration of the Government (Ch. 1-182)

Title VI. Counties and County Officers (Ch. 34-38)

Chapter 35. County Treasurers, State Supervision of County Accounts and County Finances (Refs & Annos)

M.G.L.A. 35 § 51

§ 51. Personnel board; powers and duties; discharge of employees, etc.

Currentness

The board shall (a) pass upon and finally adopt and put into effect, with such modifications, changes and additions as it shall deem proper, the classification and compensation plans and rules for their administration proposed by the director of accounts under section fifty; (b) pass upon, finally adopt and put into effect, with such modifications as it may deem proper, amendments to the classification and compensation plans and the rules for their administration as may be proposed from time to time under the provisions of section fifty or fifty-three; provided, that no such amendment not proposed by the director of accounts under section fifty shall be adopted except after a report which shall be made by said director within thirty days after submission to him; and provided, further, that an amendment proposed under section fifty-three and adopted by the board shall be effective only in the county whose county commissioners have proposed the amendment unless the county commissioners of four or more counties have joined in the proposal in which case it shall be effective in all counties, other than Suffolk and such other counties, if any, as shall under section fifty-six have ceased to be represented in the board; (c) pass upon and finally determine appeals relative to classification, as provided in section fifty-two; and (d) perform such other functions and duties as may be imposed upon it by sections forty-eight to fifty-five, inclusive.

The board is hereby authorized and directed to establish and administer uniform rules and regulations governing leaves of absence, shift differentials and overtime for officers and employees subject to section forty-eight to fifty-six, inclusive.

Any employee subject to sections forty-eight to fifty-six, inclusive, except superintendent and assistant superintendent of hospital, the chief of medical staff and the administrator at the Barnstable county hospital, superintendent and assistant superintendent of training school, superintendent and assistant superintendent of buildings, superintendent of industrial farm, superintendent of state reservation, director of agricultural school, director of extension service, master and keeper and assistant master and keeper of jail and house of correction, assistant registers of deeds, county health officer, county engineer and county dog officer, who has completed at least five years of service may not be discharged from such employment except for just cause and for reasons specifically given him in writing by the appointing authority. Before any such discharge is effected, the employee shall be given a full hearing before the appointing authority, of which hearing he shall have at least three days' written notice, exclusive of Sundays and holidays, from the appointing authority. Within two days, exclusive of Sundays and holidays, after completion of said hearing, the appointing authority shall give the employee affected a written notice of his decision, stating fully and specifically the reasons therefor.

If within five days after receiving written notice of the decision of the appointing authority, the person so discharged shall so request in writing, he shall be given a hearing before the board. Said hearing shall be commenced in not less than three nor more than ten days, and shall be completed within thirty days after the filing of such request. The decision of the board shall be in writing and notice thereof shall be sent to all parties concerned within ten days after completion of the hearing. If the board finds that the action of the appointing authority was justified, such action shall be affirmed; otherwise, it shall be

§ 51. Personnel board; powers and duties; discharge of employees, etc., MA ST 35 § 51

reversed and the person concerned shall be returned to his office or position without loss of compensation.

Within thirty days after action by the board on such a hearing, the person who was discharged may, if said action was affirmed by the board, bring a petition in the district court within the judicial district of which such person resides, addressed to the justice of the court, praying that the action of the appointing authority and of the board in discharging him may be reviewed by the court, and, after such notice to the appointing authority and the board as the court deems necessary, it shall hear witnesses, review such action, and determine whether or not upon all the evidence such action was justified. If the court finds that such action was justified the action of the appointing authority and of the board shall be affirmed; otherwise they shall be reversed and the petitioner shall be reinstated in his office or position without loss of compensation. The decision of the court shall be final and conclusive upon the parties.

Credits

Amended by St.1938, c. 73, § 2; St.1948, c. 345; St.1955, c. 645; St.1960, c. 433; St.1967, c. 625; St.1969, c. 389; St.1970, c. 70; St.1974, c. 38; St.1976, c. 8; St.1977, c. 854; St.1978, c. 478, § 29.

Notes of Decisions (14)

M.G.L.A. 35 § 51, MA ST 35 § 51

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§ 51A. Definitions, MA ST 35 § 51A

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Title VI. Counties and County Officers (Ch. 34-38)

Chapter 35. County Treasurers, State Supervision of County Accounts and County Finances (Refs & Annos)

M.G.L.A. 35 § 51A

§ 51A. Definitions

Currentness

The following words as used in this and the following sections and in the classification and compensation plans shall have the following meanings:--

“Board”, the county personnel board;

“Class” or “title”, a group of positions forming part of the classified service established by sections forty-eight to fifty-five, inclusive, and sufficiently similar in respect to duties and responsibilities that the same descriptive title may be used to designate all positions allocated to the class, the same general entrance qualifications may be required of incumbents of positions in the class, the same general tests of fitness may be used to choose qualified employees and the same schedule of pay may be made to apply under the same or substantially the same employment conditions;

“Class allocation”, the official initial placing of a class in a job group in the salary schedule;

“Class reallocation”, the official subsequent placing of a class in a job group in the salary schedule;

“Employee”, employee or officer, unless the latter is otherwise specifically exempted;

“Increment”, the amount of dollars between any two consecutive steps-in-range in the same job group in the salary schedule;

“Job group”, a unit of the salary schedule which includes all classes in the position classification plan which are sufficiently comparable in value as regards duties and responsibilities, irrespective of the field of work of which they form a part, so that the same salary range may be made to apply to all classes in the same unit of the salary schedule;

“Position”, a job which may be held by an individual employee. There may be more than one position in the same class;

“Position allocation”, the initial official placing of a position in a class forming part of the position classification plan;

§ 51A. Definitions, MA ST 35 § 51A

“Position classification plan”, the plan resulting from position allocations pertaining to the personal services of the counties;

“Position reallocation”, any subsequent official placing of a position in a class forming part of the position classification plan;

“Salary range”, a range of salaries from a specified minimum to a specified maximum amount as applied to a job group;

“Specification”, a description of the characteristic duties and requirements of a single class;

“Step-in-range” or “increment step”, one of the divisions of a salary range in a job group at which an employee is compensated.

Credits

Added by St.1948, c. 591, § 1. Amended by St.1957, c. 621, § 1.

M.G.L.A. 35 § 51A, MA ST 35 § 51A

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§ 51B. Salary schedules, MA ST 35 § 51B

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Part I. Administration of the Government (Ch. 1-182)

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M.G.L.A. 35 § 51B

§ 51B. Salary schedules

Currentness

(1) Said classification and compensation plans shall be amended so that each office and position shall be allocated by said board to the proper job group in the following salary schedule; except that, in the case of elected officials, patient help, part time officers or employees, or in unusual circumstances, the board may fix salaries or wages for individual positions upon notice to the county commissioners and employing authority, and in such cases the positions shall not be allocated in said salary schedule:

SALARY SCHEDULE
Effective July 1, 1980

Job	Step	Step	Step	Step	Step	Step	Step	Incre-
Group	1.	2.	3.	4.	5.	6.	7.	ment
1.	\$ 8,797.28	\$ 8,976.68	\$ 9,156.08	\$ 9,335.48	\$ 9,514.88	\$ 9,694.28	\$ 9,873.68	\$179.40
2.	8,958.48	9,137.88	9,317.28	9,496.68	9,676.08	9,855.48	10,034.88	179.40
3.	9,143.08	9,345.88	9,548.68	9,751.48	9,954.28	10,157.08	10,359.88	202.80
4.	9,379.68	9,582.48	9,785.28	9,988.08	10,190.88	10,393.68	10,596.48	202.80
5.	9,564.28	9,785.28	10,006.28	10,227.28	10,448.28	10,669.28	10,890.28	221.00
6.	9,884.08	10,105.08	10,326.08	10,547.08	10,768.08	10,989.08	11,210.08	221.00
7.	10,162.28	10,404.08	10,645.88	10,887.68	11,129.48	11,371.28	11,613.08	241.80
8.	10,424.88	10,687.48	10,950.08	11,212.68	11,475.28	11,737.88	12,000.48	262.60
9.	10,843.48	11,131.56	11,419.64	11,707.72	11,995.80	12,283.88	12,571.96	288.08
10.	11,267.28	11,573.56	11,879.84	12,186.12	12,492.40	12,798.68	13,104.96	306.28

§ 51B. Salary schedules, MA ST 35 § 51B

11.	11,685.88	12,019.20	12,352.52	12,685.84	13,019.16	13,352.48	13,685.80	333.32
12.	12,192.88	12,541.80	12,890.72	13,239.64	13,588.56	13,937.48	14,286.40	348.92
13.	12,860.04	13,227.68	13,595.32	13,962.96	14,330.60	14,698.24	15,065.88	367.64
14.	13,480.92	13,912.52	14,344.12	14,775.72	15,207.32	15,638.92	16,070.52	431.60
15.	14,157.44	14,629.08	15,100.72	15,572.36	16,044.00	16,515.64	16,987.28	471.64
16.	14,855.80	15,383.60	15,911.40	16,439.20	16,967.00	17,494.80	18,022.60	527.80
17.	15,679.48	16,231.20	16,782.92	17,334.64	17,886.36	18,438.08	18,989.80	551.72
18.	16,372.12	16,969.08	17,566.04	18,163.00	18,759.96	19,356.92	19,953.88	596.96
19.	17,155.76	17,797.96	18,440.16	19,082.36	19,724.56	20,366.76	21,008.96	642.20
20.	18,011.16	18,674.68	19,338.20	20,001.72	20,665.24	21,328.76	21,992.28	663.52
21.	18,792.20	19,506.68	20,221.16	20,935.64	21,650.12	22,364.60	23,079.08	714.48
22.	19,666.32	20,428.64	21,190.96	21,953.28	22,715.60	23,477.92	24,240.24	762.32
23.	20,609.60	21,393.24	22,176.88	22,960.53	23,744.16	24,527.80	25,311.44	783.64
24.	21,486.32	22,312.60	23,138.88	23,965.16	24,791.44	25,617.72	26,444.00	826.28
25.	22,363.04	23,237.16	24,111.28	24,985.40	25,859.52	26,733.64	27,607.76	874.12

(1A) Notwithstanding the provisions of paragraph (1), in any county, which by vote of the county commissioners, accepts the provisions of this paragraph said classification and compensation plans shall be amended so that each office and position shall be allocated by the board to the proper job group in the following salary schedules; except that, in the case of elected officials, court stenographers, patient help, part-time officers or employees, or in unusual circumstances, the board may fix salaries or wages for individual positions upon notice to the county commissioners and employing authority, and in such cases the positions shall not be allocated in said salary schedules:

SALARY SCHEDULE
Effective January 1, 1981

Job	Step	Step	Step	Step	Step	Step	Step	Incre-
Group	1.	2.	3.	4.	5.	6.	7.	ment
1.	\$ 9,497.28	\$ 9,676.68	\$ 9,856.08	\$10,035.48	\$10,214.88	\$10,394.28	\$10,573.68	\$179.40
2.	9,658.48	9,837.88	10,017.28	10,196.68	10,376.08	10,555.48	10,734.88	179.40
3.	9,843.08	10,045.88	10,248.68	10,451.48	10,654.28	10,857.08	11,059.88	202.80

§ 51B. Salary schedules, MA ST 35 § 51B

4.	10,079.68	10,282.48	10,485.28	10,688.08	10,890.88	11,093.68	11,296.48	202.80
5.	10,264.28	10,485.28	10,706.28	10,927.28	11,148.28	11,369.28	11,590.28	221.00
6.	10,584.08	10,805.08	11,026.08	11,247.08	11,468.08	11,689.08	11,910.08	221.00
7.	10,862.28	11,104.08	11,345.88	11,587.68	11,829.48	12,071.28	12,313.08	241.80
8.	11,124.88	11,387.48	11,650.08	11,912.68	12,175.28	12,437.88	12,700.48	262.60
9.	11,543.48	11,831.56	12,119.64	12,407.72	12,695.80	12,983.88	13,271.96	288.08
10.	11,967.28	12,273.56	12,579.84	12,886.12	13,192.40	13,498.68	13,804.96	306.28
11.	12,385.88	12,719.20	13,052.52	13,385.84	13,719.16	14,052.48	14,385.80	333.32
12.	12,892.88	13,241.80	13,590.72	13,939.64	14,288.56	14,637.48	14,986.40	348.92
13.	13,560.04	13,927.68	14,295.32	14,662.96	15,030.60	15,398.24	15,765.88	367.64
14.	14,180.92	14,612.52	15,044.12	15,475.72	15,907.32	16,338.92	16,770.52	431.60
15.	14,857.44	15,329.08	15,800.72	16,272.36	16,744.00	17,215.64	17,687.28	471.64
16.	15,555.80	16,083.60	16,611.40	17,139.20	17,667.00	18,194.80	18,722.60	527.80
17.	16,379.48	16,931.20	17,482.92	18,034.64	18,586.36	19,138.08	19,689.80	551.72
18.	17,072.12	17,669.08	18,266.04	18,863.00	19,459.96	20,056.92	20,653.88	596.96
19.	17,855.76	18,497.96	19,140.16	19,782.36	20,424.56	21,066.76	21,708.96	642.20
20.	18,711.16	19,374.68	20,038.20	20,701.72	21,365.24	22,028.76	22,692.28	663.52
21.	19,492.20	20,206.68	20,921.16	21,635.64	22,350.12	23,064.60	23,779.08	714.48
22.	20,366.32	21,128.64	21,890.96	22,653.28	23,415.60	24,177.92	24,940.24	762.32
23.	21,309.60	22,093.24	22,876.88	23,660.52	24,444.16	25,227.80	26,011.44	783.64
24.	22,186.32	23,012.60	23,838.88	24,665.16	25,491.44	26,317.72	27,144.00	826.28
25.	23,063.04	23,937.16	24,811.28	25,685.40	26,559.52	27,433.64	28,307.76	874.12

SALARY SCHEDULE
Effective September 1, 1981

Job	Step	Step	Step	Step	Step	Step	Step	Incre-
Group	1.	2.	3.	4.	5.	6.	7.	ment

§ 51B. Salary schedules, MA ST 35 § 51B

1.	\$10,597.28	\$10,776.68	\$10,956.08	\$11,135.48	\$11,314.88	\$11,494.28	\$11,673.68	\$179.40
2.	10,758.48	10,937.88	11,117.28	11,296.68	11,476.08	11,655.48	11,834.88	179.40
3.	10,943.08	11,145.88	11,348.68	11,551.48	11,754.28	11,957.08	12,159.88	202.80
4.	11,179.68	11,382.48	11,585.28	11,788.08	11,990.88	12,193.68	12,396.48	202.80
5.	11,364.28	11,585.28	11,806.28	12,027.28	12,248.28	12,469.28	12,690.28	221.00
6.	11,684.08	11,905.08	12,126.08	12,347.08	12,568.08	12,789.08	13,010.08	221.00
7.	11,962.28	12,204.08	12,445.88	12,687.68	12,929.48	13,171.28	13,413.08	241.80
8.	12,224.88	12,487.48	12,750.08	13,012.68	13,275.28	13,537.88	13,800.48	262.60
9.	12,643.48	12,931.56	13,219.64	13,507.72	13,795.80	14,083.88	14,371.96	288.08
10.	13,067.28	13,373.56	13,679.84	13,986.12	14,292.40	14,598.68	14,904.96	306.28
11.	13,485.88	13,819.20	14,152.52	14,485.84	14,819.16	15,152.48	15,485.80	333.32
12.	13,992.88	14,341.80	14,690.72	15,039.64	15,388.56	15,737.48	16,086.40	348.92
13.	14,660.04	15,027.68	15,395.32	15,762.96	16,130.60	16,498.24	16,865.88	367.64
14.	15,280.92	15,712.52	16,144.12	16,575.72	17,007.32	17,438.92	17,870.52	431.60
15.	15,957.44	16,429.08	16,900.72	17,372.36	17,844.00	18,315.64	18,787.28	471.64
16.	16,655.80	17,183.60	17,711.40	18,239.20	18,767.00	19,294.80	19,822.60	527.80
17.	17,479.48	18,031.20	18,582.92	19,134.64	19,686.36	20,238.08	20,789.80	551.72
18.	18,172.12	18,769.08	19,366.04	19,963.00	20,559.96	21,156.92	21,753.88	596.96
19.	18,955.76	19,597.96	20,240.16	20,882.36	21,524.56	22,166.76	22,808.96	642.20
20.	19,811.16	20,474.68	21,138.20	21,801.72	22,465.24	23,128.76	23,792.28	663.52
21.	20,592.20	21,306.68	22,021.16	22,735.64	23,450.12	24,164.60	24,879.08	714.48
22.	21,466.32	22,228.64	22,990.96	23,753.28	24,515.60	25,277.92	26,040.24	762.32
23.	22,409.60	23,193.24	23,976.88	24,760.52	25,544.16	26,327.80	27,111.44	783.64
24.	23,286.32	24,112.60	24,938.88	25,765.16	26,591.44	27,417.72	28,244.00	826.28
25.	24,163.04	25,037.16	25,911.28	26,785.40	27,659.52	28,533.64	29,407.76	874.12

(2) Except as otherwise provided by law, after a person has been allocated to the above salary schedule, he must render a minimum of one year of service in the step-in-range of the job group to which his office or position has been allocated before he can be moved into the next higher step-in-range of the same job group; provided, however, when computing the date when

§ 51B. Salary schedules, MA ST 35 § 51B

salary increments shall become due after the initial allocation to a step-in-range, subsequent steps shall be due annually on the anniversary of the effective date of assignment to a rate within a salary grade in the salary schedule in effect immediately prior to July first, nineteen hundred and fifty-seven; and, provided further, in the event a person has already served a period in excess of twelve months in said step-in-range in the salary schedule in effect prior to said date, the increment step to the next step-in-range shall be due immediately upon assignment to a step-in-range on said date, and any subsequent steps shall be due annually on the effective date of the salary schedule.

(3) Daily rates of per diem employees shall be computed on the basis of their assigned job groups.

(4) Said board may permit the recruitment of employees in a job group at a rate above the minimum; provided, that said board has first determined, on request of the appointing authority and the county commissioners, that an emergency exists because of lack of sufficient employees, lack of housing facilities, isolation from regular transportation facilities, or other unusual conditions. Any such permit shall remain in effect until rescinded by said board, but shall not be in effect longer than one year unless renewed in like manner and with like approval. Whenever said board permits the recruitment of employees in a job group at a rate above the minimum rate in said job group, all employees in the same classification in the same county who are below such rate of recruitment shall be advanced to said higher rate in the salary schedule; provided, that the board may, by special vote declare that such increase for other employees shall take effect only in a particular institution or specific area.

(4A) Said board may permit the recruitment of agents or instructors appointed for purposes specified in section forty-three of chapter one hundred and twenty-eight at a rate above the minimum and within the grade to which the requested position is allocated, upon certification of the appointing authority that the person to be employed has served satisfactorily in a comparable position within or without the commonwealth for a period of time equivalent to the period required by the salary schedule had such service been entirely in the service of the county, provided, that said board shall not approve the recruitment of any person at a rate above the minimum of the grade if such proposed employee has been in the service of any county within a twelve month period prior to the date of the proposed employment.

(4B) Said board may permit the recruitment of all professional vocational and technical personnel, including teachers, administrators and supervisory staff of the Bristol county agricultural school, the Essex agricultural and technical institute and the Norfolk county agricultural school, at a rate above the minimum but within the grade at which the position is allocated, upon certification of the appointing authority that the person to be employed has served satisfactorily in a comparable position within or without the commonwealth for a period of time equivalent to the period required by the salary schedule had such service been entirely in the service of the county.

(5) When an employee is initially placed in the salary schedule, or is advanced in his job group, or is transferred, reallocated or promoted to a new job group, such employee, for subsequent step-rate increases, shall be credited with the number of years of service that corresponds to his job group and rate in the salary schedule.

(6) Whenever an employee receives a promotion to a position in a higher job group, his rate shall be the next higher rate in said higher job group, or the second next higher rate therein if such new salary rate would result in an increase of salary smaller in amount than the salary increment for such higher job group.

§ 51B. Salary schedules, MA ST 35 § 51B

(7) An employee who is demoted to a position in a lower job group shall receive the salary to which his period of service would entitle him if his service had been rendered in the lower group, but not less than the employee would have been entitled to had his service been continuously in the lower group.

(8) Rates of compensation in the salary schedule are for work hours as provided by the rules or regulations of said board; provided, however, that such rules or regulations shall establish the circumstances under which the county commissioners may relieve an employee or employees of such hours of work without reduction in salary.

(9) An employee serving on a part-time basis as certified by the appointing authority shall be entitled to the provisions of this chapter in the proportion that his service bears to full-time service.

Credits

Added by St.1948, c. 591, § 1. Amended by St.1949, c. 782, §§ 1, 3; St.1951, c. 743, §§ 1, 2; St.1954, c. 566, §§ 1, 2; St.1957, c. 621, § 2; St.1960, c. 250, § 1; St.1961, c. 136, § 2; St.1963, c. 833, § 1; St.1966, c. 267; St.1967, c. 66; St.1967, c. 186, § 1; St.1969, c. 858, § 1; St.1971, c. 755, § 1; St.1971, c. 1091; St.1972, c. 441; St.1972, c. 600, § 1; St.1973, c. 772, § 1; St.1974, c. 482, § 1; St.1977, c. 233, § 2; St.1978, c. 375, §§ 1, 2; St.1978, c. 478, § 30; St.1981, c. 200, §§ 1, 2.

M.G.L.A. 35 § 51B, MA ST 35 § 51B

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§ 52. Classification and allocation of offices and positions; review, MA ST 35 § 52

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title VI. Counties and County Officers (Ch. 34-38)

Chapter 35. County Treasurers, State Supervision of County Accounts and County Finances (Refs & Annos)

M.G.L.A. 35 § 52

§ 52. Classification and allocation of offices and positions; review

Currentness

The classification and allocation of offices and positions required to be classified and allocated by section forty-nine shall be according to their respective duties and responsibilities. The classification shall be established by specifications defining for each office or position or class of offices or positions the title, duties and responsibilities thereof. The titles used in such classification shall be used for pay rolls, in the records of county commissioners, county treasurers, the director of accounts and of the board, and in all budget and appropriation records, but for working and administrative purposes within a department and for public convenience other titles may be used. Incumbents of offices and positions so classified shall perform, as far as practicable, the duties prescribed for the class to which they are assigned, but nothing in sections forty-eight to fifty-six, inclusive, shall be construed to limit or to restrict the county commissioners or other administrative authorities having charge of a department in assigning other work to such incumbents.

Any person aggrieved by the allocation or classification of his office or position or by any other action or by any failure to act, under any provision of sections forty-eight to fifty-five, inclusive, may appeal in writing to the board. Such appeal shall be filed with the county commissioners of the county in which the office or position is established, who shall forward the appeal to the board, accompanied by a report and their recommendations thereon. The board shall refer the appeal to the director of accounts, who shall investigate the merits thereof and report to the board. The board, after giving all parties interested an opportunity to be heard, shall pass upon the appeal and its decision shall be final and binding upon all such parties, including the county commissioners and the person appealing.

Credits

Amended by St.1938, c. 73, § 1.

Notes of Decisions (4)

M.G.L.A. 35 § 52, MA ST 35 § 52

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§ 53. County commissioners; powers and duties, MA ST 35 § 53

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Chapter 35. County Treasurers, State Supervision of County Accounts and County Finances (Refs & Annos)

M.G.L.A. 35 § 53

§ 53. County commissioners; powers and duties

Currentness

The county commissioners of the several counties shall (1) keep on file in their respective offices the duplicate roster of officers and employees of their county, furnished by the director under section fifty; (2) receive and forward to the board, with their report and recommendations thereon, appeals, as provided in section fifty-two; (3) receive and act upon recommendations for salary increases, as provided in section fifty-four, and (4) perform such other functions and duties as may be imposed upon them by said sections forty-eight to fifty-six, inclusive. They may also recommend to the board amendments to the classification and compensation plans and to the rules relating thereto. They shall be entitled to be heard in the determination of questions of classification and allocation on appeal to the board, or otherwise.

Notes of Decisions (1)

M.G.L.A. 35 § 53, MA ST 35 § 53

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§ 53A. Director of affirmative action; affirmative action plan; reports, MA ST 35 § 53A

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Part I. Administration of the Government (Ch. 1-182)

Title VI. Counties and County Officers (Ch. 34-38)

Chapter 35. County Treasurers, State Supervision of County Accounts and County Finances (Refs & Annos)

M.G.L.A. 35 § 53A

§ 53A. Director of affirmative action; affirmative action plan; reports

Currentness

The county commissioners of each county shall designate or appoint a director of affirmative action who shall be the chief affirmative action officer for their respective county. Said person so designated shall not be a county commissioner. The person so designated shall presently be employed by said county. The person to be designated or appointed to said position shall possess: three years full-time or equivalent part-time experience in personnel administration or in a related field, or in a program or position in which their duties significantly involve affirmative action programs, or significant involvement in a community organization dealing with minority employment, or has earned a baccalaureate degree from a recognized college or university in the field of public administration, business administration, personnel administration, urban planning, social work, counseling, or in any related field of study or has successfully completed courses toward a graduate degree in the above fields. The person so designated shall receive no additional compensation for such appointment, and the county shall not consider the position held prior to such appointment vacant and shall not hire any additional employee in consideration of this appointment. In addition, said person shall also have a knowledge of the problems of minorities, females, and other affected groups when seeking employment, a knowledge of the elements of affirmative action programs, laws, regulations and guidelines, a knowledge of the various personnel selection processes, a knowledge of social psychology and its application, a knowledge of interviewing and counseling techniques, the ability to analyze written and statistical data in conjunction with planning abilities, good writing skills and oral expression, the ability to coordinate effectively with other public and private agencies, and the administrative skills to operate and supervise the office of affirmative action. The director of affirmative action shall report to and be under the direct supervision of the county commissioners.

Said director, with the assistance of the county personnel director, shall develop a county affirmative action plan. The purpose of this plan shall be to highlight equal employment opportunity discrepancies and to establish affirmative measures to ensure equal opportunity in the areas of hiring, promotion, demotion, transfer, recruitment, layoff, termination, rate of compensation, inservice or apprenticeship training programs, grievance procedures, and all terms and conditions of employment. Such affirmative actions shall include efforts required to remedy the effects of present and past discriminatory patterns and practices, as well as actions necessary to guarantee equal employment opportunity for all people. Said director shall also monitor all county contracts with outside vendors to ensure that every effort is made to utilize minority and women vendors and that contractors engaged for county work have instituted their own affirmative action plans.

Said director shall, from time to time, but at least every three months, report to the commissioners of the progress being made by all appointing and hiring authorities in meeting their affirmative action plans. Said director, with the approval of the county commissioners, may designate certain employees as department or office affirmative action representatives. Said affirmative action representatives shall monitor the implementation of and compliance with the affirmative action plan in their departments or offices and report on same for said director.

§ 53A. Director of affirmative action; affirmative action plan; reports, MA ST 35 § 53A

Credits

Added by St.1985, c. 283.

M.G.L.A. 35 § 53A, MA ST 35 § 53A

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§ 54. Newly elected officers, etc., to receive minimum rate;..., MA ST 35 § 54

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Part I. Administration of the Government (Ch. 1-182)

Title VI. Counties and County Officers (Ch. 34-38)

Chapter 35. County Treasurers, State Supervision of County Accounts and County Finances (Refs & Annos)

M.G.L.A. 35 § 54

§ 54. Newly elected officers, etc., to receive minimum rate; exceptions; recommendations for promotions, etc.

Currentness

Except as otherwise specifically provided, newly elected or appointed officers or employees shall receive the minimum rate in the salary grade to which the office or position has been allocated. Recommendations for increases in the salaries of officers and employees under the salary schedule, shall be submitted in the first instance to the county commissioners of the various counties by the proper authority, and if approved by them and by said board shall take effect upon notice by said commissioners to said board. If said proper authority fails or refuses to recommend step-rate increases as provided in the salary schedule he shall notify said commissioners giving his reasons for such failure or refusal and shall present a copy of such notice to each employee affected. If said commissioners do not approve a proposed increase in salary under the salary schedule, they shall report the recommendation of the head of the department or institution with their own recommendation to said board whose decision shall be final, except that said board shall not grant an increase in salary greater than that recommended by the head of the department or institution.

Credits

Amended by St.1948, c. 591, § 2.

M.G.L.A. 35 § 54, MA ST 35 § 54

Current through Chapter 11 of the 2026 2nd Annual Session. Some sections may be more current; see credits for details.

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§ 55. Salaries to be full compensation; overtime pay, etc., MA ST 35 § 55

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Chapter 35. County Treasurers, State Supervision of County Accounts and County Finances (Refs & Annos)

M.G.L.A. 35 § 55

§ 55. Salaries to be full compensation; overtime pay, etc.

Currentness

Except as otherwise expressly provided, all salaries established under the authority of sections forty-eight to fifty-six, inclusive, and the salaries established by section ninety-four of chapter two hundred and twenty-one, shall be in full compensation for all services rendered, and every officer or employee shall pay all fees and other moneys received directly or indirectly in the course of his public employment, into the county treasury; provided, that nothing contained in said sections shall prevent the reimbursement of actual and other expenses necessary for the transaction of public business or the payment of overtime approved by the county commissioners, upon evidence of necessity therefor.

Credits

Amended by St.1949, c. 774, § 6.

M.G.L.A. 35 § 55, MA ST 35 § 55

Current through Chapter 11 of the 2026 2nd Annual Session. Some sections may be more current; see credits for details.

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§ 56. Suffolk county; applicability of act; classification agencies in..., MA ST 35 § 56

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Part I. Administration of the Government (Ch. 1-182)

Title VI. Counties and County Officers (Ch. 34-38)

Chapter 35. County Treasurers, State Supervision of County Accounts and County Finances (Refs & Annos)

M.G.L.A. 35 § 56

§ 56. Suffolk county; applicability of act; classification agencies in other counties

Currentness

For Suffolk county, the duties prescribed for the board by section fifty-one, except clause (c) thereof, shall be performed by the city council of the city of Boston, subject to the provisions of the charter of said city; the duties prescribed by sections forty-nine to fifty-five, inclusive, for the director of accounts shall be performed by the budget commissioner of said city, and all other duties prescribed and powers conferred by said sections forty-nine to fifty-five shall be performed by the mayor of said city. Any other county is hereby authorized, subject in all respects to the approval of the governor and council, to establish agencies for the purpose of establishing and administering classification and compensation plans in accordance with the provisions of sections forty-nine to fifty-five, inclusive, and agencies so established shall have the powers granted by said sections to the board and the director of accounts. Upon the establishment of such agency, such county shall cease to be represented in the board or to participate in the election of its members, and its obligation to contribute toward the expenses incurred by the board and by the director under section fifty shall terminate.

Notes of Decisions (4)

M.G.L.A. 35 § 56, MA ST 35 § 56

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§ 38. Clerical assistants; compensation, MA ST 36 § 38

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Part I. Administration of the Government (Ch. 1-182)
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Chapter 36. Registers of Deeds (Refs & Annos)

M.G.L.A. 36 § 38

§ 38. Clerical assistants; compensation

Currentness

Registers shall annually be allowed for clerical assistance in their respective registries, to be paid by their respective counties, such amounts as shall be approved by the county commissioners.

M.G.L.A. 36 § 38, MA ST 36 § 38

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§ 3. Use of stamps for payment of tax; metering machines, etc., MA ST 64D § 3

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Part I. Administration of the Government (Ch. 1-182)

Title IX. Taxation (Ch. 58-65c)

Chapter 64D. Excise on Deeds, Instruments and Writings (Refs & Annos)

M.G.L.A. 64D § 3

§ 3. Use of stamps for payment of tax; metering machines, etc.

Currentness

Adhesive stamps for the purpose of paying the excise under this chapter shall be prepared by the commissioner in such form, of such denominations and in such quantities as he may prescribe. He shall make provision for the sale of such stamps in such places and at such times as he deems necessary. He shall provide for the custody of the stamps, dies, plates and other materials and things used in the manufacture of said stamps in such manner as he deems expedient.

The commissioner may cause to be installed in any registry of deeds one or more metering machines, so called, through which said adhesive stamps can be sold and may remove any such machine if he deems it expedient. Upon the installation of such a metering machine or machines the register of deeds of said registry shall sell stamps from said metering machines to persons requiring the same for affixation to instruments in accordance with the provisions of this chapter.

Each register of deeds shall on or before the tenth day of each month account to the commissioner on a form prescribed and furnished by him for all sales made by said register during the preceding calendar month and shall turn over to the commissioner all moneys received from said sales, less any adjustments approved by him. Each register of deeds, with the approval of the advisory board on county expenditures and the county commissioners, shall for the purposes of purchasing equipment or services relative to electronic reporting, indexing, computers and systems designed to modernize and maintain registry records, retain interest earned on the deposit of excise stamp fees. Each such register shall, annually, furnish to the county treasurer a financial report regarding such interest and the expenditure thereof in accordance with accepted accounting procedures.

The machines shall, upon installation, be sealed by the commissioner, and he or his duly appointed agent or agents shall take readings of the said machines at such times and in such manner as he shall direct.

Each register of deeds, in whose registry there has been installed a metering machine, shall give to the commissioner a bond, in a penal sum and with sureties approved by the commissioner, conditioned satisfactorily to account for money received by said register in his official capacity from the sale of said stamps. The premium for such bond shall be paid by the state treasurer upon certification by the commissioner.

The provisions of sections three A and three B shall not be applicable to any registry of deeds during the period within which a metering machine is installed therein.

§ 3. Use of stamps for payment of tax; metering machines, etc., MA ST 64D § 3

Credits

Added by St.1951, c. 710, § 1. Amended by St.1955, c. 651, § 1; St.1977, c. 584; St.1986, c. 668.

Notes of Decisions (1)

M.G.L.A. 64D § 3, MA ST 64D § 3

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§ 11. Deeds Excise Fund, MA ST 64D § 11

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Title IX. Taxation (Ch. 58-65c)

Chapter 64D. Excise on Deeds, Instruments and Writings (Refs & Annos)

M.G.L.A. 64D § 11

§ 11. Deeds Excise Fund

Effective: July 1, 2024

Currentness

Except for Barnstable and Suffolk counties, there shall be established upon the books of each county of a transferred sheriff, the government of which county has not been abolished by chapter 34B or other law, a fund, maintained separate and apart from all other funds and accounts of each county, to be known as the Deeds Excise Fund.

Notwithstanding any general or special law to the contrary, except for Barnstable and Suffolk counties, on the first day of each month, 10.625 per cent of the taxes collected in the county of a transferred sheriff under this chapter shall be transmitted to the Deeds Excise Fund for each county; provided, however, that in any county in which its minimum obligation to fund from its own revenues in fiscal year 2009 the operation of the sheriff's office is insufficient in any fiscal year to satisfy the unfunded county pension liabilities and other benefit liabilities of retired employees of the sheriff's office, as determined by agreement of the secretary of administration and finance, the actuary of the Public Employee Retirement Administration Commission, the retirement associations and their actuaries and the county treasurers, beginning in fiscal year 2011, the county shall retain and shall transfer to the Deeds Excise Fund in which it shall be held separate and apart from all other funds and from which it shall be appropriated solely for this purpose, an additional amount of the deeds excise collected in that county necessary as determined by agreement of the secretary of administration and finance, the actuary of the Public Employee Retirement Administration Commission, the retirement associations and their actuaries and the county treasurers to meet its annual retirement assessment, which shall include the county's required maintenance of effort for the fiscal year and to satisfy the unfunded county pension liabilities and other benefit liabilities of retired employees of the sheriff's office until the minimum obligation is sufficient or until such county has paid such unfunded pension liability in full; and provided further, that once such liabilities are satisfied, the following month and each month thereafter, 10.625 per cent of such taxes collected shall be retained by such county; provided, however, that an additional 30.552 per cent of said taxes collected in Nantucket county shall be transmitted to the Deeds Excise Fund on the first day of each month for said county through June 1, 2029; and provided further that if in a fiscal year the dollar amount that equals 30.552 per cent of said taxes collected in Nantucket county exceeds \$250,000, the amount in excess shall be transmitted to the General Fund. The remaining percentage of taxes collected under this chapter, including all taxes collected under this chapter in Barnstable and Suffolk counties and all counties the government of which has been abolished by chapter 34B or other law, but not including the additional excise authorized in section 2 of chapter 163 of the acts of 1988, shall be transmitted to and retained by the General Fund in accordance with section 10.

Credits

Added by St.1992, c. 133, § 409. Amended by St.2000, c. 159, § 127; St.2009, c. 61, § 2, eff. Jan. 1, 2010; St.2010, c. 112, § 20, eff. May 22, 2010; St.2014, c. 191, § 6, eff. July 1, 2014; St.2014, c. 191, § 7, eff. July 1, 2024.

§ 11. Deeds Excise Fund, MA ST 64D § 11

M.G.L.A. 64D § 11, MA ST 64D § 11

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§ 12. Disbursement of funds, MA ST 64D § 12

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Title IX. Taxation (Ch. 58-65c)

Chapter 64D. Excise on Deeds, Instruments and Writings (Refs & Annos)

M.G.L.A. 64D § 12

§ 12. Disbursement of funds

Effective: May 22, 2010

Currentness

(a) Notwithstanding any general or special law to the contrary, of that portion of the amounts deposited in the Deeds Excise Fund for each county from revenues collected pursuant to this chapter which represents 10.625 per cent of the taxes collected: (1) not more than 60 per cent of the deposits shall be disbursed and expended for meeting the costs of the operation and maintenance of the county; and (2) not less than 40 per cent shall be disbursed and expended for the automation, modernization and operation of the registries of deeds.

(b) Notwithstanding any general or special law to the contrary, with respect to funds appropriated for the purposes designated in clause (2) of subsection (a) and which are not dedicated to the Deeds Excise Fund in each county under section 11, the county budget shall provide a continuing amount of expenditure of not less than 102.5 per cent of the amount expended for that purpose in the preceding fiscal year.

Credits

Added by St.1992, c. 133, § 410. Amended by St.2004, c. 149, § 122, eff. July 1, 2004; St.2009, c. 61, § 2, eff. Jan. 1, 2010; St.2010, c. 112, § 21, eff. May 22, 2010.

M.G.L.A. 64D § 12, MA ST 64D § 12

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§ 47. Forfeiture of property, MA ST 94C § 47

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Proposed Legislation

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Title XV. Regulation of Trade (Ch. 93-110h)

Chapter 94C. Controlled Substances Act (Refs & Annos)

M.G.L.A. 94C § 47

§ 47. Forfeiture of property

Effective: July 12, 2018

Currentness

(a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

(1) All controlled substances which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.

(2) All materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, dispensing, distributing, importing, or exporting any controlled substance in violation of this chapter.

(3) All conveyances, including aircraft, vehicles or vessels used, or intended for use, to transport, conceal, or otherwise facilitate the manufacture, dispensing, distribution of or possession with intent to manufacture, dispense or distribute, a controlled substance in violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J, or forty.

(4) All books, records, and research, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this chapter.

(5) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J, or forty.

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(6) All drug paraphernalia.

(7) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements thereto, which is used in any manner or part, to commit or to facilitate the commission of a violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J or forty.

(8) All property which is used, or intended for use, as a container for property described in subparagraph (1) or (2).

(9) No forfeiture under this section shall extinguish a perfected security interest held by a creditor in a conveyance or in any real property at the time of the filing of the forfeiture action.

(b) Property subject to forfeiture under subparagraphs (1), (2), (4), (5), (6), (7) and (8) of subsection (a) shall, upon motion of the attorney general or district attorney, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. Property subject to forfeiture under subparagraph (1) of subsection (a) shall be destroyed, regardless of the final disposition of such related criminal proceeding, if any, unless the court for good cause shown orders otherwise.

(c) The court shall order forfeiture of all conveyances subject to the provisions of subparagraph (3) and of all real property subject to the provisions of subparagraph (7) of subsection (a) of this section, except as follows:

(1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this chapter.

(2) No conveyance shall be forfeited by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of the commonwealth, or of any state.

(3) No conveyance or real property shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance or real property was used in and for the business of unlawfully manufacturing, dispensing, or distributing controlled substances. Proof that the conveyance or real property was used to facilitate the unlawful dispensing, manufacturing, or distribution of, or possession with intent unlawfully to manufacture, dispense or distribute, controlled substances on three or more different dates shall be prima facie evidence that the conveyance or real property was used in and for the business of unlawfully manufacturing, dispensing, or distributing controlled substances.

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(4) No conveyance or real property used to facilitate the unlawful manufacturing, dispensing, or distribution of, or the possession with intent unlawfully to manufacture, dispense, or distribute marihuana or a substance, not itself a controlled substance, containing any marihuana shall be forfeited if the net weight of the substance so manufactured, dispensed, or distributed or possessed with intent to manufacture, dispense or distribute, is less than ten pounds in the aggregate.

(d) A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property, moneys or other things of value subject to forfeiture under the provisions of subparagraphs (3), (5), and (7) of subsection (a). Such petition shall be filed in the court having jurisdiction over said conveyance, real property, monies or other things of value or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. In all such suits where the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subparagraph (3), (5), or (7) of said subsection (a). The owner of said conveyance or real property, or other person claiming thereunder shall have the burden of proof as to all exceptions set forth in subsections (c) and (i). The court shall order the commonwealth to give notice by certified or registered mail to the owner of said conveyance, real property, moneys or other things of value and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than two weeks after notice, hold a hearing on the petition. Upon the motion of the owner of said conveyance, real property, moneys or other things of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of this chapter. At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order, from which the parties shall have a right of appeal. In all such suits where a final order results in a forfeiture, said final order shall provide for disposition of said conveyance, real property, moneys or any other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising, and notice, and the balance thereof shall be distributed as further provided in this section.

The final order of the court shall provide that said moneys and the proceeds of any such sale shall be distributed equally between the prosecuting district attorney or attorney general and the city, town or state police department involved in the seizure. If more than one department was substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding shall distribute the fifty percent equitably among these departments.

There shall be established within the office of the state treasurer separate special law enforcement trust funds for each district attorney and for the attorney general. All such monies and proceeds received by any prosecuting district attorney or attorney general shall be deposited in such a trust fund and shall then be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or such other law enforcement purposes as the district attorney or attorney general deems appropriate. The district attorney or attorney general may expend up to ten percent of the monies and proceeds for drug rehabilitation, drug education and other anti-drug or neighborhood crime watch programs which further law enforcement purposes. Any program seeking to be an eligible recipient of said funds shall file an annual audit report with the local district attorney and attorney general. Such report shall include, but not be limited to, a listing of the assets, liabilities, itemized expenditures, and board of directors of such program. Within ninety days of the close of the fiscal year, each district attorney and the attorney general shall file an annual report with the house and senate committees on ways and means on the use of the monies in the trust fund for the purposes of drug rehabilitation, drug education, and other anti-drug or neighborhood crime watch programs.

All such moneys and proceeds received by any police department shall be deposited in a special law enforcement trust fund and shall be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or to accomplish such other law enforcement purposes as the chief of police of such city or town, or the colonel of state police deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such department.

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(e) Any officer, department, or agency having custody of any property subject to forfeiture under this chapter or having disposed of said property shall keep and maintain full and complete records showing from whom it received said property, under what authority it held or received or disposed of said property, to whom it delivered said property, the date and manner of destruction or disposition of said property, and the exact kinds, quantities and forms of said property. Said records shall be open to inspection by all federal and state officers charged with enforcement of federal and state drug control laws. Persons making final disposition or destruction of said property under court order shall report, under oath, to the court the exact circumstances of said disposition or destruction.

(f) (1) During the pendency of the proceedings the court may issue at the request of the commonwealth *ex parte* any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody, including but not limited to an order that the commonwealth remove the property if possible, and safeguard it in a secure location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account; and, that a substitute custodian be appointed to manage such property or a business enterprise. Property taken or detained under this section shall not be repleviable, but once seized shall be deemed to be lawfully in the custody of the commonwealth pending forfeiture, subject only to the orders and decrees of the court having jurisdiction thereof. Process for seizure of said property shall issue only upon a showing of probable cause, and the application therefor and the issuance, execution, and return thereof shall be subject to the provisions of chapter two hundred and seventy-six, so far as applicable.

(2) There shall be created within the division of capital asset management and maintenance an office of seized property management to which a district attorney or the attorney general may refer any real property, and any furnishings, equipment and related personal property located therein, for which seizure is sought. The office of seized property management shall be authorized to preserve and manage such property in a reasonable fashion and to dispose of such property upon a judgment ordering forfeiture issued pursuant to the provisions of subsection (d), and to enter into contracts to preserve, manage and dispose of such property. The office of seized property management may receive initial funding from the special law enforcement trust funds of the attorney general and each district attorney established pursuant to subsection (d) and shall subsequently be funded by a portion of the proceeds of each sale of such managed property to the extent provided as payment of reasonable expenses in subsection (d).

(g) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths may be seized by any police officer and summarily forfeited to the commonwealth.

(h) The failure, upon demand by a police officer of the person in occupancy or in control of land or premises upon which the species of plants are growing to produce an appropriate registration, or proof that he is a holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(i) The owner of any real property which is the principal domicile of the immediate family of the owner and which is subject to forfeiture under this section may file a petition for homestead exemption with the court having jurisdiction over such forfeiture. The court may, in its discretion, allow the petition exempting from forfeiture an amount allowed under section one of chapter one hundred and eighty-eight. The value of the balance of said principal domicile, if any, shall be forfeited as provided in this section. Such homestead exemption may be acquired on only one principal domicile for the benefit of the

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immediate family of the owner.

(j) A forfeiture proceeding affecting the title to real property or the use and occupation thereof or the buildings thereon shall not have any effect except against the parties thereto and persons having actual notice thereof, until a memorandum containing the names of the parties to such proceeding, the name of the town where the affected real property lies, and a description of such real property sufficiently accurate for identification is recorded in the registry of deeds for the county or district where the real property lies. At any time after a judgment on the merits, or after the discontinuance, dismissal or other final disposition is recorded by the court having jurisdiction over such matter, the clerk of such court shall issue a certificate of the fact of such judgment, discontinuance, dismissal or other final disposition, and such certificate shall be recorded in the registry in which the original memorandum recorded pursuant to this section was filed.

(k)(1) The attorney general, each district attorney and each police department for which the state treasurer has established a special law enforcement trust fund pursuant to subsection (d) shall file an annual report with the treasurer regarding all assets, monies and proceeds from assets seized pursuant to this section and held by such fund. The report shall provide itemized accounting for all assets, monies and proceeds from assets within the following asset categories: cash, personal property, conveyances and real property, including any property disposed of by the office of seized property management. The report shall be filed not later than January 31 for the preceding calendar year and shall be a public record.

(2) The attorney general, each district attorney and each police department for which the state treasurer has established a special law enforcement trust fund pursuant to subsection (d) shall file an annual report with the treasurer regarding all expenditures therefrom, which shall include, but not be limited to, the following expense categories: personnel, contractors, equipment, training, private-public partnerships, inter-agency collaborations and community grants. The report shall be filed not later than January 31 for the preceding calendar year and shall be a public record.

(3) Annually, not later than March 15, the state treasurer shall file a report with the executive office of administration and finance and the house and senate committees on ways and means regarding the aggregate deposits, aggregate expenditures, and ending balances for each special law enforcement trust fund during the preceding calendar year. The reports shall be a public record.

Credits

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, §§ 30, 31; St.1977, c. 556, §§ 1 to 3; St.1981, c. 669, § 3; St.1982, c. 132; St.1982, c. 650, §§ 16, 17; St.1984, c. 486, §§ 1, 2; St.1989, c. 162; St.1989, c. 653, §§ 73 to 80; St.1991, c. 412, §§ 66A, 67; St.1992, c. 133, §§ 455 to 459; St.1992, c. 289, §§ 6, 7; St.1996, c. 450, § 145; St.1998, c. 194, § 147; St.2018, c. 69, § 61, eff. July 12, 2018.

Notes of Decisions (93)

M.G.L.A. 94C § 47, MA ST 94C § 47

Current through Chapter 11 of the 2026 2nd Annual Session. Some sections may be more current; see credits for details.

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