



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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SUZANNE M. BUMP, ESQ.
AUDITOR

August 8, 2011

Mr. Robert T. Craver
Town Clerk
Town of Webster
350 Main Street
Webster, Massachusetts 01570

RE: Amendments to the Open Meeting Law, M.G.L. c. 30A, §§ 18 – 25 and 940 CMR 29.00

Dear Mr. Craver:

The State Auditor's Division of Local Mandates (DLM) has concluded its review of your request for a determination pursuant to the Local Mandate Law, M.G.L. c. 29, § 27C, and the cost of complying with the above-captioned law and regulations. The Office of the Attorney General filed initial emergency regulations to implement the amended Open Meeting Law to take effect on July 1, 2010. Most relevant to your concerns, the emergency regulations required local public bodies to post notices of upcoming public meetings in ways that would be accessible to the public "at all hours." Additionally, you note that the law requires that the minutes of all public meetings and any associated documents be maintained as public records. However, subsequent to your letter, the Attorney General's Office conducted public hearings and received feedback from local officials. This led to revised regulations that include options to ease compliance at the local level effective October 1, 2010. In light of these changes, it is the opinion of DLM that the Local Mandate Law does not apply in this case. The following discussion further explains this conclusion, first in relation to the "all hours" posting requirement, and second in relation to the record-keeping aspect of the amendments.

M.G.L. c. 29, § 27C: The Local Mandate Law sets the general rule that post-1980 state laws or regulations that impose additional costs upon any city or town must either be fully funded by the Commonwealth, or subject to local acceptance. One exception to the general rule is that the Commonwealth need not assume the cost of mandates that impose only "incidental local administration expenses." M.G.L. c. 29, § 27C (a), (c). The Supreme Judicial Court defines this term as "...relatively minor expenses related to the management of municipal services...subordinate consequences of a municipality's fulfillment of primary obligations." See *City of Worcester v. the Governor*, 417 Mass. 751, 758 (1994). Also relevant to the Open Meeting Law, the Court has emphasized that pre-1981 mandates are not subject to the Local Mandate Law. *Worcester* at 759. Based upon this precedent, the Local Mandate Law will apply only where there has been a genuine change in law, and will not apply to a mere clarification of pre-1981 obligations.

All Hours Notice Posting: Under the initial emergency regulations of the Attorney General, local clerks were required to post notices of meetings of public bodies "in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located..." From the

several specified options for satisfying this standard, you determined that the least expensive would be to broadcast notices with agendas on the Town's cable television channel, and to provide a television with cable service for public access at the police station at all hours, all days. You estimated that the cost of providing a television and installing necessary wiring at the police station would be approximately \$2,500.00. In light of input from local officials and others, the Attorney General revised the regulations to provide that the all hours requirement may be met by posting notices on the municipal website. In a meeting with DLM staff, you explained that this newest option could be implemented at little to no additional cost. Accordingly, DLM concludes that the all hours notice posting requirement imposes no more than incidental costs, if any, upon the Town of Webster.

Record-Keeping: Additionally, you note that the amendments to the Open Meeting Law require that the minutes of all public meetings and any associated documents be maintained as official public records. M.G.L. c. 30A, § 22. However, historical records indicate that state law requiring maintenance of records of public meetings for public access dates back to 1975. See St. 1975, c. 303, § 3. Although that version of the law did not specifically state that *associated documents* used at public meetings must be kept on file, it is the opinion of DLM that the inclusion of this requirement in the amendments to the Open Meeting Law is not a genuine change. Rather, per the *Worcester* case cited above, the associated documents requirement must be viewed as a basic clarification, or filling in the details of pre-1981 law. As DLM staff indicated at your meeting, the Local Mandate Law does not apply to state requirements rooted in pre-1981 law.

Conclusion: It is the opinion of the Division of Local Mandates that M.G.L. c. 29, § 27C does not apply to the "all hours" meeting notices and record-keeping aspects of the amendments to the Open Meeting Law and regulations, M.G.L. c. 30A, §§ 18 – 25 and 940 CMR 29.00. Please be advised that this conclusion is subject to revision in the event that you raise factors that would require a different result. Additionally, this opinion does not prejudice your right to seek judicial review of the issues pursuant to M.G.L. c. 29, § 27C (e).

I thank you for bringing this matter to our attention, and would like to mention that in the course of our review, staff at the Attorney General's Office indicated their willingness to assist you and the Town of Webster in complying with the Open Meeting Law. You may contact the Division of Open Government at 617-963-2540 with questions or concerns. Otherwise, please call me or DLM Legal Counsel, Emily Cousens, with further questions or comments you may have on this opinion or other matters impacting local spending.

Sincerely,

A handwritten signature in dark ink, appearing to read "Vincent P. McCarthy". The signature is fluid and cursive, written in a professional style.

Vincent P. McCarthy, Esq., Director
Division of Local Mandates

cc: Assistant Attorney General Ann Nable, Director, Division of Open Government