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# City and Town

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## Recent Developments Under the Open Meeting Law

by Attorney Elaine M. Lucas, President, Massachusetts City Solicitors and Town Counsel Association

The Open Meeting Law, M.G.L. Ch. 39, §§ 23A and 23B, was passed to ensure that government business would take place in the open. Recently, issues have arisen relative to the Open Meeting Law in the areas of electronic mail use and the comprehensive permit process. Also, the Legislature has passed an act to allow municipal board members to vote on a matter even when a session has been missed.

### Electronic Mail

The prevalence of the use of electronic mail among municipal board and commission members has raised a question as to whether serial e-mail messages among a quorum of a board, regarding a pending matter, could constitute a violation of the Open Meeting Law. The problem does not arise when there are individual e-mails between the members of separate boards, but when there are serial e-mails among a quorum of the same board. The Middlesex District Attorney's office has published guidelines that prohibit any substantive discussion by a quorum of members of a governmental body about public business by electronic mail. Opinions among the various district attorneys have differed and the Attorney General's office is attempting to bring the district attorneys together in order to obtain a consensus so that a consistent policy can be developed on this issue.

No Massachusetts appellate court has ruled on this matter. The Supreme Court of Virginia, however, has done so. That court issued a decision on an appeal from a lower court ruling that had held that e-mail communications among and between the mayor and various councilmen, constituted a "meeting" subject

to and in violation of, the open meeting requirement of the Virginia Freedom of Information Act (FOIA). The lower court decision was overturned in part (there were several allegations of meetings in violation of the FOIA) and in so doing, the court made a distinction based upon the nature of e-mail communications. The court ruled that the e-mails were the functional equivalent of letters or facsimile transmissions, specifically noting that in some cases, there was a significant delay between the sending of the e-mail and its receipt. However, the court also stated that its decision would have been different had the discussions occurred via instant messaging or in a chat room.

A number of towns have adopted e-mail policies to make certain that officials' use of e-mail complies with the Open Meeting Law. These guidelines should direct all members of town boards, departments and committees to refrain from discussing any substantive matters by way of e-mail. E-mail exchanges should be limited to procedural discussions regarding agendas and scheduling.

### Comprehensive Permit Work Sessions

Another recent development under the Open Meeting Law concerns the comprehensive permit process under M.G.L. Ch. 40B. That statute empowers zoning boards of appeals to waive all local bylaws and regulations and, in fact, in some cases requires them to do so. The Ch. 40B application process can be quite complex and, because of the added density of affordable housing developments, require extensive review by civil engineers, traffic engineers and environmental experts. Zoning boards

have found it helpful to have informal work sessions between the developer's consultants and the board's consultants. Usually one member of the zoning board of appeals is present at these meetings.

In some cases, these work sessions generate complaints to a district attorney. The Norfolk District Attorney issued an opinion dated May 15, 2003, in a matter where there was a negotiating committee, which included the zoning board chair, a board of selectmen member, town manager, town counsel, the engineering consultants and the developer. The meeting was organized and chaired by the project's facilitator who had been appointed by the MassHousing Partnership Fund. While opining that it may be desirable to post such meetings in the public interest, the district attorney concluded that the group was not, in fact, a committee covered by the Open Meeting Law, stating that when a single member of a

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**From the Deputy Commissioner**

When comparing the state and municipal budget processes, one notable similarity is that both processes benefit from

adherence to target dates for completing certain budgetary tasks. For example, due to the efforts of the governor and the Legislature in preparing budget proposals for FY05 in a timely manner, the governor was able to sign the state budget before the close of fiscal year 2004.

Similarly, communities should clearly define the time frame for completing each step of the budget process. A timeline distributed to all the individuals involved will inform them of when they are expected to fulfill their responsibilities. The Division's *Municipal Calendar* is a useful tool in this regard.

Both state and local budget preparation also involves planning, hearings and negotiations. For the state as well as municipalities, the budget is an important communication and public information document.

Unlike municipal budgets, the state budget includes "outside sections." The text of an outside section is identical to a legislative bill, but instead of becoming a bill, it is proposed as part of the budget. Outside sections are often technical amendments and clarifications, although some include substantive provisions.

The state budget process includes other components that are not common to municipalities. However, it is more important to recognize that public budgeting systems, no matter how complex, benefit from an organized process with careful adherence to deadlines.

**Gerard D. Perry**  
Deputy Commissioner

# Legal

**in Our Opinion**

## Is a Group Medical Practice Exempt from Local Tax?

by James Crowley

After two decisions by the Appellate Tax Board and years of litigation, the Massachusetts Appeals Court held that a medical office building was not eligible for a Clause 3 charitable exemption. The decision is *Sturdy Memorial Foundation, Inc. v. Board of Assessors of North Attleborough*, 60 Mass. App. Ct. 573 (2004).

Sturdy Memorial Foundation, Inc. (Foundation) is a Chapter 180 non-profit corporation organized "to support the advancement of the knowledge and practice of, and education and research in, medicine ... exclusively for the benefit of Sturdy Memorial Hospital and its affiliated organizations." After a corporate reorganization in 1982, Foundation emerged as the successor corporation to the Attleborough Hospital, and formed a new hospital named Sturdy Memorial Hospital. On June 30, 1993, Foundation acquired a five-acre parcel in North Attleborough which contained a two-story office building. Beginning in November 1993, Foundation leased 82 percent of the premises to Sturdy Memorial Associates, Inc. (Sturdy) for a medical center. Sturdy is also a Chapter 180 non-profit corporation formed to provide medical services and health education to individuals in the Sturdy Memorial Hospital's service area. At the North Attleborough site, Sturdy employed four full-time and two part-time physicians. Sturdy paid all expenses for the doctors including malpractice insurance, equipment, supplies and staff. Visits by patients were by appointment only. There was no medical education or research conducted at the site. Any free care pro-

vided resulted from charges that were not collected.

The North Attleborough assessors taxed the property for fiscal years 1996 and 1997. Foundation filed timely exemption applications that were denied. Foundation then appealed to the Appellate Tax Board (ATB) claiming that the portion of the premises (82 percent) leased to Sturdy was exempt. M.G.L. Ch. 59 Sec. 5 Cl. 3 provides an exemption for real estate owned by a charitable organization and occupied by it or by another charitable organization in furtherance of its corporate purposes. Under the Clause 3 charitable ownership-occupancy test, both the owner and the lessee had to qualify as charitable organizations, and the lessee had to occupy the property for charitable purposes. In a November 17, 1997, decision, the ATB held that Sturdy's medical clinic was conducted like a commercial group medical practice and operated primarily for the benefit of the physician members and not for the general public. On appeal, the Appeals Court held that the charitable nature of a group practice of medicine prohibits private inurement.<sup>1</sup> In addition, the people deriving a benefit from the group practice must be a sufficiently large or indefinite class. The Appeals Court then remanded the case to the ATB for further consideration of additional findings of facts offered by Foundation.

After remand, the ATB denied the exemption for fiscal years 1996 and 1997 on the ground that Sturdy was not operated as a charity. For similar reasons, the ATB also denied exemptions for fiscal years 1998 to 2000 inclusive. On further appeal, the case at hand came before the Appeals Court.

The Appeals Court addressed certain contentions by the ATB. First, the ATB noted that the doctors received salaries

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# Focus

## on Municipal Finance

### FY04 Average Single-Family Tax Bills and Assessed Values

by Andrew S. Nelson

This Focus article reviews the average single-family property tax bills and values for communities in the Commonwealth. Using the largest residential property category, the single-family home, this article provides estimates of an average tax bill and assessed value for each community, ranks communities statewide and allows the reader to compare communities.

The calculation for the average single-family tax bill for a community is a simple process. First, the combined assessed values of all single-family parcels are calculated by community. Second, the combined sum is multiplied by the community's residential tax rate. Lastly, the product is then divided by the reported number of single-family parcels in the community.

The analysis is based on only 339<sup>1</sup> of the 351 communities because Boston, Brookline, Cambridge, Chelsea, Marlborough, Nantucket, Somerset, Somerville, Tisbury, Waltham and Watertown adopted a residential exemption and are therefore omitted from this analysis. The residential exemption reduces the taxable valuation of each residential parcel that is a taxpayer's principal residence. Granting the exemption raises the residential tax rate and shifts the residential tax burden from low and moderately valued homes to apartments and higher valued homes. Communities granting residential exemptions do not submit adequate detailed data to the Division of Local Services (DLS) to determine average tax bills.

#### Statewide Analysis

Statewide average single-family tax bills have increased every year during the last 10 years in both actual and constant (1995) dollars. *Table 1* shows a comparison of average tax rates, average values (actual and constant dollar) and average tax bills (actual and

constant dollar) over the past 10 years. Constant dollars have been calculated by taking FY95 dollars and applying the Consumer Price Index (CPI) for all Urban Consumers, Boston.

Actual average statewide tax bills have increased steadily in the past years. Increases over the prior year have ranged from 3.8 percent (FY97 and FY99) to a high of 6.7 percent (FY02) over this period. FY04 saw an increase of 6.5 percent in average statewide tax bills. This was the second largest increase over the past 10 years. In total, average statewide tax bills increased from \$2,182 in FY95 to \$3,413 in FY04. This is an increase of 56.4 percent. Using constant FY95 tax dollars, bills have also increased every year since 1995, however, at a more moderate pace. The total increase over the 10-year period in constant FY95 dollars was 18.9 percent.

Also shown in *Table 1* is the dramatic increase in the statewide average assessed value over the past decade. Since FY95 this figure has doubled (100.2 percent) from \$153,571 in FY95 to \$307,417 in FY04. The current year saw the largest single-year increase (15.4 percent) over the period detailed. FY04 was the fourth consecutive year that experienced a double-digit increase in statewide average assessed value for single-family homes. The average assessed value in constant FY95 dollars also increased over the majority of the 10 years covered. The first three years of the analysis saw a decrease in assessed values in constant FY95 dollars and has steadily risen every year since. The cumulative increase in constant FY95 dollars over the 10 years was still a robust 52.2 percent.

As expected, the statewide average tax rate has decreased in recent years as the average assessed value has grown at a faster rate than the tax bills them-

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**Average Single-Family Value and Tax Bill in Actual and Constant Dollars, FY95–FY04**

Fiscal year	Avg. tax rate	Actual avg. value	Actual avg. tax bill	Constant avg. value	Constant avg. tax bill
1995	14.21	153,571	2,182	153,571	2,182
1996	14.55	156,159	2,272	152,496	2,219
1997	14.76	159,838	2,359	151,655	2,238
1998	14.92	165,050	2,463	152,214	2,271
1999	14.73	173,576	2,557	156,547	2,306
2000	14.48	185,009	2,679	162,918	2,359
2001	13.67	206,789	2,827	174,612	2,387
2002	12.76	236,229	3,015	191,010	2,438
2003	12.03	266,350	3,205	209,973	2,527
2004	11.10	307,417	3,413	233,773	2,595
Dollar change		153,846	1,231	80,202	413
Percent change		100.2%	56.4%	52.2%	18.9%

Notes: These figures have been updated to reflect information for communities previously excluded for reasons other than the residential exemption. Constant FY95 dollars calculated using the Consumer Price Index for All Urban Consumers, Boston.

Table 1







FY04 Tax Bills

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**Statewide Average Single Family Tax Bills for Communities Adopting Chapter 3 of the Acts of 2004**

	FY2003 shift	Max. FY2004 allowable shift	Adopted FY2004 shift	2003 actual tax bill	2004 actual tax bill	Pct. change tax bill FY03/04
Boston	175	200	200	\$1,972	\$2,257	14.45
Dedham	175	200	200	\$3,367	\$3,697	9.80
Everett	175	193	193	\$1,714	\$1,855	8.23
Fall River	175	200	200	\$1,368	\$1,482	8.33
Lexington	170	194	180	\$5,775	\$6,428	11.31
Lynn	175	195	195	\$2,621	\$2,618	-0.11
Malden	175	200	187	\$2,524	\$2,624	3.96
Medford	175	200	200	\$2,980	\$3,171	6.41
New Bedford	175	187	184	\$2,028	\$2,113	4.19
Saugus	175	192	192	\$2,505	\$2,595	3.59
Somerville	175	200	200	\$3,839	\$3,674	-4.30
Waltham	175	194	194	\$2,987	\$3,121	4.49
Wilmington	174	200	200	\$2,982	\$3,108	4.23

Note: Tax bill data for Boston, Somerville and Waltham was provided by the community. Because they grant a residential exemption DLS does not collect information necessary to calculate an average tax bill.

Table 3

selves. Tax bills increased 6.5 percent for the current year, while average assessed values increased 15.4 percent. As a result, the statewide average tax rate decreased from \$12.03 in FY03 to \$11.10 in FY04.

**Municipal Analysis**

Table 2 details the average single-family assessed value and tax bill for FY03 and FY04, ranks the 339 communities included from high to low for the FY04 tax bill, and shows the percentage change in assessed value and tax bills.

The data reveals that communities with higher assessed values also tend to have high average tax bills. This relationship is not unexpected nor is it a new concept. For FY04, the five communities with the highest average tax bills are Weston (\$11,238), Sherborn (\$9,591), Lincoln (\$9,394), Carlisle (\$9,016) and Dover (\$8,412). Based on the average assessed value for these same communities, they ranked as follows: Weston (2), Sherborn (15), Lincoln (3), Carlisle (10) and Dover (4). Conversely, the five communities with the lowest average tax bills were Rowe (\$469), Erving (\$771), Florida (\$921), Tolland (\$995) and Monroe (\$1,136).

The relationship between tax bill and assessed value, while strong, is not as closely correlated on the lower end of the rankings. This is largely due to the existence of power plants that pay the majority of the taxes in all of these towns except Tolland. These communities, with regard to their average assessed value, rank as follows: Rowe (312), Erving (321), Florida (338), Tolland (237) and Monroe (339).

With an average single-family assessed value of \$1.52 million, Chilmark was the highest in the state, yet it ranked 182nd for average tax bill. This exemplifies the situation regarding the Cape and Island communities, which tend to have higher assessed values but lower tax bills due to the large number of seasonal properties whose residents have a lesser demand for municipal services. Seven of the top 20 communities when ranked by average assessed value were Cape or Island communities, however only one (West Tisbury) ranked in the top 100 single-family tax bills, with a ranking of 91.

On average, statewide tax bills increased 6.5 percent between FY03 and FY04. There were 153 communities (45

percent) with an equal or greater increase than the state average. The highest percentage increase in a tax bill was 23.2 percent in the western community of Gill. Another western community, the town of Blandford, experienced the largest decrease (-3.5 percent) in tax bills on a percentage basis. Also, 81 communities (24 percent) saw increases in the tax bill equal to or less than the Consumer Price Index (CPI) growth of 3.7 percent for FY04.

**Split Rate Classification Shift**

From 1988 until last year, communities that used different tax rates for residential and commercial properties, known as split rates, were restricted from taxing commercial taxpayers more than 175 percent of the taxes they would have to pay under a single rate. Additionally, residential taxpayers could be taxed no less than 50 percent of their tax burden under a single rate system.

Chapter 3 of the Acts of 2004 passed by the Legislature and signed by the governor allows for a temporary adjustment to this formula. Communities that adopted this provision for FY04 were allowed to shift the commercial tax burden up to 200 percent and reduce the minimum burden for residential properties to 45 percent. This provision will be rolled back over the ensuing four years by reducing the maximum commercial percentage and increasing the minimum residential percentage each year. In FY09 the communities that adopted the shift will have a maximum commercial percentage of 170 and a minimum residential percentage of 50. These communities will not be returned to the preexisting 175/50 commercial/residential split.

Table 3 depicts the 13 communities that utilized Chapter 3 of the Act of 2004 for the purpose of shifting their tax burden. The data indicates that eight of the thirteen communities experienced smaller percentage increases in their tax bills than the state average of 6.5 percent (taken from Table 2). Of those

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# DLS Update

## Course 101 Reminder

There is still time to register for the Department of Revenue's Course 101, *Assessment Administration: Law, Procedures, Valuation*. This course will be offered in the evening in October and November 2004 at the Bourne High School, 75 Waterhouse Road.

Attendance at Course 101 and successful completion of the examination satisfies minimum qualification requirements for assessors that were established by 830 Code of Massachusetts Regulation (CMR) 58.3.1. Assessors, and assistant assessors with valuation responsibilities, must fulfill the minimum qualifications within two years of the date of their original election or appointment.

For more details and to access a registration bulletin, click on [www.mass.gov/dls/PUBL/BULL/2004/2004\\_10b.pdf](http://www.mass.gov/dls/PUBL/BULL/2004/2004_10b.pdf). Please note that all registrations must be received by Friday, October 1, 2004.

## FY05 Cherry Sheets

The FY05 estimated receipts for cities, towns and regional school districts total \$4.936 billion, an increase of \$124.9 million or 2.6 percent from the FY04 Cherry Sheet totals of \$4.811 billion. The increase is primarily attributable to a \$72.2 million increase in Chapter 70 aid, a \$9.9 million increase in Regional Transportation aid, a \$24.8 million increase in Charter Tuition Assessment Reimbursements and a \$4.5 million increase in State-Owned Land reimbursements. Most other Cherry Sheet programs were level funded or had modest changes from FY04.

FY05 estimates for School Construction reflect recent legislation changing state school construction financing. The legislation provides for the continuation of on-going payments for projects that have already received their first payment. No new projects from the wait list

are included in the FY05 estimates. When these new projects are funded the new legislation provides for a lump sum payment representing the state share of the project costs. More information regarding the legislative change in the School Building Assistance law can be found at [www.mass.gov/legis/laws/seslaw04/sl040208.htm](http://www.mass.gov/legis/laws/seslaw04/sl040208.htm).

In FY05 the Division of Local Services (DLS) posted estimates based on the various stages of the state budget process. It is the intention of the Division to continue this process of providing valuable local aid information for communities and school districts as they begin their annual budget process. Local aid proposals and final cherry sheet estimates will be available at [www.mass.gov/dls/cherry/index.htm](http://www.mass.gov/dls/cherry/index.htm).

For further information, call the DLS Local Aid Section at (617) 626-2386 or (617) 626-2320.

## New School Building Reform Law

On July 28, 2004, the governor approved sweeping reforms to the Commonwealth's school building assistance program, clearing the way for the expedited construction or renovation of 425 school projects statewide. Under the old school construction system, it would have taken 15 years for all of the projects on the waiting list to receive state reimbursement.

This new legislation clears the program's backlog by establishing a capital grant program, which will provide funding at the beginning of a construction project and an accelerated reimbursement schedule. Instead of receiving payments from the state over 20 years, communities will promptly receive their final reimbursement as soon as the newly created School Building Authority has audited the project.

The reform package also sunsets the current moratorium on July 1, 2007, for new school construction projects to be added to the list.

Under the new law, the school building assistance program will be managed by the independent Massachusetts School Building Authority overseen by a seven-member board chaired by state Treasurer Tim Cahill. Both the secretary of Administration and Finance and the education commissioner will serve on the board.

The governor signed the bill at the Jeremiah E. Burke High School in Dorchester, which is planning a \$37 million addition and renovation. With the new law, they will receive accelerated payments from the state nearly six years earlier than under the old system. ■

## FY04 Tax Bills continued from page six

eight communities, Lynn and Somerville, actually experienced a decrease in their tax bill from FY03 to FY04. Additionally, only three of the communities, Dedham (\$3,697), Lexington (\$6,428) and Somerville (\$3,674) had average tax bills that exceeded the state average tax bill of \$3,413 (taken from *Table 2*). Lexington (ranked 20th) was also the only community adopting the shift that ranked in the top 75 average tax bills for FY04. ■

1. Hancock had not set a tax rate at the time this article was written. Therefore, it was excluded from this analysis.

# DLS Update

## Healey Signs Construction Reform into Law

On July 19, 2004, Lieutenant Governor Kerry Healey signed a new public construction reform package into law. These reforms will save taxpayer dollars and prevent unnecessary delays in construction projects.

Healey said that the passage of construction reform allows cities and towns to begin new projects through an inclusive process that saves money and results in better quality construction. With annual public construction spending in Massachusetts at more than \$3 billion, the series of reforms will save as much as 10 percent on building costs statewide.

Under the new law, all large public building projects valued at \$5 million or more will be eligible to use the "construction manager at risk" method. With this approach, the construction manager will guarantee a maximum price for the project and any cost overrun will be borne by the contractor — not the taxpayer.

"The reform package now holds construction managers accountable for project delays that result in cost overruns, not the taxpayers," said Healey. "By streamlining the construction process for cities and towns, we will reduce statewide construction costs and proceed with projects that have previously been stalled."

The new law also adopts a "design-build" delivery system for road and bridge projects, a process that greatly reduces construction time. Massachusetts will now join 45 other states that have established this system of construction.

In addition, the legislation requires municipalities to hire a professional project manager for all projects valued at more than \$1.5 million to ensure that in-

formed decisions are made every step of the way.

The bill, which reflects recommendations of the Special Commission on Public Construction Reform, represents the most significant changes in public construction reform since the Ward Commission report was released nearly 25 years ago.

"This bill reaches an appropriate balance between private sector style efficiencies and public sector transparencies and access," said Chris Gordon, director of capital programs at the Massachusetts Port Authority and chair of the commission. "It will provide significant, long-term advantages for taxpayers including more options and accountability, and no perceived disadvantages.

The only groups that will not benefit from this reform will be unqualified contractors, designers and owners."

## Springfield Finance Control Board Appointments

Eric Kriss, secretary of the Executive Office for Administration and Finance, has named Revenue Commissioner Alan LeBovidge, Michael (Jake) Jacobson and Tom Trimarco to the Springfield Finance Control Board. This board was established under Chapter 169 of the Acts of 2004 in July 2004.

This five-member team, which will also include Springfield Mayor Charles Ryan and Springfield City Council President Dominic Sarno, will help restore fiscal stability to the Commonwealth's third largest city over the next three years.

"We have assembled a team of top-caliber individuals who are experts in their respective fields to help restore the fiscal condition of the City of Springfield," said Kriss. "We will work together to establish sound business practices and create a balanced budget that aims to prevent future crises."

As revenue commissioner, LeBovidge oversees the state's collection of billions of dollars in revenue as well as the Division of Local Services. Prior to assuming that position, LeBovidge worked for more than 20 years at PricewaterhouseCoopers, retiring as vice chairman of the taxes division.

Jacobson assisted state officials in a 2003 assessment of Springfield's finances that recommended special legislation to establish an oversight board. He has more than 25 years of experience in management consulting and executive positions. Jacobson holds an MBA from Harvard Business School and a bachelor's degree in mathematics from the Massachusetts Institute of Technology.

Trimarco has experience in both the public and private sector. He served as chairman of the Pension Reserve Investment Management (PRIM) board, which oversees the state's retirement fund. He also served as an advisor to John Volpe during Volpe's tenure as U.S. secretary of transportation and as U.S. ambassador to Italy. Trimarco is currently a legal consultant and is a graduate of Dartmouth College and Boston College Law School.

The Executive Office for Administration and Finance has launched a Springfield Finance Control Board website that contains a schedule of upcoming meeting dates as well as background information relating to the board and the City of Springfield. The direct link to the website is: [www.mass.gov/portal/index.jsp?pageID=sfcbhomepage&L=1&LO=Home&sid=sfcb](http://www.mass.gov/portal/index.jsp?pageID=sfcbhomepage&L=1&LO=Home&sid=sfcb). ■



# DLS Update

## Collaborative Purchasing with Out-of-State Communities

by Katherine Rudeen,  
Office of the Inspector General

The Massachusetts Office of the Inspector General (OIG) is charged with preventing and detecting fraud, waste, and abuse in the expenditure of public funds. A principle objective of the OIG is to prevent fraud, waste, and abuse before they happen. Toward this end, the OIG has long been involved in interpreting and applying the provisions of M.G.L. Chapter 30B, the Uniform Procurement Act. Chapter 30B governs the procurement of supplies and services, surplus supply disposition, and the acquisition and disposition of real property for cities, towns, counties, districts, local authorities, and other public entities at the municipal and regional level.

The OIG has received several inquiries concerning collaborative purchases with non-Massachusetts governmental entities. This issue has been raised because an out-of-state collective purchasing group informed certain municipalities in Massachusetts that municipalities may participate in such purchases with out-of-state communities based on an exemption found in Chapter 30B, Section 1(b)(3). Chapter 30B, Section 1(b)(3) provides an exemption for inter-governmental agreements subject to the provisions of Chapter 40, Section 4A. In the opinion of the OIG, Massachusetts law does not support the contention that the exemption applies to a collaborative contract entered into with an out-of-state entity.

Chapter 40, Section 4A is primarily applicable when governmental entities contract with each other for the performance of public services. These contractual relationships are direct, meaning that the governmental entities involved provide the contracted services themselves. These public services may include, for example, water and firefighting services.

In the opinion of the OIG, Chapter 40, Section 4A was not intended to apply to collective purchasing. Although Chapter 40, Section 4A does not explicitly restrict contracts with out-of-state entities and Massachusetts governmental entities, it does not explicitly allow collective purchasing.

However, Chapter 7, Sections 22A and 22B permit Massachusetts governmental entities to conduct collective purchases with other state or local entities that have agreed to be part of a collective bidding process. For example, two or more local entities may jointly purchase vehicles. Perhaps the Legislature will eventually broaden these collective purchasing provisions to encompass collaborative purchasing agreements established in other states or by the federal government. In the opinion of the OIG, however, municipalities in Massachusetts should not currently rely on Chapters 7, 30B, or 40 to make collective purchases with out-of-state governmental entities. ■

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governmental body attends a meeting, there is no "subcommittee under the Open Meeting Law created." Other factors that influenced the opinion were the absence of votes designating representatives to the meeting on behalf of the various boards, the absence of deliberations, and the lack of authority to make factual investigations or to make recommendations.

Thus, municipalities must take care when scheduling work sessions.

### Pending Legislation

Currently, when a member of a multi-member board or commission is absent from a session in which a matter is being heard, that member is disqualified from voting on the application before the board. This court-imposed rule has placed a hardship on many communities, volunteer boards, as well as, on applicants. An amendment to Chapter 39 has been favorably acted upon by the Legislature. The governor has proposed amending the legislation to make it a local option and sent it back to the Legislature. Assuming that this act becomes law, municipalities will be empowered to allow board members who miss a session of a hearing to review the testimony, evidence and the audio or video recording and then vote on the matter. ■

**The City Solicitors and Town Counsel Association is a bar association dedicated to the promotion of better government through the advancement of municipal law.**

## DLS Profile: Property Tax Bureau Attorney

Property Tax Bureau attorney **Kathleen Colleary** is a valuable resource for state and local officials, as she possesses a wide range of expertise in laws relating to municipal finance. She is regarded as a subject matter expert in such key areas as assessment administration, Proposition 2½, special funds, the Community Preservation Act and town meeting procedures relating to budgets.

Due to her vast legal knowledge and ability to communicate complicated issues clearly and concisely, Kathleen is an instructor in most of the Division of Local Services' training programs, including Course 101, the basic course for assessors, and the annual New Officials Finance Forum. She also participates in the Division's "What's New in Municipal Law" seminars and is an instructor in educational programs sponsored by the various statewide, professional associations of municipal finance officers.



**Kathleen Colleary**

According to Kathryn Peirce, president of the Massachusetts Association of Assessing Officers (MAAO), "Kathleen is the backbone of resources for the newer assessors. She is the first face they meet and is very personable. She puts them at ease and provides no-nonsense answers." Donna Putt, MAAO executive board member, added, "Kathleen is very knowledgeable and always willing to help in any way she can. She has been more than generous in giving time and assistance to members of the assessing profession."

Kathleen is charged with overseeing the publication of most guidelines (Information Guideline Releases or IGRs) and other written materials for local officials. She is a member of the Division's education and training committee, where she plays an important role in developing more effective and innovative training programs for local officials.

Kathleen began working for the Division in 1980 as an attorney in the Bureau of Local Assessment and eventually joined the Division's legal staff in 1986. She holds a bachelor's degree in political science from Arizona State University and a law degree from Boston College Law School. In 1996, she was an individual recipient of the Commonwealth of Massachusetts' Citation for Outstanding Performance.

Originally from Woburn, Kathleen attended high school and college in Arizona, and eventually moved back to Massachusetts to attend law school. She currently resides in Watertown. ■

Legal

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based on the going rate earned by doctors in private practice. They also received bonus compensation that amounted to 50 percent of excessive productivity over and above the anticipated productivity for the year. The ATB ruled that the incentive bonus plan essentially diverted income or profits to the employee physicians, which contravened M.G.L. Ch. 59 Sec. 5 Cl. 3(a). That statutory provision prohibits any private inurement. In the court's view, tying the bonus payment to the productivity of each physician was suggestive of a commercial venture. Under the facts presented, the court held that the ATB ruling on the bonus payment was supported by substantial evidence.

Second, the ATB stated that Sturdy did not operate as a charity because it did not benefit an indefinite class of the public. The Appeals Court distinguished the case at hand from that presented in *Harvard Community Health Plan, Inc. v. Assessors of Cambridge*, 384 Mass. 536 (1981). In *Harvard Community*, the Supreme Judicial Court found that the health plan provided substantial medical services at less than average cost to approximately 64,000 enrollees who came from all walks of life. In the present situation, the Appeals Court found that Sturdy did not provide medical care at a lower cost than charged by conventional health plans.

Consequently, on the evidence presented, the Appeals Court upheld the denial of the exemption since the parcel was not occupied for charitable purposes. Further appellate review was denied by the Supreme Judicial Court. ■

1. *Black's Law Dictionary* defines inurement as "service to the use or benefit of a person."

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