COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

No. 2012-P-1529
BRISTOL COUNTY

ATTLEBORO REDEVELOPMENT AUTHORITY,
PLAINTIFF-APPELLANT

v.

MICHAEL MILANOSKI, MEG ROSS, AND
CIVIL SERVICE COMMISSION,
DEFENDANTS-APPELLEES

APPEAL FROM A JUDGMENT OF THE SUPERIOR COURT

BRIEF OF AMICI CURIAE MASSACHUSETTS CITY SOLICITORS AND TOWN COUNSEL ASSOCIATION AND MASSACHUSETTS MUNICIPAL ASSOCIATION

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

I. ISSUE PRESENTED 1

II. STATEMENT OF INTEREST OF AMICI CURIAE 1

III. STATEMENT OF FACTS 4

IV. STATEMENT OF PROCEEDINGS 4

V. ARGUMENT 5

1. The Actions of Attleboro, a Legally Separate and Distinct Entity in Relation to the Authority, Should Not Have Been Attributed to the Authority's Board Members . .5

2. Neither the Actions of the Authority's Board nor the Actions of the City Constituted Bad Faith 9

3. The Authority's Decision to Use Remaining Funds for Proper Purposes Other than Employee Salaries was Within the Authority's Discretion 15

4. The Factual Inferences and Legal Conclusions Drawn by the Commission and Affirmed by the Trial Court Were Not Supported by the Weight Of the Evidence 21

VI. CONCLUSION 23

ADDENDUM

CERTIFICATION OF COMPLIANCE

TABLE OF AUTHORITIES

Page(s)

CASES

Beverly v. Civil Serv. Comm'n,
78 Mass. App. Ct. 182 (2010) 22

Boston Redev. Auth. v. Civil Serv. Comm'n,
14 Mass. App. Ct. 1006 (1982) (rescript) . . . 11

Cambridge Hous. Auth. v. Civil Serv. Comm'n,
7 Mass. App. Ct. 586 (1979) 11

Commissioner of Health & Hosps. of Boston v.
Civil Serv. Comm'n,
23 Mass. App. Ct. 410 (1987) 11

Debnam v. Belmont,
388 Mass. 632 (1983) 16, 17

Equipment & Sys. For Indus., Inc. v.
Northmeadows Constr. Co.,
59 Mass. App. Ct. 931 (2003) 7

Falmouth v. Civil Serv. Comm'n,
447 Mass. 814 (2006) 22

Garvey v. Lowell,
199 Mass. 47 (1908) 11

Gloucester Landing Assocs., LP v.
Gloucester Redev. Auth.,
60 Mass. App. Ct. 403 (2004) 6-9

Hartford Acc. & Indem. Co. v.
Millis Roofing & Sheet Metal, Inc.,
11 Mass. App. Ct. 998 (1981) 10

Judge Rotenberg Educ. Center, Inc. v.
Commissioner of the Dept. of Mental
Retardation (No. 1),
424 Mass. 430 (1997) 10, 11

Page(s)

CASES (continued)

Mayor of Somerville v.
Dist. Court of Somerville,
317 Mass. 106 (1944) 11

Police Dept. of Boston v. _Kavaleski_,
463 Mass. 680 (2012) 21

Speigel v. _Beacon Participations, Inc._,
297 Mass. 398 (1937) 10

T.W. Nickerson, Inc. v. _Fleet Nat. Bank_,
456 Mass. 562 (2010) 7

STATUTES

G.L. c. 40, § 6 17

G.L. c. 121B, § 5 . . . . 3, 6, 13

G.L. c. 121B, § 7 . . . . 3, 6, 13, 14

G.L. c. 121B, § 17 . . . . 3. 6

G.L. c. 121B, § 23 . . . . 13, 14

ISSUES PRESENTED

The City Solicitors and Town Counsel Association and Massachusetts Municipal Association adopt the Issues Presented for Review set forth in the Brief of the Appellant, the Attleboro Redevelopment Authority ("Authority").

STATEMENT OF INTEREST OF AMICI CURIAE

Amicus, the City Solicitors and Town Counsel Association (the "CSTCA"), is the oldest and largest bar association dedicated to the practice of municipal law in the Commonwealth. The members of the CSTCA include attorneys and their assistants who represent municipal governments as city solicitor, town counsel, town attorney, or corporation counsel. Members of the CSTCA also include attorneys who represent or advise cities, towns, and other governmental agencies in other capacities. CSTCA's mission is to promote better local government through the advancement of municipal law.

Amicus, the Massachusetts Municipal Association ("MMA"), is a nonprofit, nonpartisan statewide association of 350 member cities and town. The MMA provides advocacy, training, publications, research, and other services to its members. The MMA is

governed by a Board of Directors composed of mayors, selectmen, managers, councilors, and Finance Committee members from across Massachusetts. It brings municipal officials together to establish unified policies, to advocate these policies, and to share information that increases the efficiency and cost-effectiveness of service delivery to community residents.

The CSTCA and the MMA submit this *amicus curiae* brief to urge the Court's reversal of the trial court's judgment by illustrating the potentially far reaching detrimental impacts on cities and towns in Massachusetts should the Civil Service Commission be allowed to substitute its judgment for the judgment of cities, towns and redevelopment authorities in allocating scarce financial resources among and between competing fiscal priorities, which is inherently best done at the local level.

The trial court's judgment affirming the Commission's decision in this matter raises several concerns for the CSTCA and the MMA. By attributing the Attleboro mayor's actions to the Authority's board members, the Commission's decision ignores the separate and distinct legal status of municipalities

vis-à-vis redevelopment authorities expressly provided under G.L. c. 121B §§ 5, 7 and 17. Further, the Commission's decision erroneously equates the City's power to address perceived financial mismanagement by appointing new board members more likely to address such mismanagement, the mere exercise of checks and balances powers contemplated by G.L. c. 121B, §5 (giving Mayors and Boards of Selectmen the right to appoint four of five members of local redevelopment authorities), with evidence of bad faith. The CSTCA and the MMA believe that if upheld, the erroneous legal conclusions contained in the Commission's decision would set an incorrect precedent that would have the primary effect of impairing local authority and accountability of redevelopment authorities and threaten the statutory system of checks and balances set forth in G.L. c. 121B, which provides municipalities with the right to exercise defined control over redevelopment authorities in their communities.

Moreover, the CSTCA and the MMA are troubled by the Commission's apparent substitution of its own judgment in place of the Authority's discretion, consistent with its statutory purpose and policy

goals, to determine how the Authority's funds should be spent.

Lastly, the CSTCA is concerned by the seeming erosion of the "substantial evidence" standard evidenced in the Commission's decision, specifically the Commission's thinly supported conclusion that sufficient funds were available to pay salaries giving the dire financial crisis faced by the Authority. A properly firm and robust application of the substantial evidence test helps guard against the Commission intentionally or unintentionally usurping local autonomy and decision making on matters of local importance, which unfortunately appears to have occurred in this case.

STATEMENT OF FACTS

The CSTCA and the MMA adopt the statement of facts set forth in the Authority's brief.

STATEMENT OF PROCEEDINGS

The CSTCA and the MMA adopt the statement of proceedings set forth in the Authority's brief.

ARGUMENT

1. The Actions of Attleboro, a Legally Separate and Distinct Entity in Relation to the Authority, Should Not Have Been Attributed to the Authority's Board Members

The trial court found that there was "an abundance of evidence that the Authority's board members had an ulterior motive to abolish the positions." [A. 1822].[1] The trial court's decision lists several reasons for this conclusion:

a. The trial court cited the Commission's findings regarding mayor's "persistent campaign" to remove Michael Milanoski ("Milanoski"), which the trial court believed "demonstrated his goal of terminating [him]." The trial court specifically noted that the mayor lobbied Authority board members, made financial offers to Milanoski to induce his resignation, and cut off funding for the Authority until Milanoski resigned or was removed. Id.

b. The board members who voted to abolish the staff positions were appointed by the mayor. Id.

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[1] Citations in the form "[A. ___]" refer to the specified page or pages contained in the record appendix submitted by the Authority.

c. The Authority abolished the positions at the first meeting after the mayor's appointees gained a majority on the board. Id.

d. The Authority was assisted by Attleboro's counsel, whose services were loaned to the Authority by the mayor. Id.

The trial court found that the Commission "could properly consider evidence of what Mayor Dumas wanted and what he did to achieve those goals as bearing on the board members' intentions." [A. 1823]. This finding is inconsistent with the statutory scheme of Chapter 121B, as recognized and applied in Gloucester Landing Assocs., LP v. Gloucester Redev. Auth., 60 Mass. App. Ct. 403 (2004) ("Gloucester Landing"). Redevelopment authorities, although they are established and organized by municipalities, are separate entities "managed, controlled and governed" by their members. Id. at 414, citing G.L. c. 121B, §§ 5, 7. This distinction is expressly recognized in G.L. c. 121B, § 17, which provides in pertinent part that "[n]othing in this chapter shall be construed . . . to render the commonwealth or any political subdivision thereof other than such agency liable for

any indebtedness or liability incurred, acts done, or any omissions or failures to act, of any such agency."

The Gloucester Landing case is particularly instructive because the Appeals Court affirmed the decision of the trial court to reject a developer's analogous attempt to do what the Commission did in this case, namely attribute the purported bad faith of a municipality to its redevelopment authority. One of the claims alleged by the developer in Gloucester Landing was a claim for breach of the implied covenant of good faith and fair dealing based upon the Gloucester Redevelopment Authority's alleged duty to give active support and assistance to the developer's quest for a license. Id. at 404.

Usually, a breach of the implied covenant involves "bad faith" conduct. Equipment & Sys. For Indus., Inc. v. Northmeadows Constr. Co., 59 Mass. App. Ct. 931, 932-33 (2003). While bad faith need not necessarily be shown, a plaintiff asserting such a claim still has the burden of proving a lack of good faith at a minimum. T.W. Nickerson, Inc. v. Fleet Nat. Bank, 456 Mass. 562, 570 (2010) (citations omitted).

In an apparent attempt to support the "bad faith" element of its claim for breach of the implied covenant of good faith and fair dealing, the developer moved to amend its complaint to add the City of Gloucester as a defendant. In support of the motion to amend, the developer argued that Gloucester's mayor had actively opposed the developer's project by writing letters to the Commonwealth Department of Environmental Protection against the project and speaking publicly about his opposition. Gloucester Landing, 60 Mass. App. Ct. at 414. The Appeals Court affirmed the trial court's denial of the developer's motion based on the separate legal status of the city in relation to the redevelopment authority, implicitly rejecting the premise that the purported bad faith conduct of the mayor could be attributed to the redevelopment authority to support the developer's claims. Id. at 414-15.

The claims in Gloucester Landing arose out of a contractual relationship between a redevelopment authority and a third party developer, but the reasoning in that case should be no less applicable in the context of an employment relationship, such as that between the Authority and Milanoski and Meg Ross

("Ross"). The legal distinctions between municipalities and redevelopment authorities provided for in Chapter 121B and expressly recognized in Gloucester Landing should be recognized in the employment context as well.

The separate legal status of Attleboro and the Authority was not given appropriate deference by the trial court in affirming the Commission's decision. Like the Commission, the trial court conflated the statutory distinction between municipalities and redevelopment authorities by attributing the (proper) conduct of the mayor and members of the Attleboro City Council to the Authority as evidence of purported bad faith underlying the Authority's decision to terminate Milanoski, Ross and the other Authority employees due to the lack of funds. The CSTCA and the MMA submit the trial court's decision on this point was in error and should be reversed.

2. **Neither the Actions of the Authority's Board Members nor the Actions of the City Constituted Bad Faith**

Even assuming *arguendo* that the actions of Attleboro's mayor and city council members properly can be attributed to the Authority, the conduct cited by the trial court in affirming the Commission's

decision does not satisfy the legal definition of bad faith set forth in existing case law.

In Speigel v. Beacon Participations, Inc., 297 Mass. 398, 416 (1937), the Supreme Judicial Court defined bad faith as follows:

> "Bad faith" is a general and somewhat indefinite term. It has no constricted meaning. It cannot be defined with exactness. It is not simply bad judgment. It is not merely negligence. It imports a dishonest purpose or some moral obliquity. It implies conscious doing of wrong. It means a breach of a known duty through some motive of interest or ill will. It partakes of the nature of fraud... (emphasis added).

This definition, which requires knowing and conscious wrongdoing, has been carried forward in subsequent appellate cases examining alleged bad faith conduct. See, e.g., Judge Rotenberg Educ. Center, Inc. v. Commissioner of the Dept. of Mental Retardation (No. 1), 424 Mass. 430, 454 (1997), quoting Hartford Acc. & Indem. Co. v. Millis Roofing & Sheet Metal, Inc., 11 Mass. App. Ct. 998, 999-1000 (1981) (bad faith "carries an implication of a dishonest purpose, conscious doing of wrong, or breach of duty through motive of self-interest or ill will").

Cases involving judicial review of Commission decisions have touched upon the concept of "bad

faith," but have not refined or further explicated the definition set forth in Judge Rotenberg in any further detail. See, e.g., Commissioner of Health & Hosps. of Boston v. Civil Serv. Comm'n, 23 Mass. App. Ct. 410, 413 (1987) (termination of employment of public health dentists not motivated by improper considerations); Boston Redev. Auth. v. Civil Serv. Comm'n, 14 Mass. App. Ct. 1006, 1007 (1982) (rescript) (absence of findings of fact as to motive or intent of authority required reversal of trial court decision and remand to Commission for more detailed findings of fact); Cambridge Hous. Auth. v. Civil Serv. Comm'n, 7 Mass. App. Ct. 586, 589-90 (1979).

As the Authority notes in its brief, motive is an essential element of proving bad faith in a pretext scenario. Boston Redev. Auth., 14 Mass. App. Ct. at 1007. Pretextual bad faith motives have been found in scenarios involving terminations based on a failure to render political service, Garvey v. Lowell, 199 Mass. 47, 50 (1908); discriminatory grounds, Mayor of Somerville v. Dist. Court of Somerville, 317 Mass. 106 (1944); and anti-union sentiment, Cambridge Hous. Auth., 7 Mass. App. Ct. at 590.

The present case fails to fall within the ambit of any of these previous decisions. The Commission's findings contain no evidence of an improper motive behind the Authority's decision to terminate Milanoski, Ross or the other employees. The conduct and statements of the Authority's board members and Attleboro's mayor and city council members were open, public actions made in the midst of public discourse and debate over the actions and proper future for a financially troubled redevelopment authority. If the Mayor and Council had not commented upon the actions and future of the Authority, they could have properly been viewed as derelict in their duty. Such statements concerning matters within the statutory authority of public officials should not constitute evidence of bad faith.

Local government officials have the right and responsibility to be concerned about the efficiency of government within their community, and to take actions within their authority to address such concerns. If Attleboro's Mayor found fault with the Authority's operations under Milanoski's leadership, the Mayor had the right and responsibility to use the authority given to him under G.L. c. 121B to effectuate change.

If the legislature did not want mayors and boards of selectmen to have some defined controls over the actions and conduct of redevelopment authorities, it would not have given municipal officers the express power to appoint more than a majority of its members. The Mayor exercised the express power conferred upon him under G.L. c. 121B, §5 by appointing board members who shared his concerns about the Authority. Such action was fully consistent with the valid exercise of the checks and balances expressly conferred on municipalities by the statutory scheme established by the legislature in Chapter 121B. Appointing board members who may have shared the mayor's concerns about the Authority's operations does not constitute bad faith conduct by the mayor, or some type of nefarious "conspiracy" as the Commission and trial court found.

The other tool that is implicitly available in Chapter 121B for municipalities is to choose not to financially support a redevelopment authority if the municipality determines the redevelopment authority is mismanaged, inefficient or insolvent. Section 7 of Chapter 121B only requires that municipalities provide services "[s]o far as practicable." Similarly, G.L. c. 121B, § 23 permits, but does not require,

municipalities to make various agreements and offer various forms of support to redevelopment authorities.

The trial court's finding that "[t]he Authority is required to use, and the city is obligated to provide, support for the Authority," is incorrect and ignores the "as far as practicable" language used in Section 7 as well as the legislative scheme underpinning Chapter 121B in general. The legislative scheme in Chapter 121B properly cannot be read to require a municipality's unwavering, blind faith support, financial or otherwise, of a municipality's redevelopment authority regardless of the authority's actions or management, good or bad. Rather, Attleboro had the right and duty under G.L. c. 121B, §§ 7 and 23 to act as a check against what the City perceived as the Authority's mismanagement of its finances and the projects within its purview. In furthermore of this duty, Attleboro decided to use its authority under Chapter 121B to cease support for the Authority through Community Development Block Grant funds after the spring of 2008. [A. 345-49]. In or about 2009, Attleboro exercised this authority further by ceasing the disbursement of Urban Renewal Bond proceeds to pay Authority employee salaries. [A. 379]. The actions

of Attleboro's Mayor and City Council were well within the statutory rights and separation of powers memorialized within Chapter 151B and did not constitute bad faith.

The basis for the purported bad faith of the Authority's board members cited in the trial court's decision relies entirely upon the purported important actions of Attleboro's Mayor and City Council. For the reasons described above, however, there is no substantial evidence that the Authority's board members themselves acted in bad faith. The Court therefore should reverse the trial court's judgment affirming the Commission's decision.

3. **The Authority's Decision to Use Remaining Funds for Proper Purposes Other than Employee Salaries was Within the Authority's Discretion**

The trial court incorrectly concluded that there was substantial evidence to support the Commission's findings that were funds remaining for the Authority to fund employee salaries. Despite the admittedly precarious financial position of the Authority, the Commission found there were funds remaining to fund employee salaries, albeit on a short term basis. The decisions of both the trial court and the Commission failed to consider that redevelopment authorities,

like municipalities in general, have the discretion to choose among competing priorities for the lawful use of funds. Moreover, both decisions appear to ignore that the Authority in fact chose more appropriate uses of the available funds given the requirements of the funding sources involved. The Authority did not act in bad faith by choosing to expend the remaining funds available to the Authority on the Authority's projects rather than employee salaries especially where such expenditures were more in line with the limits and requirements applicable to such funding. This was a valid and proper policy decision by the Authority.

A lack of money is just cause for abolishment of a position under the civil service laws. Debnam v. Belmont, 388 Mass. 632, 634 (1983). Municipalities may separate civil service employees when "anticipated revenues will be inadequate to pay the employee's salary as well as to meet other more pressing municipal needs." Id. at 636. In Debnam, the Supreme Judicial Court held that the existence of a stabilization reserve fund was legally insufficient to support the Commission's finding that a layoff of firefighters due to lack of funds was unjustified. Id. The reserve fund was statutorily authorized by

G.L. c. 40, § 6 to "provide for extraordinary or unforeseen expenditures."

The holding in Debnam also applies to evaluating decisions to terminate civil service employees of redevelopment authorities. Like municipalities generally, redevelopment authorities have a variety of demands on available funds from year to year. Redevelopment authorities must have the same discretion to set spending priorities that the Supreme Judicial Court recognized generally for municipalities in the Debnam decision.

The factual record shows that each of the funding sources identified by the Commission as a potential source to continue to fund employee salaries was instead expended for otherwise proper purposes. The Massachusetts Opportunity Relocation and Expansion Program ("MORE") grant was used to fund environmental remediation efforts, demolishing an existing building and cleaning up environmental contamination on a site owned by the Authority. [A. 396-97]. The MORE grant had to be expended in full prior to June 30, 2010. [A. 397]. The $150,000 in Mantrose-Haueser settlement funds were expressly required to be used for a riverbank restoration project pursuant to a settlement

agreement between the Commonwealth and Mantrose-Haueser. [A. 395-96]. The Authority chose to use the funds for the riverbank restoration project consistent with the settlement agreement, not for employee salaries. Id. If the Authority had used the funds for a purpose other than the riverbank restoration it is possible that the Authority would have been subjected to a request for reimbursement, or legal proceedings to recoup the expenditure of the settlement funds for improper purposes, or worse. While the Commission noted that CDBG funds and the City's Urban Renewal Bond could have been used to fund Authority employee salaries, the City, not the Authority, decided not to allow the Authority access to these funding sources for such purposes. The Authority had no power or recourse to alter the City's decision.

The factual record shows that the alternative use of the MORE grant funds and the Mantrose-Haueser settlement funds to pay employee salaries was at best a stop gap measure and not a long term solution to the Authority's inability to continue to pay employee salaries while meeting the Authority's other more pressing needs. The Authority acted within its discretion in deciding to use the funds in the manner

they were used. Any purported bad faith of the Authority's board members in the choices made in how to spend the remaining funds is based upon unreasonable inferences by the Commission. The factual record contains substantial evidence that as of October 13, 2009, the Authority's finances were in substantial disarray. The Commission's decision concedes this point. [A. 414-15].

At the time of the Authority's decision to eliminate the four salaries, it was in debt more than $3.5 million dollars. Specifically, the Authority was in default on approximately $2 Million in loans associated with one of its projects. [A. 388]. Moreover, the Authority had judgments entered against it in two separate eminent domain matters totaling over $1.2 Million. Id. Finally, the Authority owed over $250,000 to Attleboro for infrastructure improvements on one of the Authority's projects and over $100,000 to various appraisers, engineers and attorneys retained in the eminent domain actions. [A. 390].

Coupled with this substantial deficit, the Authority faced bleak prospects for future anticipated sources of revenue. Several state and federal

agencies, including the Massachusetts Executive Office of Transportation, the Massachusetts Bay Transportation Authority, the Greater Attleboro-Taunton Transit Authority, and the Federal Transit Administration ("FTA"), terminated their financial support of the Authority's projects during 2009. [A. 390-92]. Significantly, the FTA had undisputedly suspended its financial support for one of the Authority key projects, the Intermodal Transportation Center (ITC), by October 6, 2009, a mere week before the Authority's board members concluded on October 13, 2009 that the Authority could no longer afford to continue with existing projects while paying the salaries of Milanoski, Ross and the other employees. [A. 392].

The trial court erred by affirming the Commission's substitution of its judgment for the Authority's judgment on the best way to utilize scarce funds available to the Authority to address competing priorities in the face of increasing financial constraints. The judgment should be reversed.

4. The Factual Inferences and Legal Conclusions Drawn by the Commission and Affirmed by the Trial Court Were Not Supported by the Weight of the Evidence

On appeal the Court must be deferential to the Commission's factual findings, but the Court is not similarly bound by unreasonable inferences drawn from those findings. Police Dept. of Boston v. Kavaleski, 463 Mass. 680, 689 (2012). Based upon the reasoning set forth in the previous sections of the CSTCA's and the MMA's argument, the inferences drawn by the Commission that (1) there were sufficient funds available to the Authority to pay employee salaries and (2) that the Authority "conspired" with Attleboro's mayor are not reasonable because they were not supported by substantial evidence. The evidence supporting such inferences was miniscule compared to the Commission's other factual findings justifying this opposite conclusion and did not give the Commission the proper basis to render the conclusions it did.

If the Commission's decision is affirmed in this case, the net result will be an erosion of the substantial evidence test. Ultimately this trend will be detrimental to principles of local autonomy,

control and accountability to all Massachusetts cities and towns, not just Attleboro. The case law requires the Commission to adhere to a consistently applied standard of proof - that of substantial evidence in the record - to justify its application and interpretations of the civil service statute.

Upholding the trial court in this case creates the risk that the Commission will become what amounts to a super personnel board, second guessing appointing authorities on ambiguous evidence and effectively impairing the right of local government to make personnel decisions and exercise local control over local redevelopment authorities. See Falmouth v. Civil Serv. Comm'n, 447 Mass. 814, 823-27 (2006) (reversing trial court judgment affirming Commission decision to reduce employee suspension because the Commission "improperly substituted its judgment for that of the appointing authority"); Beverly v. Civil Serv. Comm'n, 78 Mass. App. Ct. 182, 190-91 (2010) (absent proof that city acted unreasonably in declining to hire police officer, commission is "bound to defer to the city's exercise of its judgment").

The CSTCA and the MMA respectfully urge the Court to reemphasize the substantial evidence test as the

evidentiary benchmark for Commission decisions. Applying that test, the CSTCA and the MMA respectfully request that the Court reverse the trial court's judgment in this case because it was based upon unreasonable inferences which were not supported by substantial evidence.

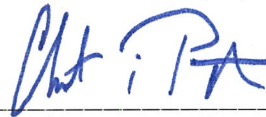
CONCLUSION

For the foregoing reasons, the CSTCA and the MMA request that the Court reverse the trial court's judgment affirming the Commission's decision in this matter.

RESPECTFULLY SUBMITTED,

MASSACHUSETTS CITY SOLICITORS
AND TOWN COUNSEL ASSOCIATION
and MASSACHUSETTS MUNICIPAL
ASSOCIATION,

By their attorneys,



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ADDENDUM

THE 188TH GENERAL COURT OF
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site search
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Massachusetts Laws

Massachusetts Constitution

General Laws

Session Laws

Rules

General Laws

Print Page

PART I — ADMINISTRATION OF THE GOVERNMENT (Chapters 1 through 182)

PREV NEXT

TITLE VII — CITIES, TOWNS AND DISTRICTS

PREV NEXT

CHAPTER 40 — POWERS AND DUTIES OF CITIES AND TOWNS

PREV NEXT

Section 6 — Towns; reserve funds for extraordinary expenditures; establishment

PREV NEXT

Section 6. To provide for extraordinary or unforeseen expenditures, a town may at an annual or special town meeting appropriate or transfer a sum or sums not exceeding in the aggregate five per cent of the levy of the fiscal year preceding the fiscal year for which the fund, to be known as the reserve fund, is established. No direct drafts against this fund shall be made, but transfers from the fund may from time to time be voted by the finance or appropriation committee of the town, in towns having such a committee, and in other towns by the selectmen; and the town accountant in towns having such an official, and in other towns the auditor or board of auditors, shall make such transfers accordingly.

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THE 188TH GENERAL COURT OF
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General Laws

PART I	ADMINISTRATION OF THE GOVERNMENT (Chapters 1 through 182)	PREV NEXT
TITLE XVII	PUBLIC WELFARE	PREV NEXT
CHAPTER 121B	HOUSING AND URBAN RENEWAL	PREV NEXT
Section 5	Membership; appointment; election; term of office	PREV NEXT

Section 5. Every housing and redevelopment authority shall be managed, controlled and governed by five members, appointed or elected as provided in this section, of whom three shall constitute a quorum.

In a city, four members of a housing or redevelopment authority shall be appointed by the mayor subject to confirmation by the city council; provided, that, the members shall be appointed to serve for initial terms of one, two, four and five years, respectively.

In a town, four members shall be elected by the town; provided, that of the members originally elected at an annual town meeting, the one receiving the highest number of votes shall serve for five years, the one receiving the next highest number of votes, for four years, the one receiving the next highest number of votes, for two years, and the one receiving the next highest number of votes shall serve for one year; provided, that upon the initial organization of a housing or redevelopment authority, if a town so votes at an annual or special town meeting called for the purpose, four members of such an authority shall be appointed forthwith by the selectmen to serve only until the qualification of their successors, who shall be elected at the next annual town meeting as provided above.

In a city or town, one member of a housing or redevelopment authority shall be appointed by the department for an initial term of three years.

Thereafter, as the term of a member of any housing or redevelopment authority expires, his successor shall be appointed or elected, in the same manner and by the same body, for a term of five years from such expiration. Membership in a housing or redevelopment authority shall be restricted to residents of the city or town.

In a city, one of the four members of a housing authority appointed by the mayor shall be a resident of that city and shall be a representative of organized labor who shall be appointed by the mayor from a list of not less than two nor more than five names, representing different unions submitted by the Central Labor Council, AFL-CIO and the International Brotherhood of

Teamsters, Chauffeurs, Warehousemen and Helpers of America of the city or of the district within which the city is included. If no such list of names is submitted within sixty days after a vacancy occurs, the mayor may appoint any representative of organized labor of his own choosing to the authority. In a city, one of the four members of a housing authority appointed by the mayor shall be a tenant in a building owned and operated by or on behalf of the local housing authority who shall be appointed by the mayor from lists of names submitted by each duly recognized city-wide and project-wide tenants' organization in the city. A tenants' organization may submit a list which contains not less than two nor more than five names to the mayor who shall make his selection from among the names so submitted; provided that, where no public housing units are owned and operated by the local housing authority and no such units are owned and operated on behalf of the local housing authority, the mayor shall appoint any tenant of the housing authority from lists submitted in accordance with this section. If no list of names is submitted within sixty days after a vacancy occurs, the mayor shall appoint any tenant of his choosing to the authority. The mayor shall notify in writing tenant organizations as specified herein not less than ninety days prior to the expiration of the term of a tenant member. Whenever a vacancy occurs in the term of a tenant member for any reason other than the expiration of a term, the mayor shall notify in writing the tenant organizations specified herein within ten working days after the vacancy occurs. The mayor shall make an appointment within a reasonable time after the expiration of sixty days after said notice.

Vacancies, other than by reason of expiration of terms, shall be filled for the balance of the unexpired term, in the same manner and by the same body, except elected members in towns whose terms shall be filled in accordance with the provisions of section eleven of chapter forty-one. Every member, unless sooner removed, shall serve until the qualification of his successor.

As soon as possible after the qualification of the members of a housing or redevelopment authority the city or town clerk, as the case may be, shall file a certificate of such appointment, or of such appointment and election, as the case may be, with the department, and a duplicate thereof, in either case, in the office of the state secretary. If the state secretary finds that the housing or redevelopment authority has been organized and the members thereof elected or appointed according to law, he shall issue to it a certificate of organization and such certificate shall be conclusive evidence of the lawful organization of the authority and of the election or appointment of the members thereof.

Whenever the membership of an authority is changed by appointment, election, resignation or removal, a certificate and duplicate certificate to that effect shall be promptly so filed. A certificate so filed shall be conclusive evidence of the change in membership of the authority referred to therein.

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THE 188TH GENERAL COURT OF
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Home Glossary FAQs
site search
Options

Massachusetts Laws | Bills | State Budget | People | Committees | Educate & Engage | Events

Massachusetts Laws

Massachusetts Constitution

General Laws

Session Laws

Rules

General Laws

Print Page

PART I ADMINISTRATION OF THE GOVERNMENT (Chapters 1 through 182) PREV NEXT

TITLE XVII PUBLIC WELFARE PREV NEXT

CHAPTER 121B HOUSING AND URBAN RENEWAL PREV NEXT

Section 7 Officers and executive director of authorities; compensation of members PREV NEXT

Section 7. A housing or redevelopment authority shall elect from among its members a chairman and a vice-chairman, and may employ counsel, an executive director who shall be ex officio secretary of the authority, a treasurer who may be a member of the authority and such other officers, agents and employees as it deems necessary or proper, and shall determine their qualifications, duties and compensation, and may delegate to one or more of its members, agents or employees such powers and duties as it deems necessary or proper for the carrying out of any action determined upon by it. So far as practicable, a housing or redevelopment authority shall make use of the services of the agencies, officers and employees of the city or town in which such authority is organized, and such city or town shall, if requested, make available such services, except, that in the city of Boston, the housing authority may contract with said city for the assignment of thirty-seven police officers of the police department of said city to police the buildings and grounds owned by said authority with the proviso that said authority shall reimburse said city for one third of the cost thereof.

A housing authority may compensate its members for each day spent in the performance of their duties and for such other services as they may render to the authority in connection with projects commenced prior to July first, nineteen hundred and sixty-five. Such compensation shall not exceed fifty dollars a day for the chairman and forty dollars a day for a member other than the chairman, provided that the total sum paid to all the members in any one month or year shall not exceed two per centum of the gross income of the housing authority during such month or year, respectively, nor shall the total sum paid in any year exceed twelve thousand five hundred dollars in the case of the chairman or ten thousand dollars in the case of a member other than the chairman. Such compensation shall be allocated by the housing authority among its various projects commenced prior to July first, nineteen hundred and sixty-five, in such manner and amounts as it deems proper. Members of a housing authority shall be allowed, or be reimbursed for, all expenses properly incurred by them within or without the city or town in the discharge of their duties. Such expenses shall be allocated by the housing authority among its various projects in such manner and amounts as it deems proper.

For the purposes of chapter two hundred and sixty-eight A or paragraph (7) of section forty-four D of chapter one hundred and forty-nine, each housing and redevelopment authority shall be considered a municipal agency and, without limiting the power of a city council or board of aldermen or board of selectmen to classify additional special municipal employees pursuant to said chapter, each member of such an authority, and any person who performs professional services for such an authority on a part-time, intermittent or consultant basis, such as those of architect, attorney, engineer, planner, or construction, financial, real estate or traffic expert, shall be considered a special municipal employee.

Any compensation paid to a tenant member of a housing authority for services as a member shall be included as income in determining rent, and the tenant shall be subject to appropriate rent increases, as provided for in authority policy and as regulated by the department; provided, however, that such compensation shall not be considered income for purposes of determining continued occupancy.

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THE 188TH GENERAL COURT OF
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General Laws

PART I	ADMINISTRATION OF THE GOVERNMENT (Chapters 1 through 182)	PREV NEXT
TITLE XVII	PUBLIC WELFARE	PREV NEXT
CHAPTER 121B	HOUSING AND URBAN RENEWAL	PREV NEXT
Section 17	Liability of commonwealth or political subdivisions for debts of housing authority	PREV NEXT

Section 17. No bond, note or other evidence of indebtedness executed or obligation or liability incurred by an operating agency shall be a debt or charge against the commonwealth or any political subdivision thereof other than such agency. Nothing in this chapter shall be construed to obligate the commonwealth, or any political subdivision thereof other than the applicable operating agency, or to pledge its credit, to any payment whatsoever to any operating agency or to any creditor or bondholder thereof, nor shall anything therein contained be construed as granting to any operating agency any exemption from taxation except as expressly provided therein or to render the commonwealth, or any political subdivision other than such agency liable for any indebtedness or liability incurred, acts done, or any omissions or failures to act, of any such agency.

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General Laws

PART I — ADMINISTRATION OF THE GOVERNMENT (Chapters 1 through 182)

TITLE XVII — PUBLIC WELFARE

CHAPTER 121B — HOUSING AND URBAN RENEWAL

Section 23 — Municipal powers

Section 23. For the purpose of complying with the conditions of federal legislation, or in lieu of a contribution, loan or grant in cash to an operating agency organized within its limits, or to aid and cooperate in the planning, construction or operation of any project of such an agency, a city or town, or the appropriate board or officer thereof on behalf of such city or town, may upon such terms, and with or without consideration, do or agree to do any or all of the following things, as such city, town, board or officer, as the case may be, may determine:—

(a) Sell, convey or lease any of its interests in any property, or grant easements, licenses or any other rights or privileges therein to such agency or to the federal government;

(b) Cause parks, playgrounds or schools, or water, sewer or drainage facilities, or any other public improvements which it is otherwise authorized to undertake, to be laid out, constructed or furnished adjacent to or in connection with a housing, clearance, relocation or urban renewal project;

(c) Lay out and construct, alter, relocate, change the grade of, make specific repairs upon or discontinue, public ways and construct sidewalks, adjacent to or through a housing, clearance, relocation or urban renewal project;

(d) Adopt ordinances or by-laws under section twenty-five to thirty A, inclusive, of chapter forty or repeal or modify such ordinances or by-laws; establish exceptions to existing ordinances and by-laws regulating the design, construction and use of buildings; annul or modify any action taken or map adopted under sections eighty-one A to eighty-one J, inclusive, of chapter forty-one;

(e) Cause public improvements to be made and services and facilities to be furnished to or for the benefit of an operating agency for which betterments or special assessments may be levied or charges made, and assume or agree to assume such betterments, assessments or charges;

(f) Purchase and hold any of the bonds or notes of an operating agency and exercise all of the rights of a holder of such bonds or notes;

(g) Make available to an operating agency the services of its agencies, officers and employees;

(h) Cause private ways, sidewalks, footpaths, ways for vehicular travel, playgrounds, or water, sewer or drainage facilities and similar improvements to be constructed or furnished within the site of a project for the particular use of the project or of those dwelling therein;

(i) Enter into agreements with an operating agency, the term of which agreements may extend over the period of a loan to the operating agency by the federal government, respecting action to be taken by such city or town pursuant to any of the powers granted by this chapter; and

(j) Do any and all other things necessary or convenient to aid and cooperate in the planning, construction or operation of a housing, clearance, relocation or urban renewal project within its limits.

The entering of a contract under this section between a city or town and the federal government or between a city or town and an operating agency shall not be subject to any provision of law relating to publication or to advertising for bids.

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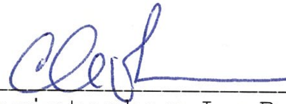
CERTIFICATION OF COMPLIANCE

Pursuant to Mass. R. A. P. 16 (k), I, the undersigned Christopher L. Brown, 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)(6) (pertinent findings or memorandum of decision); Mass. R. A. P. 16(e) (references to the record); Mass. R. A. P. 16(f) (reproduction of statutes, rules, regulations); Mass. R. A. P. 16(h) (length of briefs); Mass. R. A. P. 18 (appendix to the briefs); and Mass. R. A. P. 20 (form of briefs, appendices, and other papers).



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Dated: March 29, 2013