



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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October 21, 2024

RECEIVED

Town Clerk-Dighton, MA

OCT 21 2024

Time: 3:00 pm

By: 

Shara Costa, Town Clerk
Town of Dighton
979 Somerset Avenue
Dighton, MA 02715

Re: Dighton Annual Town Meeting of June 10, 2024 -- Case # 11553
Warrant Articles # 9, 32, 33, and 34 (General) ¹

Dear Ms. Costa:

Articles 9, 32, 33, and 34 - We approve Articles 9, 32, 33, and 34 from the June 10, 2024 Dighton Annual Town Meeting. Our comments regarding Articles 32 and 33 are provided below.

Article 32 – Under Article 32 the Town voted to amend the general by-laws, Article XXXIX, “Municipal Commission on Disability,” to insert new text. The Commission on Disability (Commission) is established in accordance with G.L. c. 40, § 8J for the purpose of carrying out programs, in coordination with the Massachusetts Office of Disability, in order to bring about the full and equal participation in all aspects of life in the Town for people with disabilities. Section 2, “Title and Purpose.” We approve Article 32 and offer comments for the Town’s consideration on certain provisions.

1. Chapter 3 – Powers and Duties

Section 3 (k) authorizes the Commission to receive gifts as follows:

Receive gifts of property, both real and personal in the name of the Town subject to the approval of the Board of Selectmen; such gifts are to be managed and controlled by the Commission.

¹ Although Form 1 does not identify that the Town is submitting Article 13 to the Attorney General for review under G.L. c. 40, § 32, the Town submitted a certified copy of the vote under Article 13 as well as Form 6 referencing Article 13. Article 13 is a vote to adjust the eligibility limits for the senior tax exemption available under the provisions of G.L. c. 59, § 5 clause 41C ½ by reducing from 70 to 65 the requisite age of eligibility. Article 13 however is not a by-law amendment and therefore it does not require the Attorney General’s review and approval under G.L. c. 40, § 32. However votes to accept local option statutes should be filed with the Secretary of State and the Department of Revenue/Division of Local Services. The Town should consult with Town Counsel with any questions on this issue.

We approve this provision. However, the Town must ensure it is applied consistent with state law, including G.L. c 44, § 53A that relates to the acceptance and expenditure of grants and gifts, and requires:

An officer or department of any...town, or of any regional school or other district, may accept grants or gifts of funds from the federal government and from a charitable foundation, a private corporation, or an individual, or from the commonwealth, a county or municipality or an agency thereof, and in the case of any grant or gift given for educational purposes may expend said funds for the purposes of such grant or gift with the approval of the school committee, and in the case of any other grant or gift may expend such funds for the purposes of such grant or gift...in towns with the approval of the board of selectmen...

Further, Section 53A provides that "[n]otwithstanding the provisions of section fifty-three, any amounts so received by an officer or department of a city, town or district shall be deposited with the treasurer of such city, town or district and held as a separate account and may be expended as aforesaid by such officer or department receiving the grant or gift without further appropriation." Moreover for a gift of real property, the Town should consult with Town Counsel to determine the process for accepting such a gift, including whether Town Meeting approval is required. See also Department of Revenue, Division of Local Services, "Ask DLS: Gifts," at: <https://www.mass.gov/info-details/ask-dls-gifts>. The Town should consult with Town Counsel regarding the proper application of this provision.

2. Chapter 7 – Amendments

Chapter 7, "Amendments," identifies the process of amending the Commission's by-laws, and provides as follows:

These by-laws may be amended at any duly constituted meeting of the Commission by two consecutive meetings with two-thirds vote of those members present provided written notice of the proposed amendment is distributed to each member at least fourteen (14) days prior to the meeting. All amendments proposed and passed by a two-thirds vote of the commission shall also require the amendment to be placed on the warrant for an annual or special town meeting. A passing vote of the quorum present at an annual or special town meeting shall be required for the by-law amendment to be adopted by the Town of Dighton.

We construe the amendment process in Chapter 7 to be the process by which the Commission will internally propose by-law amendments for inclusion in the Town Meeting Warrant for consideration and possible adoption by Town Meeting, and we approve this portion of the by-law for that reason. However, the Town cannot apply Chapter 7's provisions in a way that would authorize the Commission to amend the by-law outside of the Town Meeting process. See G.L. c. 40, § 32 ("[B]efore a by-law takes effect it shall be approved by the attorney general...after the clerk of the town in which a by-law has been adopted has submitted to the attorney general a certified copy of such by-law with a request for its approval...Such request

and proof shall be submitted by the town clerk within thirty days after final adjournment of the town meeting at which such by-law was adopted.”) The Town should consult with Town Counsel to determine whether the by-law should be amended at a future Town Meeting to clarify that the Commission may not unilaterally amend the by-law outside of the Town Meeting process.

Article 33 – Under Article 33 the Town voted to amend the general by-laws, “Licenses & Permits of Delinquent Taxpayers,” to add new text (shown in underline) and delete text (shown in strikethrough), as follows:

The tax collector or other municipal officials responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the tax collector, shall annually, or more often as deemed necessary by the tax collector, furnish or make electronically available to each department, board, commission or division, hereinafter referred to as the licensing authority that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a ~~twelve month~~ 60 day period, and that such party has not filed in good faith a pending application for abatement of such tax or a pending petition before the appellate tax board.

The Town’s by-law, “Licenses & Permits of Delinquent Taxpayers,” authorizes the withholding of a license or permit for failure to pay local taxes and fees. The by-law is authorized by G.L. c. 40, § 57, a local-option statute that allows a town to adopt a by-law regarding the denial, revocation, or suspension of local licenses and permits for failure to pay local taxes, fees, assessments, betterments or municipal charges. General Laws Chapter 40, Section 57 requires that such by-laws include certain text. See G.L. c. 40, c. 57 (“[s]uch by-law or ordinances shall provide that...”).² As amended, G.L. c. 40, § 57 (a) provides as follows:

The tax collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the tax collector, shall annually, and may periodically, furnish to each department, board, commission or division, hereinafter referred to as the licensing authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.

General Laws Chapter 40, Section 57 does not include the text: (1) “or more often as deemed necessary by the tax collector;” (2) “or make electronically available;” or (3) “for not

² General Laws Chapter 40, Section 57 was amended by Chapter 218 of the Acts of 2016, “An Act Modernizing Municipal Finance and Government” signed into law on August 9, 2016.

less than a 60 day period," but the Town's by-law now does. Because as amended, the Town's by-law departs from the text required by G.L. c. 40, § 57, it is unclear whether the by-law, as written, is sufficient for the Town to utilize the provisions of G.L. c. 40, § 57. The Town should discuss with Town Counsel whether the by-law should be amended at a future Town Meeting to delete the above noted by-law text that G.L. c. 40, § 57 does not require.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute.

Very truly yours,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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cc: Town Counsel Matthew J. Costa