

THE COMMONWEALTH OF MASSACHUSETTS
WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH
WARRANT FOR FIRE DISTRICT NO. 1 OF SOUTH HADLEY

Commonwealth of Massachusetts Hampshire, ss

To either constables of the Town of South Hadley:

Greetings:

In the name of the Commonwealth of Massachusetts, you are directed to notify and warn the inhabitants of Fire District No. 1, in the Town of South Hadley, qualified to vote in the Special Meeting to meet at:
**Fire Department Headquarters, 144 Newton Street, South Hadley, MA
on Monday, August 28, 2023, at 6:00 P.M.**

To vote on the following articles:

ARTICLE 1. To see if the District will vote to appropriate the sum of \$9,100 to pay a prior years' bill to the Commonwealth of Massachusetts for Reimbursable Unemployment, or take any other action relative thereto.

ARTICLE 2: To see if the District will vote to appropriate the sum of \$14,606.10 to comply with Massachusetts General Laws to provide Medical, Dental and Life Insurance benefits for all grandfathered, eligible, elected officials in the service of the District, or take any other action relative thereto.

HEREOF FAIL NOT and make due return of the warrant with your doings thereon to the District on or before the time of holding said meeting.

Given under our hands this 11th day of August in the year of Our Lord, Two Thousand Twenty-Three.


KENNETH BELIVEAU BRUCE PERRON JOHN WOJCIECHOWSKI

PRUDENTIAL COMMITTEE

A true copy. Attest:

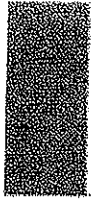

Kari Scytkowski, District Clerk

Posting: Fire District No 1. Fire Dept., Fire District No. 1 Water Dept., Town Hall, Main Library and Council on Aging
Warrant must be posted by August 21, 2023 at least seven days prior to the August 28, 2023 Special Meeting.

August 28, 2023 Special District Meeting

ARTICLE 1: I move that the District vote to appropriate the sum of \$9,100 from the Administrative Payroll Account (001-122-5100) to pay a prior years' bill to the Commonwealth of Massachusetts for Reimbursable Unemployment.

ARTICLE 2: I move that the District vote to appropriate the sum of \$14,606.10 from the Health and Life Insurance Account (001-110-5400-5435) to comply with Massachusetts General Laws, to fund 75% of the Medical, Dental and Life Insurance benefits for all grandfathered, eligible, elected officials in the service of the District.



SULLIVAN
HAYES & QUINN, LLC

ATTORNEYS AT LAW

ONE MONARCH PLACE Suite 1200, Springfield, Massachusetts 01144
P 413.736.4538 F 413.731.8206 Lawoffice@Sullivanandhayes.com

June 23, 2023

VIA E-MAIL: kscytkowski@shdistrict1.org

Ms. Kari Scytkowski,

Clerk/Treasurer

South Hadley Fire District No. 1

144 Newton Street

South Hadley, MA 01075-2372

**PRIVILEGED AND CONFIDENTIAL: TO MAINTAIN PRIVILEGE,
DO NOT CIRCULATE**

Re: Legal Opinion – Health Insurance Obligations for Grandfathered Elected Officials

Dear Ms. Scytkowski:

The purpose of this correspondence is to render an opinion for South Hadley Fire District No. 1 (hereinafter “The District”) on the legality of appropriating \$0 toward funding of the premium for specific elected officials, namely the Prudential Committee and the Moderator.

I. Factual Background

Prior to 2019, all elected officials were eligible to participate in the District insurance offerings pursuant to local option. In 2019, the Prudential Committee enacted a change to their benefits policies, eliminating such benefits prospectively for all elected officials that did not work for more than twenty (20) hours per week. This resulted in all future Prudential Committee members, Board of Water Commissioners and the Moderator all being ineligible for participation in the insurance offerings. The policy, however, also grandfathered in all currently participating elected officials. The specific policy language is as follows:

District elected officials that do not meet eligibility requirements shall not receive a District contribution towards their insurance premiums effective upon the adoption of this policy.

Notwithstanding the foregoing, this policy shall not apply to those elected officials who, at the time of the adoption of this policy, are currently serving on either the Prudential Board or Water Commission and who are currently receiving their medical, dental, and/or life insurance from the District. This exemption from this policy for said elected officials shall only be for that period of time in which said elected officials serve on said board(s).

Two (2) current elected officials who were grandfathered in remain in their capacity as elected officials and are still receiving District contributions toward their insurance. One elected official is a Prudential Committee official. The other elected official is a Board of Water Commissioner. The Prudential Committee member receives health, dental, and life insurance benefits. The Board of Water Commissioner receives dental benefit only.

At the April 27, 2023 Annual District meeting, Article 23 was presented for a vote. The Article was to “vote to raise and appropriate the sum of \$604,796 to fund Medical, Dental, and Life Insurance benefits for certain qualified persons in the service of the District for health, dental and life insurances benefits at seventy-five (75%) the premium. A Motion was made on the floor to amend the Article and change the language to the following to be voted upon:

Motion was made and amended to move that the District raise and appropriate the sum of \$589,796 to fund 75% of the Medical, Dental and Life Insurance benefits for certain qualified persons in the service of the District including the Fire Department and District/Clerk Treasurer, and zero appropriation for the Prudential Committee and Moderator.

The Motion to Amend and the Motion as Amended passed. Article 29 was also the Warrant and was to “*appropriate the sum of \$240,000.00 for the Health, Dental, and Life Insurance Account and to meet said appropriation, transfer the sum of \$240,000 from the Water Available Surplus.*” This Article passed as presented. While the Article as drafted does not identify in the Article who these appropriations pertain to, it is understood that the individuals covered by this Motion are all Water Board employees and the grandfathered Board of Water Commissioner. My further understanding is that this amount is toward seventy-five percent (75%) of the premium for the benefit coverage each such individual.

The result of these votes at the Annual Meeting is that the zero dollars was appropriated for the health, life and dental insurance for the grandfathered Prudential Committee member, whereas toward seventy-five percent (75%) of the premium cost was appropriated for every other eligible employee, including the dental insurance of the grandfathered Board of Water Commissioner.

II. Applicable Law

MGL Ch. 32B governs District employee health insurance. MGL Ch. 32B, Section 2 defines employee as follows:

“Employee”, any person in the service of a governmental unit or whose services are divided between 2 or more governmental units or between a governmental unit and the commonwealth, and who receives compensation for any such service, whether such person is employed, appointed or elected by popular vote, and any employee of a free public library maintained in a city or town to the support of which that city or town annually contributes not less than one-half of the cost; provided, however, that the duties of such person require not less than 20 hours, regularly, in the service of the governmental unit during the regular work week of permanent or temporary employment; provided further, that no seasonal employee or emergency employees shall be included, **except that persons elected by**

popular vote may be considered eligible employees during the entire term for which they are elected regardless of the number of hours devoted to the service of the governmental unit. [emphasis added].

Consistent with this statutory language, Group Insurance Commission Regulations (805 CMR 8.03) includes the following in the definition of Municipal Employees:

Elected officials, without regard to hours worked ¹or to participation in a pension system, are Municipal Employees at local option, consistent with 805 CMR 9.02: Elected Officials and M.G.L. c. 32B, § 2, "Employee".

MGL Ch. 32B, Section 7a, Paragraph 1, provides as follows:

A governmental unit which has accepted the provisions of section ten and which accepts the provisions of this section may, as a part of the total monthly cost of contracts of insurance authorized by sections three and eleven C, with contributions as required by section seven, make payment of a subsidiary or additional rate which may be lower or higher than a premium determined by the governmental unit to be paid by the insured, the combination of which shall result in the governmental unit making payment of more, but not less, than fifty per cent of the total monthly cost for such insurance. **No governmental unit, however, shall provide different subsidiary or additional rates to any group or class within that unit.** [emphasis added]

MGL Ch. 32B, Section 7A provides as follows:

d) This section shall take effect in a county, except Worcester county, city, town or district upon its acceptance in the following manner:--In a county by vote of the county commissioners; in a city having a Plan D or Plan E charter by majority vote of its city council; in any other city by vote of its city council, approved by the mayor; in a district, except as hereinafter provided, by vote of the registered voters of the district at a district meeting; in a regional school district by vote of the regional district school committee; in a veterans' services district by vote of the district board; in a welfare district by vote of the district welfare committee; in a health district established under section twenty-seven A of chapter one hundred and eleven by vote of the joint committee; and in a town either by vote of the town or by a majority of affirmative votes cast in answer to the following question which shall be printed upon the official ballot to be used at an election in said town:--"Shall the town, in addition to the payment of fifty per cent of a premium for contributory group life and health insurance for employees in the service of the town and their dependents, pay a subsidiary

¹ Such regulations also require that Municipal Employers must "shall inform the Commission by May 1st of each year of any change in eligibility of elected officials. Notification of the local option is binding on the Municipal Employer for the fiscal year starting that July 1". It is not known whether the District timely notified the GIC of the attempted eligibility change. Nevertheless, this would be one more potential basis for why the intended consequence of the vote at the Annual Meeting is unlawful.

or additional rate?" Section seven shall not apply in any governmental unit which accepts the provisions of this section.

III. Legal Analysis and Conclusion

The vote to appropriate \$0 for Prudential Committee health insurance is unlawful in violation of MGL Ch 32B, specifically violating MGL Ch. 32(B), Sections 2 and 7(A). Current District Policy which was voted by and put into effect in 2019 provides that current Prudential Committee member, Bruce Perron and current Board of Water Commissioner, William Schenker are deemed eligible employees for purposes of MGL CH. 32B health insurance benefits and that they are entitled to receive 75% contributions. MGL CH. 32B allows Districts, at their local option, to include such employees who work less than 20 hours a week in the definition of employee.

MGL Ch.32B bars the District from contributing less than 50% of a health insurance premium for all employees deemed to be eligible employees. Moreover, MGL Ch. 32B, Section 7A allows Districts to opt into providing more than 50%. For Districts that do provide for more than 50% contributions for eligible employees, like South Hadley Fire District No. 1 which contributes 75%, they are legally barred from requiring "different subsidiary or additional rates to any group or class within that unit." Therefore, in order to comply with the MGL Ch.32B all eligible employees, including the grandfathered elected officials, must receive 75% contributions toward the benefit programs in which they elect to and are eligible to participate.

There is no lawful basis to discriminate as to rates for any eligible employees, as has been proposed by the vote at the Annual Meeting. Additionally, the only way to exclude one grandfathered elected official would be to exclude all such grandfathered officials. The voted appropriation, therefore, also arbitrarily grandfathers one elected official while the excluding the other without sufficient basis. Moreover, if properly excluded, the elected official would have no coverage unless they paid for COBRA. There is no legal basis for them to be excluded from 75% contribution but to also be eligible to participate if they contribute all of the premium. It is an all or nothing proposition.

For all of these separate reasons, there is no lawful basis to provide for an eligible employee to be required to contribute 100% of the premiums, regardless of whether that eligible employee is eligible due to hours worked or as an elected official pursuant to local option.

The District must contribute 75% of the premium for the grandfathered Prudential Committee member to comply with its legal obligations. The District must also adjust its budget accordingly to satisfy these legal obligations. I am happy to assist with whatever questions that you may have with legal compliance.

Best regards,

SULLIVAN, HAYES & QUINN, LLC

/s/ Brendan L. Hughes

Brendan L. Hughes, Esq.

BLH:ljb