

The Public Recorder



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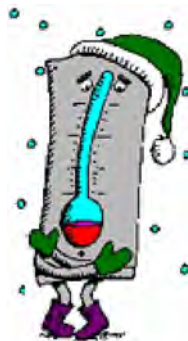
Website: www.newenglandclerks.org

Report of the President, Sally M. Hayden

Budget season is upon us again and the outlook for fiscal 2010 looks bleak. The deterioration of the economy has affected municipalities "new growth". Municipalities are waiting to here if the state will cut local aid. The Deputy Commissioner of the Division for Local Services has announced that motor vehicle excise receipts are expected to drop. The average age of vehicles reached 10 years in fiscal 2008. Finance Committees through out the Commonwealth will no doubt be requesting budget reductions. A positive note in budgets this fiscal year, fuel costs have not escalated as high as originally projected.

At the time the AutoMark was introduced to Town Clerks, the cost of the programming of this machine became an issue. We were told that the state would fund the programming for the AutoMark for state and municipal elections for two years. The two years have past. Now municipalities are responsible for the cost of this programming. A figure of \$1000 per precinct was the suggested cost. Some municipalities have paid less. At our conference in Sturbridge, Bridget Simmons, from the office of the Secretary of State, will be part of the panel on Wednesday afternoon. Ms. Simmons will demonstrate how to complete the paperwork for the AutoMark and answer any questions.

In 2007 the MTCA wrote to the State Auditor requesting determination if the costs associated with the AutoMark came under the Local Mandate Law, G.L. c.29, s.27c. The auditor's response is included in this issue of the Public Recorder. The Auditor concluded that MTCA did not identify a state law, regulation, or agency rule that can be reviewed under the Local Mandate Law.





A. JOSEPH DeNUCCI
AUDITOR

The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

ONE ASHBURTON PLACE, ROOM 1819
BOSTON, MASSACHUSETTS 02108

TEL: 617-727-6200

July 25, 2008

Ms. Sally Hayden, President
Massachusetts Town Clerks' Association
Town Hall
250 Main Street
Rutland, Massachusetts 01543

RE: Cost of Programming Automark Voting Equipment for Local Elections

Dear Ms. Hayden:

Auditor DeNucci asked that I respond to your request, on behalf of the Massachusetts Town Clerks' Association, relative to the Local Mandate Law, G. L. c. 29, s. 27C, and costs associated with programming Automark voter assist terminals for local elections. After in-depth consideration of the circumstances surrounding your inquiry, the Division of Local Mandates (DLM) concludes that you have not identified a state law, regulation, or agency rule that can be reviewed under the Local Mandate Law. The following is an explanation and summary of the factors that lead to this conclusion.

As of January 1, 2006, Title III of the federal Help America Vote Act (HAVA) imposes various new requirements for conducting federal elections. 42 U.S.C. 15301 – 15545. Relevant to the question at issue, section 301(a)(3)(A) of HAVA requires that voting equipment used for the election of any federal officer shall be "accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters." The law goes on to provide that states may achieve compliance by using "at least one direct read electronic voting system [or similar equipment] at each polling place." Section 301(a)(3)(B). Sources at the United States Department of Justice, Civil Rights Division clarify that the HAVA standards are limited to federal elections, and do not apply at non federal elections.

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The Secretary of the Commonwealth has paid for the cost of obtaining voting equipment to meet HAVA accessibility standards for each polling place in Massachusetts (the Automark voter assist terminals) through federal funds allocated under HAVA. Additionally, the state has paid for the cost of programming this equipment for state primaries and elections. In your letter, you note that the Secretary also paid these programming costs for annual municipal elections in 2007, and is committed to paying these local costs for 2008, but not for subsequent local elections. Depending upon the number of strictly local elections that might be conducted in a given year, information from the Secretary of State's Office indicates that the statewide cost impact on cities and towns could approximate \$1.7 million. Recognizing that programming costs for local elections are not mandated by HAVA, you ask whether these costs are state mandates subject to the state funding standards of the Local Mandate Law.

After considerable research into this matter (including inquiries at the Office of the Secretary of State and the Massachusetts Office on Disability) the Division of Local Mandates (DLM) has been unable to document that use of the Automark voter assist terminals or any other direct read voting system is, in fact, required at local elections where no candidate for federal office appears on the ballot. As you know, the Local Mandate Law provides that post-1980 laws and regulations that impose additional costs upon cities and towns must either be fully funded by the Commonwealth, or subject to local acceptance. A community aggrieved by a state law, rule, or regulation adopted contrary to this standard may petition superior court for an exemption from compliance. G. L. c. 29, s. 27C (a), (c), and (e). In the case at hand, there is apparently no state law, regulation, or agency rule that requires use of this equipment at local elections, so there is nothing from which a court could grant a compliance exemption. Accordingly, there is no matter to warrant review under the Local Mandate Law.

In discussions with the Massachusetts Office on Disability, however, we learned that it is their position that the Automark voter assist terminals must be used at local elections to satisfy the protections guaranteed under Article 114 of the Amendments to the State Constitution, and Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. s. 12131, et seq. Article 114 provides:

No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the commonwealth.

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The state courts have not directly addressed the question of whether Automark or similar technology would be necessary under Article 114. Nonetheless, in view of the fact that cities and towns are in possession of machines that enable disabled persons to vote independently, staff at the Office on Disability believe that a failure to program and use the machines at local elections would be tantamount to excluding these individuals from election activities based solely upon their disabilities – in contravention of Article 114. It is DLM's opinion that the standards of the Local Mandate Law would not be applied to exempt cities and towns from complying with actions required of local governments by the State Constitution.

Similarly, the courts have not directly addressed this question in relation to the federal requirements under the ADA, a body of law that provides protections for disabled individuals independently of the federal HAVA guarantees. Staff at the Office on Disability report that their contacts at the Department of Justice Disability Rights Section share the opinion that various provisions of the ADA require that Automark or a similar direct recording electronic voting system must be used at all elections, including local elections. As you know, the state Local Mandate Law would not be applied to exempt cities and towns from complying with a federal mandate.

In summary, there appears to be no state law, regulation, or agency rule that requires use of this type of equipment at local elections. Accordingly, there is no state mandate subject to review under the Local Mandate Law. Nonetheless, the staff at the Massachusetts Office on Disability holds the opinion that the Automark voter assist terminals, or similar technology, must be used at all elections pursuant to the accessibility standards of Article 114, and the ADA.

We recognize the significant cost impact on cities and towns to make these machines available at local elections and are available to discuss the funding issue. We thank you for the opportunity to review this matter, and welcome further questions or comments you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Parsons". The signature is stylized and written over the word "Sincerely,".

John W. Parsons, Esq.
Deputy Auditor

cc: Michelle Tassinari, Esq., Director, Secretary of State's Elections Division
Myra Berloff, Director, Massachusetts Office on Disability

MTCA LOBBYIST REPORT – JANUARY 2009
By Stephen Roche

A NEW SESSION UNDERWAY

Hello & Happy New Year to all!

The end of a legislative session is a sight to behold. Legislators rush and rush to squeeze in action on dozens of bills before the clock strikes Midnight on the last day of the session. For departing members, it's their last shot at leaving a legacy behind.

The 2007-2008 session officially ended at Midnight on January 6th and I worked through the holidays on a variety tasks – from recruiting legislative sponsors for MTCA bills to battling House action of dog control legislation – more on this below.

There were literally dozens of bills going back and forth between the House and Senate during the final week or so of the session; to be honest, most of them were for a specific city or town. It gets a bit stressful trying to keep up on what's going on – you feel like you're on a trend mill running faster & faster until someone hits the red STOP BUTTON and you come to a grinding stop – session's over!

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The new session started with the usual pomp & circumstance on the morning of January 7th. The Speaker of the House was re-elected but not without controversy – eight Democratic members did not vote for Sal DiMasi – when the roll was called, they voted “Present.” The election of House Minority Leader was also contested – seven of sixteen House Republicans did not vote for Brad Jones for Minority Leader.

Things in the State Senate were much less exciting with Senate President Therese Murray and Minority Leader Richard Tisei re-elected without contest or controversy.

It will be a while until the House and Senate Leaders name their committee chairs and other leadership positions. Once that happens, the joint (11 House members, 5 Senate members) committees will schedule hearings on matters before them. We expect that hearings will start in earnest in March.

BUDGET WOES WORSEN

Of course, all eyes on Beacon Hill are on our state budget these days. The Governor’s recent announcement that another \$1 billion in cuts is necessary during this fiscal year has caused great angst at the State House. Local Aid will take a hit in January as will many, many other state funded programs.

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The Governor's FY2010 budget will be out by the end of the month and more cuts are expected to be proposed for the next fiscal year.

As I reported last month, we are presently awaiting a report from a special legislative commission charged with recommending ways to help cities and towns during these difficult times. The commission has yet to release its report but some of its recommendations will no doubt be considered for inclusion in the Governor's FY2010 budget plan. I will keep you posted.

SENATE 2624 – DOG CONTROL

As you know, we were in yet another last minute battle trying to stop legislation that made no sense. We prevailed – or should I say, common sense prevailed – and Senate 2624, previously Senate 2450, died with the end of the last session.

The thing that bothered me most about the last minute lobbying push by the bill's advocates that the town clerks were "OK" with the bill, that MTCA had signed off on the proposal. I received some heated messages from a few strong supporters, including the lead sponsor of the legislation and the lobbyist for the MSPCA.

For the record, no one associated with the MTCA ever signed off on the surcharges in the proposal. In fact, MTCA Legislative Committee member Patrick Ward, Brookline Town Clerk & an all-around cool guy, met over 2 years ago with the advocates when the bill was being drafted and told them then the surcharges would not fly. They decided to insert the surcharges anyway.

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As further evidence of the MTCA's opposition to the bill with the surcharges, we gave them written testimony prepared by Pat that outlined our objections to the surcharges – we submitted these comments in September 2007 and again in July 2008.

Again, no idea where folks got the sense that the MTCA had signed off on this proposal.

So there we were, heading into Christmas and New Year's, with a full-court press on to have the House pass the bill after the Senate approved it on December 18th. We were able to recruit several House members to hold the line on Senate 2624 until the session ended. I was also in regular contact with the MMA to ensure that they backed our position.

We heard from the advocates on several occasions and offered to remove our "hold" on the bill if they deleted the two surcharge sections – that way they would have the other 113 sections become law.

Key House members who took a lead in assisting us in this battle included Representatives Tom Calter, Bob DeLeo, Vinny deMacedo, and Lida Harkins

Thanks also to all of you who made calls or sent emails to your state representatives asking them to hold the line.

MTCA'S 2009-2010 LEGISLATIVE AGENDA

With respect to filing MTCA bills for the 2009-2010 session, we have Lead Sponsors for all the bills and continue to recruit co-sponsors. As previously noted in the last newsletter, bills for the new session are to be filed by 5 PM on January 14th. It will be a while before we get actual bill numbers to share with you.

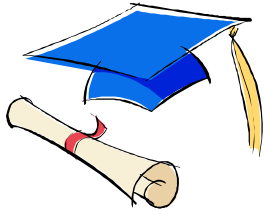
In closing, I know that many of you are already dealing with budget shortfalls in your communities. Good luck and hang in there.

MTCA CONFERENCE SCHEDULES 2009

MTCA WINTER CONFERENCE
JANUARY 28, 29 & 30, 2009
STURBRIDGE HOST HOTEL
STURBRIDGE, MA

MTCA SUMMER CONFERENCE
JUNE 10, 11, & 12, 2009
SEA CREST
FALMOUTH, MA

IIMC NE CLERK'S INSTITUTE & ACADEMY
JULY 18 – JULY 24, 2009
PLYMOUTH STATE UNIVERSITY
PLYMOUTH, NH



ATTENTION! ATTENTION! ATTENTION!
Mark your calendars!
By Tedi Eaton

Plymouth State University in the beautiful lakes region of New Hampshire will be the new home and host of the 2009 New England Municipal Clerk Institute and Academy from Saturday, July 18 – Friday, July 24, 2009. It promises to be a new and exciting year!

Look for the New England Municipal Clerk Institute and Academy scholarship criteria and application in the February issue of The Public Recorder. You will need to fill out the application and include a letter from either your Finance Director or Board of Selectmen that states that you have been denied funds from your municipality. Preference is given to first-time students, but all students have a chance for a scholarship. The state associations, the New England Association of City and Town Clerks and the New England Municipal Clerks Institute all provide money for scholarship to go to the Institute. The deadline for scholarship applications is April 22, 2009 ~ with no exceptions!

All applications will be reviewed by the MTCA Scholarship Committee and the recipients will be announced at the June Conference. Members of the MTCA Scholarship Committee are Theodora K. (Tedi) Eaton, Needham; Marlene B. Chused, Sharon; and Sandra J. Burgess, Amherst.

So, mark you calendars for the 2009 New England Municipal Clerk Institute and Academy from July 18 – 24, 2009 and look for the scholarship application in the February issue of The Public Recorder! And, Good Luck!

JANUARY 2009 – FEBRUARY 2009

Thursday	January 1	New Year's Day
Monday	January 19	Martin Luther King Day
Thursday	February 12	Lincoln's Birthday
Saturday	February 14	Valentine's Day
Monday	February 16	Presidents' Day
Sunday	February 22	Washington's Birthday

News from the Registry of Vital Records & Statistics

Loss of Positions

It is with deep regret that our Director of Registration position held by Kerry Castrucci, and our in-house amendments specialist position held by Irene Chu, have been eliminated due to recent state reductions in workforce. RVRS has also lost three other positions in other areas. We are very happy to report, however, that Kerry and Irene have already found new positions elsewhere at the Department of Public Health. While RVRS is considering ways to reallocate jobs and services, we have temporarily reassigned these portions of the workload until further notice:

- Calls that would normally be directed to Kerry should be directed to June Deloney, Registration Unit Supervisor, at (617) 740-2665, june.deloney@state.ma.us, or Karin Barrett, Assistant State Registrar, at (617) 740-2621, karin.barrett@state.ma.us.
- Calls that would normally be directed to Irene regarding in-house marriage and death amendments may be directed to Crystal Steward, Paralegal, (617) 740-2631, crystal.steward@state.ma.us or Denise O’Gara, Paralegal, In-House Amendments Supervisor, (617) 740-2679, denise.ogara@state.ma.us. Note that Ms. Steward is part-time and available only on Mondays, Wednesdays, and Fridays.
- The training sessions to be held at the MTCA/MCCA Sturbridge conference will be conducted by June Deloney and Bob McMahan. Karin Barrett will also attend for questions and answers.

Clerks may also be affected by an extended leave of absence by Mary Risser, our City/Town Clerk amendments specialist. For approximately eight weeks beginning on January 29th, the following personnel will be available to take calls and emails regarding amendments done in your offices:

- Review of birth and marriage amendments: June Deloney, Crystal Steward, or Denise O’Gara (listed above).
- Review of death amendments will continue to be handled by: Ellen M. Butt, Administrative Coordinator, (617) 740-2612, ellen.m.butt@state.ma.us.

VIP

The Vitals Information Processing system (VIP) project, also known as eVITALS, has taken a step forward. On December 30, 2008, an open solicitation for bids was posted on the state Comm-PASS system for the development and implementation of a comprehensive vital records and statistics system that will be built in phases. We will again be seeking interested town and city clerks to participate in this project. To view the solicitation:

1. Go to <http://www.comm-pass.com>
2. Select the "Search for Solicitations" link
3. Enter the Document Number 906612 in the Document Number field.
4. At the top of the page click on the link that says: "There are 1 Solicitation(s) that match your search criteria."

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LEGISLATIVE COMMITTEE by Larry Pizer, Chairman

As Chair of the Legislative Committee, let me add my thanks to the many clerks who contacted their representatives concerning the animal control bill that had been making its way through the legislature. The good news is that our efforts worked out because of years of planning. We cultivate legislators who appreciate the work that we do so that when we need their votes, they listen to our arguments. We might never know the final piece that worked in our favor, but the barrage of communications to the Chair of the House Ways and Means Committee from his colleagues as well as letters from his constituents and friends must have been important.

Patrick Ward from Brookline has been the lead in our efforts to work with the Massachusetts Society for the Prevention of Cruelty to Animals on the bill. He strongly and clearly expressed our opposition to a surcharge on dog licenses and our general approval of the rest of the bill. MSPCA chose to ignore his counsel and proceeded without changing the bill. We think that MSPCA misread state law on what we can charge for dog licenses in our towns, and they did not ask us to explain our position.

We have offered to meet with MSPCA in order to remove our opposition to what is otherwise a praiseworthy bill, one we hope will pass this year as long as there is no surcharge.

Laurence R. Pizer, Town Clerk
lpizer@townhall.plymouth.ma.us



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The cost is \$15.00 – so please fill out the form below – and make out a check for \$15.00 made payable to the MTCA and either turn this form and the check in to Linda Hutchenrider at the Sturbridge Conference; or put the form and check in an envelope and mail them to: Linda Hutchenrider, Town Clerk, 367 Main St., Hyannis, MA 02601. The deadline for orders is February 13th. So don't just carry it – Sling it – order your slingpack today!!!

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Newsletter of the MTCA

584 Main Street
Athol MA 01331



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The Public Recorder

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Phone: 978-249-4551

E-mail: townclerk@townofathol.org

Website: www.newenglandclerks.org