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September 18, 2012

Cheryl A. Mooney, Town Clerk
Town of Stoughton
10 Pearl Street
Stoughton, MA 02072

**RE: Stoughton Annual Town Meeting of May 7, 2012 – Case # 6435
Warrant Article # 75 (General)**

Dear Ms. Mooney:

Article 75 – As more fully explained below, we disapprove the amendments adopted under Article 75 because they conflict with G.L.c. 30A, § 20 (f), and unlawfully interfere with the authority of the executive branch (the Board of Selectmen) on a matter within the exclusive power of the executive branch. We recognize that the intent of the amendments adopted under Article 75 was to promote open and participatory political process in the Town, which is a laudable goal. However, because the amendments conflict with state law and unlawfully interfere with the executive branch, we are constrained to disapprove them.

The amendments adopted under Article 75 proposed to add a new Section 5.6, “Public Comment” to Chapter 5, Board of Selectmen, of the Town’s general by-laws. The new Section 5.6 would have required:

Regular meetings of the Board of Selectmen shall provide for a 15 minute period of public comment, provided however, that the Board may promulgate rules that regulate such period of public comment as deemed appropriate and do not negate the intent of this section.

We disapprove and delete the amendments adopted under Article 75 (as shown in underlined above) because they conflict with G.L. c. 30A, § 20 (f) and the Board of Selectmen’s exclusive authority.

General Laws Chapter 30A, Section 20 (f) applies to all meetings of a public body, including open meetings of the Board of Selectmen, and establishes the discretion of the Board chairperson to allow public comment at open meetings, as follows:

(f) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body.¹

The amendments adopted under Article 75 are in conflict with G.L.c. 30A, § 20 (f) because they remove the discretion from the presiding officer (the chair of the Board of Selectmen) whether or not to allow public comment, and instead require the Board to allow a 15 minute period of public comment.

Moreover, the amendments adopted under Article 75 are an invalid directive from the legislative branch (Town Meeting) to the executive branch (the Board of Selectmen) on a matter within the exclusive authority of the executive branch: the discretion of the Board to set their own meeting agenda in order to carry out their executive authority and their numerous statutory duties. Town Meeting serves as “the legislative body for the town.” Conroy v. Conservation Commission of Lexington, 73 Mass.App.Ct. 552, 558 (2009). As such, Town Meeting is “vested the traditional powers of the legislative branch of any level of government, i.e. the power to make laws (by-laws) and the power of the purse.” Wright v. Town of Bellingham, 2007 WL 1884657 (Mass.LandCt.), quoting *Town Meeting Time*, 2d Ed. 1984. However, there are restrictions placed on the legislative power of Town Meeting. A legislative body cannot interfere with the executive branch on a matter which is in the exclusive authority of the executive branch. See Anderson v. Board of Selectmen of Wrentham, 406 Mass. 508 (1990) (Selectmen not bound by Town Meeting vote purporting to establish the Town’s rate of contribution for group insurance benefits); Russell v. Canton, 361 Mass. 727 (1972) (Town Meeting could authorize the Board of Selectmen to take land by eminent domain, but could not direct how much land was to be taken); Breault v. Auburn, 303 Mass. 424 (1939) (Town Meeting vote directing board of health to hire an employee was ineffective because hiring power was solely conferred on board); Lead Lined Iron Pipe v. Wakefield, 223 Mass. 485 (1916) (Town Meeting vote directing the board of selectmen to hire an engineer was void). The Board of Selectmen has numerous statutory duties which they are required to fulfill and often must work within prescribed time limits. By requiring the Board of Selectmen to devote a certain amount of time at each Board meeting for public comment, Town Meeting has potentially limited the Board’s ability to carry out these statutory duties. Massachusetts courts have long recognized that “when a board of selectmen is acting in furtherance of a statutory duty, the town meeting may not command or control the board in the exercise of that duty.” Anderson v. Board of Selectmen of Wrentham, 406 Mass. 508, 512 (1990).

Nothing in this decision is intended to limit the Board of Selectmen in exercising their discretion to allow for a period of public comment at public meetings - and we are informed by Town Counsel that the Board is currently doing so. Moreover, nothing in this decision affects the obligation of the Board of Selectmen and all other town boards to comply with the provisions of the Open Meeting Law, G.L. c. 30A, §§ 18-25. We suggest that the Town confer with Town Counsel to ensure the meetings of all Town boards are in compliance with the Open Meeting Law.

¹ The requirements of Section 20 (f) were previously codified, in substantially the same form, at G.L. c. 39, § 23C

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. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MARTHA COAKLEY
ATTORNEY GENERAL

Margaret J. Hurley

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cc: Town Counsel Brian Riley (via electronic mail)



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Cheryl A. Mooney
Town Clerk

ANNUAL TOWN MEETING
June 13, 2012

ARTICLE 75 (ID 71) Bylaw Change – Add Section 5.6 to Chapter 5 Board of Selectmen Bylaw

On motion by Roberta Camacho, Precinct 4, it was unanimously voted to amend the Code of the Town of Stoughton by adding the following new section to PART I ADMINISTRATIVE LEGISLATION/Chapter 5, BOARD OF SELECTMEN; or to take any other action relative thereto.

§ 5-6. Public Comment

Regular meetings of the Board of Selectmen shall provide for a 15 minute period of public comment, provided however, that the Board may promulgate rules that regulate such period of public comment as deemed appropriate and do not negate the intent of this section.

Complete text of Chapter 5, Sections 1-5 included for reference and is to be included with this article in the printed warrant.

Chapter 5, BOARD OF SELECTMEN

[HISTORY: Adopted by the Annual Town Meeting of the Town of Stoughton 2-6-1939 as Art. II of the 1939 Bylaws, approved 4-3-1939 (Ch. 16 of the 1983 Code). Amendments noted where applicable.]

CODE OF THE TOWN OF STOUGHTON MASSACHUSETTS, v7 Updated 10-01-2011 / PART I ADMINISTRATIVE LEGISLATION / Chapter 5, BOARD OF SELECTMEN / § 5-1. Authority to institute, prosecute and settle claims and suits. [Amended 4-30-1984 ATM, Art. 43]

§ 5-1. Authority to institute, prosecute and settle claims and suits. [Amended 4-30-1984 ATM, Art. 43]

The Selectmen have full authority, as agents of the Town, to institute and prosecute suits in the name of the Town and to appear and defend suits brought against it, unless it is otherwise specially ordered by a vote of the Town. They may, with the advice of counsel, settle, by compromise, suits or claims.

CODE OF THE TOWN OF STOUGHTON MASSACHUSETTS, v7 Updated 10-01-2011 / PART I ADMINISTRATIVE LEGISLATION / Chapter 5, BOARD OF SELECTMEN / § 5-2. Execution of deeds and other instruments.

§ 5-2. Execution of deeds and other instruments.

Whenever it shall be necessary to execute any deed or any other instrument required to carry into effect any vote of the Town, the same shall be executed by the Selectmen, or a majority of them, in the name and behalf of the Town unless the Town shall otherwise vote in any special case.

**CODE OF THE TOWN OF STOUGHTON MASSACHUSETTS, v7 Updated 10-01-2011 / PART I
ADMINISTRATIVE LEGISLATION / Chapter 5, BOARD OF SELECTMEN / § 5-3.
Appointment of veterans. [Added 3-7-1955 ATM, Art. 23, approved 6-28-1955]**

§ 5-3. Appointment of veterans. [Added 3-7-1955 ATM, Art. 23, approved 6-28-1955]

The Town Manager shall appoint and the Board of Selectmen shall approve, upon application duly made, the appointment of veterans as defined in MGL c. 31, § 21, as amended, to any and all positions in the labor, official, or other service of the Town, provided that the veterans are duly qualified.

**CODE OF THE TOWN OF STOUGHTON MASSACHUSETTS, v7 Updated 10-01-2011 / PART I
ADMINISTRATIVE LEGISLATION / Chapter 5, BOARD OF SELECTMEN / § 5-4. Uniform
procurement practices. [Added 4-30-1990 ATM, Art. 2]**

§ 5-4. Uniform procurement practices. [Added 4-30-1990 ATM, Art. 2]

Unless otherwise provided by a vote of Town Meeting, the Board of Selectmen, School Committee or Chief Procurement Officer designated pursuant to MGL c. 30B is authorized to enter into any contract within his or her respective spheres of responsibility for the exercise of the Town's corporate powers, on such terms and conditions as are deemed appropriate.

Notwithstanding the foregoing, the Board of Selectmen, School Committee or Chief Procurement Officer shall not contract for any purpose, on any terms or under any conditions inconsistent with any applicable provisions of any general or special law.

**CODE OF THE TOWN OF STOUGHTON MASSACHUSETTS, v7 Updated 10-01-2011 / PART I
ADMINISTRATIVE LEGISLATION / Chapter 5, BOARD OF SELECTMEN / § 5-5.
Intergovernmental and regional contracts. [Added 5-5-1997 STM, Art. 21]**

§ 5-5. Intergovernmental and regional contracts. [Added 5-5-1997 STM, Art. 21]

The Board of Selectmen shall not enter into any binding obligations, commitments, contracts, memorandums of agreement, or formal expressions of interest which encumber the Town of Stoughton or any of its agencies, departments, boards, commission, agents, employees, or services with any regional vendors, authorities, commissions, agencies, or business enterprises for more than three years without having first received a majority vote of the Town meeting; said vote to be on an article which specifically addresses the period of the contract, financial obligation of the Town, manner of financing, managerial authority which will expend such funds, and any other relevant information which can affect the fiscal condition and liability of the Town.

A true copy. Attest:

Cheryl A. Mooney
Town Clerk