



June 2, 2008

Tony Troiano
Town of Hopkinton
Selectmen's Office
18 Main Street
Hopkinton, MA 01748

Re: *Supervision of the Department of Public Works*

Dear Tony:

You have inquired about the Town Manager's authority to supervise the Department of Public Works (DPW) and, in particular, the authority to appoint and remove the DPW Director.

Chapter 375 of the Acts of 1998 originally established the Department of Public Works. At that time, the Board of Selectmen had authority under the Act to supervise and control the DPW. See Ch. 375 of the Acts of 1998, §1. The Board also had authority to appoint and remove the Director of the DPW. *Id.* at §§4, 10, respectively.

Subsequently, the Town voted to adopt a new Charter at the May 2006 Town Election. The Charter explicitly states that the "Town Manager will appoint...[the] DPW director." See Charter Appendices. Section 4-2(a) of the Charter states that it is the Town Manager's duty to "supervise and be responsible for the efficient and coordinated administration of all Town functions under his control...including all officers appointed by him and their respective departments."

Pursuant to this provision, because the Appendices indicate that the Town Manager is responsible for appointing the DPW director, he is also responsible for supervising the DPW itself. Additionally, section 4-2(c) of the Charter states that the Town Manager's duties include: "To appoint and remove department heads, officers, and subordinates and employees for whom no other method of appointment or removal is provided in the Charter, the general laws or by law."

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M.G.L. c.43B, §20 states:

The provisions of any charter or charter amendment adopted pursuant to the provisions of this chapter shall be deemed consistent with the provisions of any law relating to the structure of city and town government.... Such provisions may provide:

(b) that any particular local officer or employee shall be appointed by any particular local officer.

The Appeals Court has interpreted this section to mean that, when the appointing authority differs under the Charter from what was provided in pre-existing law, the Charter provision governs. *See Town Council of Agawam v. Town Manager of Agawam*, 20 Mass. App. Ct. 100, 104-05 (1985).

Therefore, the Charter affects the 1998 Special Act in three ways: First, the Town Manager's authority to appoint the DPW Director under the Charter (which, pursuant to section 4-2(c), is subject to the "confirmation by the affirmative vote of the majority of the Board of Selectmen") clearly supersedes the Board of Selectmen's appointing power under the 1998 Special Act.

Second, *M.G.L. c.43B, §20* confirms the Town Manager's authority under section 4-2(a) of the Charter to supervise the DPW ("To supervise and be responsible for the efficient and coordinated administration of...all officers appointed by him and their respective departments." (emphasis added)). Although the power to supervise Town Departments is not enumerated in *M.G.L. c.43B, §20*, it appears that that list of such powers is not intended to be exhaustive. At any rate, the statutory language ("shall be deemed consistent") is not limited to only those powers explicitly enumerated, and the Charter provision therefore supersedes the Board of Selectmen's authority under section 1 of the 1998 Special Act (DPW "shall be under the supervision and control of the board of selectmen.").


Third, *M.G.L. c.43B, §20* also gives effect to the provision of section 4.2(c) of the Charter, which authorizes the Town Manager "to remove department heads...for whom no other method of...removal is provided in the Charter, the general laws or by bylaw." While section 10 of the 1998 Special Act authorizes the Board of Selectmen to remove the DPW Director "when in its judgment the public interest so requires," this authority is not stated in the General Laws, and was therefore superseded by section 4.2(c).

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The reorganization of the DPW under Chapter 262 of the Acts of 2006 does not affect the above analysis in any way. Section 1 of the 2006 Special Act does purport to place the DPW "under the supervision and control of a board of public works," in contradiction of section 4-2(a) of the Charter. However, the Appeal Court has ruled that such a fundamental change to the governing authority established by a Charter, without a valid amendment to that Charter, is not effective. *Town Council of Agawam, supra*, 20 Mass. App. Ct. at 106.

If you have any further questions please do not hesitate to contact me.

Sincerely,



J. Raymond Miyares

Board of Public Works