



Town of Winchester

Town Manager's Office
71 Mt. Vernon Street
Winchester, MA 01890
Phone: 781-721-7133
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townmanager@winchester.us

Board of Selectmen Meeting
Monday, August 8, 2016

BUSINESS

Docket Item G - 9: Town Counsel Selection

Supporting Documents:

G - 9:

- Memo from Town Manager
- March, 2013 Review Documents
 - 1.) Legal Services Comparison Chart
 - 2.) Town Charter – Article 3 Section 3-2 and Article 5 Section 5-6
 - 3.) Town Counsel Powers and Duties / Job Description
- Handbook for Massachusetts Selectmen excerpts

Action Required:



Town of Winchester

Richard C. Howard,
Town Manager

Board of Selectmen
71 Mt. Vernon Street
Winchester, MA 01890
Phone: 781-721-7133
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MEMORANDUM

August 4, 2016

TO: Board of Selectmen
FROM: Richard C. Howard, Town Manager
SUBJECT: Town Counsel Selection

Regarding the above, I am circulating some information compiled in past efforts pertaining to hiring of Town Counsel.

Docket information from March 11, 2013 provides an in-depth survey that we had done at the time, together with Town Charter information pertaining to the position, and a job description developed at the time.

I have also enclosed some information from the Selectmen's Handbook pertaining to this process. Finally, I have attached suggested names for consideration on a search or advisory committee should the Board decide to establish such a committee.

RCH:pcm

attachments



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Board of Selectmen's Meeting
Monday, March 11, 2013

BUSINESS

Docket Item G – 1:

Town Counsel Position Review Discussion

Supporting Documents:

- Legal Services Comparison Chart
- **Town Charter** – Article 3 Section 3-2 and Article 5 Section 5-6
- Town Counsel Powers and Duties / Job Description

Legal Services Survey
conducted by the Board of Selectmen

Towns	Population	Legal Budget \$ (Municipal)	Does This include all Special Counsel?	Outside / Inside Counsel	If Outside, Name of Firm	Hourly Rate	Does Counsel Report to BOS or ME / Administrator	Other Special Counsel (please list and identify specialty)	Hourly Rate	Legal Budget \$ (School)	What legal areas are included in the School Budget? (e.g., collective bargaining)
Acton	21,650	\$ 720,000	Yes	Outside	Anderson & Kreiger	Varies by Attorney \$150.00- \$275.00	Town Manager			Contact School	
Andover	33,000	\$ 376,500	Yes	Outside	Urbels, Fieldsteel, LLP	\$170.00	Town Manager	Labour Cable/Electrom Environmental	195.00 \$210.00 \$175.00	\$299,000	All, including collective Bargaining
Arlington	42,000	\$ 300,959	No, Additional \$135,002	Inside	N/A		Town Manager	Deutsch Williams & Urbels & Fieldsteel	Prefer not to give out info - both are reasonable	\$370,943	
Belmont	26,000	\$ 235,000	Yes	Outside	Anderson & Kreiger	\$150.00	Town Administrator	Morgan Brown & Joy (Labour Collective Bargaining) Morrissey, Hawkins & Lynch (Litigation)	\$150.00 \$150.00	\$ 115,000	Collective Bargaining
Concord		\$ 225,000	Yes	Outside	Anderson & Kreiger	\$150.00- \$295.00	Town Manager (by Charter)	Mridul Orconell (Labour Matter) There have been each appointments from time to time - only by Town Manager and only when Town Counsel firm had conflict or did not have a specialty expertise		\$ 50,000	Concord Public (K-8) and Concord-Charle (HS) has a Joint Superintendency CDS-CDSO Selects its own counsel
Lexington	32,000	\$ 400,000	Above is for general services only. See Comments	Outside	Anderson & Kreiger	\$275.00- \$295.00	Town Manager but appointed by BOS	Labour: Collins, Loughran	\$220.00	\$ 222,360	Collective Bargaining, Special Ed, other Educational Matters
Melrose		\$ 550,780	Yes				Board of Aldermen			Waiting for School's reply	
Needham	28,886	\$ 300,039	No, This Town's legal budget includes all Municipal legal services, except land court actions related to tax title work	See Attached e-Mail	Tobin & Grunbaum (Town)	\$115 to \$220	BOS	Stoneham Chandler & Miller (School SPED) Morgan Brown & Joy (School Labor) There are many different special counsel hired during any year the council is hired for a special expertise needed for a case	\$175.00 \$175.00 Rates Fluctuate	\$ 125,321	The School Dept. hires and pays for legal services related to its labor and education services (e.g., SPED). The School Dept. relies on Town Counsel for business related expertise (i.e., contracting)
Reading	24,747	\$ 67,000	All Inclusive		Brackett & Lucas	\$145.00	Appointed by the BOS Town Manager is responsible for managing legal services and acts as "gatekeeper"			\$ 45,250	
Stoneham	21,437	\$ 112,615	No	Both	Feeley & Brown, PC	\$170.00	BOS			\$ 30,000	Personnel Issues, Negotiations, Special Legal Issues
Watertown	33,120	\$ 210,000	Yes	Outside	Kopelman & Pidge	\$175.00	Town Manager	For Schools: Morgan, Brown & Joy Lang & DiPietro	\$200.00 \$215.00	\$79,000	Collective Bargaining Personnel, other Items SPED
Wellesley	27,982	\$ 272,360 Includes Schools Legal Budget	Yes	Outside	Grinde & Robinson (Town Counsel) Morgan, Brown & Joy (Labor Counsel)	\$145.00 \$135.00	BOS & Executive Director	Anthony Arbibano (Legal Counsel for Assessor) Murphy, Hesse, Teomey & Lehanspeter	\$235.00 \$230.00	See Municipal	Collective Bargaining
Winchester	22,629	\$345,000	Yes	Outside	Wade Welch	\$185.00	BOS	Blatman, Bohrowski & Mead Kearney, Donovan & McDee Morgan Brown & Joy/ Judson Lewis, Murphy Hesse Teomey & Lehane	\$250.00 \$2,000/Mo \$250.00 \$265.00 \$160.00	\$50,000	Collective Bargaining

Lexington: Does Legal Budget include all Special Counsel? Labor Counsel is budgeted at \$110,000. In addition, legal services related to construction contracts and CRA projects are charged directly to the appropriation for the project and varies widely year to year depending on the number of on-going projects.

Needham: The Town has a hybrid approach with legal services. A single individual is appointed as Town Counsel and is paid a salary which is inclusive of basic services (e.g., attend meetings of the Board of Selectmen and Town Meeting, provide general guidance to various boards and town officials on topics such as open meeting law, weekly review of contracts, etc), individual cases and special services are tracked and handled on a billable basis. Any special counsel utilized must be approved by Town Counsel.

Legal Services Survey
conducted by the Board of Selectmen

TOWNS	Other (Benefits e.g. Health Insurance, pension, overhead, etc.)	If Inside Counsel: Please List Positions	Does Budget Include Benefits/Overhead costs	Does your Town have a Personnel Dept.	If not does Town Counsel assist in Personnel Matters	Does your Town have a Purchasing Dept.	If Not, Does Town Counsel assist in Purchasing Matters/Contract Administration	Is Town Counsel Involved with Capital Projects including MSBA School Projects	Contact	Phone Number
Acton			None	Yes, HR		No		Only if a legal issue arises with project	Steve Barrett, CPA	978-929-6524
Andover	N/A	N/A	N/A	Yes	No, Provided	Yes	Yes	Yes	Steven Suenzo, Assistant Town Manager	978-533-8230
Arlington		Employee - Town Counsel; Special Town Counsel for Workers Compensation and Benefits	Yes	Yes	Yes	Yes	Yes	Yes	Juliana Rice, Town Counsel	781-316-3150
Belmont	N/A	N/A	No	Yes		No		No	Kellie Gilbert, Assistant Town Administrator	617-593-2514
Concord	N/A	N/A	N/A	Yes	Separate Labor Counsel also appointed by Town Manager	No - Handled as part of Finance Administration	Yes - Limited	No - Building Committee selected project counsel in each instance	Anthony Luglio, Finance Director	978-318-3090
Lexington	None	N/A	N/A	Yes	N/A	Yes	N/A	Yes	Carl Valente, TM	781-862-0550 x296
Melrose	9,562,413			Yes		No	Auditors Office	Yes	Kelly Cagavin	781-979-4194
Needham	None	Town Counsel (part-time not benefit eligible)	Only benefits which are not included in the legal budget is the Town's share of Medicare and Social Security taxes	Yes		No	No Purchasing Dept; but policies & procedures are overseen by the Finance Dept.	The town's by-laws require Town Council approval of all contracts as to form. Contracts subject to MG1308 require Town Council approval when more than \$25K	David Davison	781-455-7500 x220
Reading	None			Yes	Occasionally	No	Occasionally	Seldom	Peter Heckenheller, Town Manager	781-946-9044
Stoneham	Health Ins. & Pension for Town Counsel	Town Counsel	No	Yes		No	Yes	No	Elin Sinclair	781-276-2680
Watertown		N/A	N/A	Yes		Yes		Yes	Michael Driscoll	617-972-6455
Wellesley			No	Yes		Yes		Yes	Rachel Lopes	781-431-1019 x2212
Winchester	Town Counsel is in the Town's Group Plan; he pays 100%	N/A	No	No	Yes	No	Yes	Yes	Mark Twingood	781-721-7133

additional powers and duties as may be authorized by the charter, by by-law or by other town meeting vote. The board of selectmen shall cause the laws and orders for the government of the town to be enforced and shall cause a record of all its official acts to be kept. To aid the board in its official duties, the board of selectmen shall appoint a town manager, as provided in article 4.

(c) Appointing Powers - The board of selectmen shall appoint the town manager, town counsel,

town comptroller, registrars of voters (but not the town clerk) and other election officers; and members of all appointed multiple-member bodies for whom no other method of selection is provided by the charter or by by-law, except persons serving under other elected town officers and officials appointed by state officers.

(d) Licensing Authority - The board of selectmen shall be the license board of the town and shall have the power to issue licenses, to make all necessary rules and regulations regarding the issuance of such licenses and to attach such conditions and restrictions thereto as it deems to be in the public interest, and to enforce the laws relating to all businesses for which it issues licenses.

Section 3-3 School Committee

(a) Composition; Term of Office - There shall be a school committee consisting of five members elected for three-year terms, so arranged that as nearly an equal number of terms as possible shall expire each year.^{1 2}

(b) Powers and Duties - The school committee shall have all of the powers and duties school committees are given under the constitution and general laws of the Commonwealth and such additional powers and duties as may be authorized by the charter, by by-law or by other town meeting vote. The powers of the school committee shall include but need not be limited to the following:

(1) The school committee shall appoint a superintendent of the schools and all other officers and employees associated with the schools, fix their compensation and define their duties, make rules concerning their tenure of office, and discharge them.

(2) The school committee shall make all reasonable rules and regulations, consistent with law, for the administration and management of the public schools of the town.

Section 3-4 Board of Assessors

(a) Composition; Term of Office - There shall be a board of assessors consisting of three members elected for three-year terms, so arranged that one term shall expire each year.

(b) Powers and Duties - The board of assessors shall annually make a valuation of all property, both real and personal, within the town. It shall have all of the powers and duties given to boards of assessors under the constitution and general laws of the Commonwealth, and such additional powers and duties as may be authorized by the charter, by by-law or by other town meeting vote.

¹ Art 2 1978 Fall Town Meeting changed the number of members from five to six.

² Art 14 1985 Fall Town Meeting changed the number of members from six to five.

- (6) He shall be responsible for a continuous audit of all accounts and records of the town wherever located.
- (c) **Vacancy** - If the comptroller is unable to perform his duties because of disability or absence, or if the office is vacant because of resignation or death, the board of selectmen may appoint a temporary comptroller to hold such office and exercise the powers and perform the duties until the comptroller who was disabled or absent resumes his duties, or until another comptroller is duly appointed. Said temporary appointment shall be in writing, signed by a majority of the board of selectmen and filed in the office of the town clerk.
- (d) **Assistant Comptroller** - The comptroller with the approval of the majority of the board of selectmen may appoint, in writing, an assistant. Unless a temporary comptroller is appointed, the assistant may, in the absence of the comptroller, perform the duties of the comptroller and when performing such duties shall have the same powers and be subject to the same requirements and penalties as the comptroller.

Section 5-6

Town Counsel¹

- (a) **Appointment; Qualifications; Term of Office** - The board of selectmen each year shall appoint a town counsel and fix his compensation within the amount annually appropriated for that purpose. The person appointed and employed by the selectmen as town counsel shall be a member in good standing of the bar of the Supreme Judicial Court of Massachusetts and of all other courts before which he has been admitted to practice. Any special counsel employed by the selectmen shall be a member in good standing of the bar of all courts before which he has been admitted to practice.
- (b) **Powers and Duties** - In addition to those duties which the selectmen may request or authorize the town counsel to perform, he shall have the following powers and duties:
- (1) The town counsel shall examine and report to the town manager upon the title to any land to be acquired by the town or any town agency.
 - (2) The town counsel shall, when requested, counsel with respect to all contracts, bonds, deeds and other legal instruments to which the town is a party or in which any right or interest of the town is involved.
 - (3) The town counsel shall advise all town agencies regarding legal questions relating to their powers and duties.
 - (4) The town counsel, when requested by the board of selectmen, shall appear and conduct, or assist in the conduct of the prosecution, defense or compromise of any claims, actions and proceedings by, on behalf of, or against the town or any town agency.
 - (5) The town counsel, when requested by the board of selectmen, shall assist in the prosecution of any violation of the laws or regulations of the town.¹

* * * *

TOWN COUNSEL POWERS AND DUTIES

3-6-06

AT
TABLE

Winchester's Home Rule Charter defines Town Counsel's duties as those which the Selectmen may request or authorize. Listed below are the duties specified in the Charter, as well as those current regular duties established by the Selectmen. Following the list is a more detailed treatment of several activities, pointing up the risk-management nature of legal services.

Legal responsibilities:

- Examine and report upon the title to any land to be acquired by the Town or any Town agency,
- When requested, advise on all contracts, bonds, deeds, and other legal instruments to which the Town is a party or in which any right of interest of the Town is involved,
- Advise all Town agencies regarding legal questions relating to their powers and duties,
- Appear and conduct or assist in the conduct of the prosecution, defense or compromise of any claims, action and proceedings by, on behalf of, or against the Town or any Town agency,
- On request, assist in the prosecution of any violation of the laws or regulations of the Town,
- Write policies on insurance and indemnity,
- Act as purchasing agent

Legal Settlements: A relatively small component, this involves the settlement of claims against the Town that are of such a nature that on a cost-to-benefit basis, it simply makes more sense to settle these claims than to take them to court.

Insurance and Indemnity: Incidents on Town property (either School or Municipal) may have the potential to become larger issues under state or federal law or may pose a significant threat to public well-being if not handled properly from a legal perspective. In order to control some of these risks, Town Counsel, in conjunction with the Town Manager's office, the Comptroller and the Finance Committee, instituted liability insurance coverage for elected and appointed officials and employees. In addition to working with the Town Manager and the Superintendent of Schools, Town Counsel developed a policy with respect to requiring insurance coverage for vendors and indemnity agreements for volunteers performing services within the Town. To judge from activities in other municipalities, these initiatives have resulted in considerable risk reduction for the Town over the past 10 years. For example, during the period FY2000-FY2004, insurance counsel has resolved six lawsuits in which the Town was named a defendant, at no cost to the Town.

Purchasing Agent: While the Town Manager acts as the Town's chief procurement officer, there are often legal issues around larger acquisitions or property disposition which require legal involvement. Town Counsel reviews bid documents and makes sure they comply with requirements of State law. Counsel also advises on liability and ensures that insurance bonds are proper and appropriate for contract awards. Reviewing contract documents on capital projects prior to their execution can avert future disputes or disadvantages to the Town due to oversights. During the period FY1999 - FY2004, Town Counsel's involvement in the bidding and disposition process relating to the Woburn Loop and the bidding and construction process of the McCall, Lincoln, and Ambrose schools has proved to be cost effective. It is worth noting that since the advent of the Uniform Procurement Act in 1990, no procurement decision by the Town Manager's office has been successfully challenged.

Education Counsel: Unlike 95% of comparable communities, Winchester's Town Counsel provides legal services to the School Department, including contracts, procurement, retirement, health insurance, disciplinary cases, and occasional representation in litigation. Services for

Education over the past five years have accounted for between 10% and 20% of the legal budget annually.

Litigation: As stated above, the Charter requires Town Counsel to be involved in the prosecution by or defense of the Town for any claims, action, or proceedings by or against it. Town Counsel coordinates to ensure that the Town is adequately represented in any litigation in which the Town has an interest or to which the Town is a party. Such litigation has generally resulted in positive results for the Town. Upon occasion, Town officials are called to court as a result of appeals of litigation with respect to action in an official capacity. Such activities are legally indemnified and legal representation is provided either by Town Counsel or other counsel as is deemed appropriate by the Board of Selectmen. During the period July 1, 1999 to June 30, 2004, Town Counsel resolved 50 lawsuits, 8 administrative proceedings, and 73 other claims which had been noticed against the Town. The total amount paid on all claims was \$52,922.

Special Counsel: Special Counsel with specific expertise is often required to achieve the Town's overall objectives. For example, when an issue comes up involving special narrow questions of law (cutting-edge technology for example), it is more cost effective to hire a specialist. It may also be necessary to use special counsel if there are conflicting interests between various boards or commissions acting for the Town. It should be remembered that the Town of Winchester is not a monolithic entity, and the rules of the Massachusetts Supreme Judicial Court recognize the special role of municipal counsel in representing multiple municipal officials and entities due to public policy considerations.

In recent years, the Selectmen have authorized the use of the special counsel listed below. (In the future, other special counsel may be used.)

- Labor counsel. This counsel is used for negotiations or other labor matters.
- Environmental counsel. Environmental counsel is critical to flood mitigation because of the potential hazardous materials present in the banks and sediment. Before the Board of Selectmen or its staff may act, legal authority and legal changes may have to be enacted. A multitude of legal requirements of state, federal, and local laws and regulations regulating drinking water, sanitary sewer systems, clean waterways, wetlands protection, flood control, and prevention of hazardous waste contamination must be met.
- Telecommunications counsel. Telecommunications is an ever-developing and changing area requiring current expertise. Special Counsel Bill August assisted the Board of Selectmen in developing a policy on grant-of-location and assisted the Planning Board in writing a new section for the zoning by-law on telecommunications.
- Counsel to the Zoning Board of Appeals. In cases where there may be conflicting interests between the ZBA and one or more Town agencies such as the Zoning Enforcement Officer, the ZBA may use outside counsel.
- Bond counsel. This counsel reviews proposed Town Meeting bonding and warrant articles and prepares appropriate opinions for the underwriter, customarily a commercial bank.
- Utility counsel. During FY2005, John Shortsleeve of Bay State Consultants has assisted in the preparation of an underground utilities bylaw.

5.20 LEGAL SERVICES

With laws and regulations affecting municipal government in a constant state of flux, towns can't afford to function without the services of a lawyer. The importance of town counsel is more obvious now than ever as the legislature and the courts have cleared the way for lawsuits against municipalities. As a selectman, you need to consider carefully the potential legal consequences for your town before you embark on any course of action.

Massachusetts towns have made various provisions for legal assistance, ranging from creation of full-time legal departments to occasional consultation with a local attorney. In addition, towns are encountering with increasing frequency the need to engage the services of legal "specialists" for particular matters—labor counsel to negotiate collective bargaining agreements, a land use attorney to put together an industrial park, or a lawyer skilled in litigation to defend the town against a personal injury lawsuit.

Although the Massachusetts Supreme Judicial Court does not permit attorneys to hold themselves out as "specialists" in any particular area of law, lawyers, like most professionals, tend to concentrate their expertise in certain subjects. It is important that, at a minimum, your town has the services of a lawyer with a background in municipal law. If and when you need special counsel on a particular matter, and providing that funds have been appropriated, your town counsel should be able to help you find an attorney with the necessary skills.

5.21 ROLE OF THE TOWN COUNSEL

State law identifies certain purposes for which a town is authorized to use the services of counsel, but does not define the position of town counsel or how he or she is appointed. Unless provided otherwise by charter, however, it is usually the board of selectmen that is the appointing authority for the town counsel.

5.21.1 Statutory Duties

The town counsel has some specific responsibilities spelled out by state law, including:

- Representing the board of assessors or the selectmen acting as assessors, before the state Appellate Tax Board (MGL 41:26A);
- Defending the tax collector or treasurer in legal actions for damages (MGL 41:43A);
- Serving as legal adviser to the local retirement board, unless the board opts to retain its own counsel (MGL 32:20(47));
- Defending all civil actions against town employees for injury, loss of property, personal injury, or death caused by their negligence, or wrongful act or omission (MGL 258:6); and
- Issuing opinions on the conflict-of-interest law (MGL 268A:22).

5.21.2 Other Duties

In addition to carrying out statutory duties, the town counsel also serves as adviser to town officials and departments. He or she defends the town in all legal actions and prosecutes civil actions on behalf of the town. (The town counsel has no standing in criminal cases.) Counsel also usually prepares and approves legal documents, renders opinions on legal questions, and represents the town and its officials in court and before state agencies and legislative bodies.

The town counsel may also perform other duties, as provided by town charter, or as directed by the board of selectmen or professional administrator. These may include reviewing contracts; drafting agreements, bylaws, and warrant articles for town meeting; attending town meetings; and attending meetings of the board of selectmen and other town boards.

Ordinarily, the town counsel offers opinions to the town meeting and to the various boards and departments of the town. Town administration tends to run more smoothly if the selectmen regulate access to the town counsel by requiring other town officials and employees to seek prior approval before questions are referred to him or her. Some towns have adopted bylaws that require boards to seek approval from the board of selectmen before retaining separate counsel.

In many towns, the town counsel regularly attends selectmen's meetings and meetings of other boards. It is often helpful to have an attorney present to give at least a preliminary opinion on legal issues that arise during your discussions. Some towns meet without counsel, but make a list of legal questions to present to him or her afterwards or have their counsel "on call" during meetings, available by phone when needed. Advice of town counsel is critical if there is any question about compliance with the Open Meeting Law.

5.22 RELATIONS BETWEEN SELECTMEN AND TOWN COUNSEL

Your board's relationship with your town counsel should be a professional one. A qualified town counsel knows the limits of your authority, understands political realities, and can help you assess the risks of certain actions. In no case, however, does he or she make the final decision. While you need to be able to trust your counsel's judgment, you also must make sure you don't mistake a legal opinion for a policy directive. Recent court rulings have held that town counsels do not even have authority to settle or compromise claims against the town. Your town counsel can and should advise you, but it is up to you and your fellow board members, as elected officials, to decide town policy.

Although the board of selectmen is apt to use the town counsel more than most other boards, he or she is not "your" lawyer. The town counsel's primary function is to interpret the law and defend the interests of the town as a whole. To be effective and credible, town counsel must avoid taking sides both in disputes within the board and, under most circumstances, among town boards and departments.

Occasionally, two town boards, such as the planning board and the board of appeals, take opposing sides on an issue. When such a case results in court action, the town may be required to hire an additional lawyer to represent one of the parties in order to avoid a conflict of interest. In cases of this sort, it should be clear that the town counsel is representing the interest of only one town department.

5.23 OPTIONS FOR LEGAL REPRESENTATION

There are a number of ways in which towns can meet their legal needs. The most common approach is to appoint one person as town counsel and keep him or her on retainer or salary, often providing benefits and covering expenses. A variation is to retain counsel at established hourly rates, to be paid periodically as agreed. Many towns prefer a town counsel who understands the history, problems, peculiarities, and politics of their town.

An alternative to appointing one person as town counsel is to retain a law firm to handle the town's legal business. While sometimes offering a broader range of talents and skills, this approach can cost more and gives the town less control. In-house law departments should be established only after careful evaluation, since this approach frequently requires the town to pay for office space, clerical staff, library facilities, insurance, and supplies, in addition to salaries.

Town counsel usually serves at the pleasure of the selectmen, unless your charter or bylaws provide otherwise. In some towns, town counsel is appointed for limited terms, occasionally by written contract.

5.24 HIRING A TOWN COUNSEL

Before hiring a town counsel, make sure you know what you are seeking. Counsel should have a background in municipal law. How much time do you expect him or her to devote to the job? What types of work can he or she expect to do?

Lists of attorneys who are involved in public sector work are available from the New England Legal Foundation, the Massachusetts Bar Association, and the Massachusetts City Solicitors and Town Counsel Association. Openings may be advertised in the Massachusetts Municipal

Exhibit 5.2

Town Officials Appointed by Selectmen

Listed below are the town officials most commonly appointed by selectmen and the applicable state law. In most cases, the authority to appoint the official is specified in state law. Otherwise, town meeting must vote to authorize the selectmen to appoint these positions. This guideline should aid selectmen in appointing town officials.

Accountant (41:55)
 Airport commission (90:51E)
 Art commission (41:82)
 Assessors (41:21)
 Board of health (41:21)
 Board of registrars of voters (51:15)
 Building commissioner (143:3)
 Cemetery commissioners (41:21)
 Chief of the fire department (41:21)
 Chief of police (41:21)
 Constables (41:91A)
 Development and industrial commission (40:8A)
 Dog officer (140:151)
 Election officials (54:12)
 Executive secretary (41:23A)
 Fence viewers (49:1)
 Fire engineers (48:45)
 Firewards (48:1)
 Harbormaster and assistant harbormasters (102:19)
 Historical commission (40:8D)

Historic district study committee (40C:4)
 Housing authority members (121:26K)
 Insect pest control superintendent (132:13)
 Inspector of animals (129:15)
 Inspector of buildings (143:3)
 Inspector of health (41:102)
 Inspectors of lime (94:262)
 Inspector of wires (166:32)
 Inspectors and collectors of milk (94:33)
 Keeper of lockup (40:35)
 Manager of municipal lighting (164:56)
 Measurers of leather (95:10)
 Measurers of wood and bark (94:296)
 Police officers (41:96)
 Pound keeper and field drivers (49:22)
 Public weigher of fish (41:88)
 Purchasing agent (41:103)
 Recycling commission (40:8H)
 Special constables (90:29)
 Superintendent of shade tree management and pest control (132:9)
 Superintendent of streets (41:21)
 Superintendent of water and sewer department (41:21)
 Town counsel (40:5-15)
 Tree warden (41:106)
 Veteran's agent (115:3)
 Weighers, measurers or surveyors of goods and commodities (41:85)
 Weighers of coal (94:238)
 Weighers of hay (94:236)
 Weighers of vessels (102:6)
 Youth commission (40:8E)

Association's newsletter, *The Beacon*, or in *Massachusetts Lawyers Weekly*, a statewide weekly newspaper for attorneys.

Towns have different policies about requiring town counsel to be a resident. While there are certain advantages to having your town counsel easily accessible, it is also important that he or she keep out of, though be aware of, local politics. If your town is small or if its politics are particularly divisive, it may be helpful to hire an out-of-town lawyer or law firm to handle your legal business.

5.30 PERSONNEL MANAGEMENT

The goal of any personnel management system is to attract and maintain high-quality employees. This requires comprehensive and consistent practices. Your town, no matter how small, should have a written, regularly updated bylaw or set of rules or regulations that spell out the town's personnel policies for all full-time and part-time employees. Job descriptions for each permanent appointed position should also be in writing and there should be a formal salary structure. In towns where some or all of the employees are organized, the terms of labor contracts should be coordinated with personnel policies for non-union employees. (See also Section 5.40 on Labor Relations.)

5.31 WHO'S IN CHARGE

Traditionally, personnel management has been (and still is in many places) entrusted to a municipal personnel board established prior to home rule (MGL 41:108A, 108C). Under certain conditions, the selectmen may act as this board. With the advent of home rule, however, many towns have opted to turn over more of the day-to-day administration of personnel affairs to a professional administrator.

Some home rule charters give full personnel authority to a top administrative position, for example, a town manager or personnel director. In other instances, towns have seen fit to retain the personnel board, but have changed its role to one of hearing appeals and developing policy. Other towns have separate personnel relations review boards to hear grievances by public employees. In general, the trend is toward bringing personnel management more into the overall operations of the town. You should consult your town charter or bylaws to see how responsibility for personnel matters is allocated in your community.

5.32 WHAT IS A PERSONNEL SYSTEM?

Town personnel systems should reflect the civil service or non-civil service status of town employees, and should be consistent with federal and state statutes (including the state's Department of Personnel Administration Rules—PAR), local bylaws and regulations. Special care should be taken to ensure that affirmative action or equal employment opportunity requirements are met. Many of the components noted below are subject to mandatory collective bargaining in towns where public employees are organized. Even so, management should strive to maintain continuity throughout the local personnel system. Basic components of an effective personnel system include the following:

1. *Recruitment and Selection.* Your town should have a system for informing qualified candidates of employment opportunities, including procedures for posting or advertising jobs. Selection must be based on relevant requirements, including affirmative action.
2. *Classification.* Your town should have a classification plan that accurately describes all town jobs and allocates them to proper classification and grade levels. This is usually done by a professional trained in job analysis.
3. *Compensation.* Pay for town employees should be based on an equitable schedule that is consistent with the classification plan and supported by adequate pay data for comparable positions.
4. *Fringe Benefits.* Benefits for employees, such as health and life insurance, holidays and vacation, and sick, military and maternity leaves should be described clearly and based on established procedures.
5. *Working Conditions.* Your town should specify working hours, overtime policy, eligibility for benefits, restrictions on outside employment, and other rules governing behavior, dress, attendance, etc.
6. *Promotions.* Your town should have an open system, based on merit, for advancing employees to higher-level jobs.
7. *Appeals.* The personnel system should include a fair and explicit, multi-level process through which employees can address their grievances to management. The process must be aimed at reaching a satisfactory resolution.
8. *Performance Appraisal.* Your town should have a system for appraising the strengths and weaknesses of all employees. This system can be used to facilitate merit pay increases, merit promotions and employee development.
9. *Employee Development.* Your town should have established procedures for the training and development of its employees. Training should be a routine activity. However, it should emphasize employees who have been found deficient in job skills through performance appraisals.