

From: Kevin Jourdain [<mailto:Kevin.Jourdain@verizon.net>]
Sent: Monday, April 17, 2023 10:46 PM
To: 'Todd McGee' <mcgeetodd@yahoo.com>
Subject: Lack of Mayoral Veto Power on a CPA ballot question

Hello Todd,

As discussed, I am of the opinion that the Mayor lacks the authority to veto the Council's action placing the CPA question on the ballot for the following reasons and intend to raise a point of order that no "veto override" vote is required to have our prior vote of approval upheld. Likewise, the City Clerk should follow the law ("**shall place it on the ballot**") and is hereby ordered by virtue of our vote to place the question on the ballot.

State Statute

MGL Ch. 44B CPA Statute

The CPA statute specifically only requires the vote of approval by the legislative body (MGL c 44B sec 3-7 & 16) and it must be put on the ballot for the voters if approved. No mayoral approval is required. "The inexhaustible canon of canons of statutory construction has a maxim:..." [A] statutory expression of one thing is an implied exclusion of other things omitted from the statute.' " City Council of Boston v. Mayor of Boston, 512 N.E.2d 510, 24 Mass.App.Ct. 663 (Mass. App. 1987) citing Harborview Residents' Comm., Inc. v. Quincy Housing Authy., 368 Mass. 425, 432, 332 N.E.2d 891 (1975).

MGL c. 44B, Section 16.

(a) At any time after imposition of the surcharge, ***the legislative body*** may approve and the voters may accept an amendment to the amount and computation of the surcharge, or to the amount of exemption or exemptions, in the same manner and within the limitations set forth in this chapter, including reducing the surcharge to 1 per cent and committing additional municipal funds pursuant to subsection (b.5) of section 3.

(b) At any time after the expiration of five years after the date on which sections 3 to 7, inclusive, have been accepted in a city or town, said sections may ***be revoked in the same manner as they were accepted by such city or town***, but the surcharge imposed under section 3 shall remain in effect in any such city or town, with respect to unpaid taxes on past transactions and with respect to taxes due on future transactions, until all contractual obligations incurred by the city or town prior to such termination shall have been fully discharged.

MGL c. 44B, Section 3: Acceptance of Secs. 3 to 7

(a) Sections 3 to 7, inclusive, ***shall take effect in any city or town upon the approval by the legislative body*** and their acceptance by the voters of a ballot question as set forth in this section.

(b) ***Notwithstanding the provisions of chapter 59 or any other general or special law to the contrary, the legislative body may vote to accept sections 3 to 7***, inclusive, by approving a surcharge on real property of not more than 3 per cent of the real estate tax levy against real property, as determined annually by the board of assessors. The amount of the surcharge shall not be included in a calculation of total taxes assessed for purposes of section 21C of said chapter 59.

(b.5) ***Notwithstanding chapter 59 or any other general or special law to the contrary, as an alternative to subsection (b), the legislative body may vote to accept sections 3 to 7***, inclusive, by approving a surcharge on real property of not less than 1 per cent of the real estate tax levy against real property and making an additional commitment of funds by dedicating revenue not greater than 2 per cent of the real estate tax levy against real property; provided, however, that additional funds so committed shall come from other sources of municipal

revenue including, but not limited to, hotel excises pursuant to chapter 64G, linkage fees and inclusionary zoning payments, however authorized, the sale of municipal property pursuant to section 3 of chapter 40, parking fines and surcharges pursuant to sections 20, 20A and 20A.5 of chapter 90, existing dedicated housing, open space and historic preservation funds, however authorized, and gifts received from private sources for community preservation purposes; and provided further, that additional funds so committed shall not include any federal or state funds. The total funds committed to purposes authorized under this chapter by means of this subsection shall not exceed 3 per cent of the real estate tax levy against real property, less exemptions, adopted. In the event that the municipality shall no longer dedicate all or part of the additional funds to community preservation, the surcharge of not less than 1 per cent shall remain in effect, but may be reduced pursuant to section 16.

(c) All exemptions and abatements of real property authorized by said chapter 59 or any other law for which a taxpayer qualifies as eligible shall not be affected by this chapter. The surcharge to be paid by a taxpayer receiving an exemption or abatement of real property authorized by said chapter 59 or any other law shall be reduced in proportion to the amount of such exemption or abatement.

(d) Any amount of the surcharge not paid by the due date shall bear interest at the rate per annum provided in section 57 of said chapter 59.

(e) **The legislative body may also vote** to accept one or more of the following exemptions:

(1) for property owned and occupied as a domicile by a person who would qualify for low income housing or low or moderate income senior housing in the city or town;

(2) for class three, commercial, and class four, industrial, properties as defined in section 2A of said chapter 59, in cities or towns with classified tax rates;

(3) for \$100,000 of the value of each taxable parcel of residential real property; or

(4) for \$100,000 of the value of each taxable parcel of class three, commercial property, and class four, industrial property as defined in section 2A of said chapter 59.

A person claiming an exemption provided under this subsection may apply to the board of assessors, in writing, on a form approved by the commissioner of revenue, on or before the deadline for an application for exemption under section 59 of chapter 59. Any person aggrieved by the decision of the assessors, or by their failure to act, upon such application, may appeal as provided in sections 64 to 65B, inclusive, of chapter 59. Applications for exemption under this chapter shall be open for inspection only as provided in section 60 of chapter 59.

(f) **Upon approval by the legislative body, the actions of the body shall be submitted for acceptance to the voters of a city or town at the next regular municipal or state election. The city or town clerk or the state secretary shall place it on the ballot in the form of the following question:**

"Shall this (city or town) accept sections 3 to 7, inclusive of chapter 44B of the General Laws, **as approved by its legislative body**, a summary of which appears below"

(Set forth here a fair, concise summary and purpose of the law to be acted upon, as determined by the city solicitor or town counsel, including in said summary the percentage of the surcharge to be imposed.)

If a majority of the voters voting on said question vote in the affirmative, then its provisions shall take effect in the city or town, but not otherwise.

(g) The final date for notifying or filing a petition with the city or town clerk or the state secretary to place such a question on the ballot shall be 35 days before the city or town election or 60 days before the state election.

The definition section under MGL c. 44B, Sec 2

"Legislative body", the agency of municipal government which is empowered to enact ordinances or by-laws, adopt an annual budget and other spending authorizations, loan orders, bond authorizations and other financial matters **and whether styled as a city council**, board of aldermen, town council, town meeting or by any other title.

Mayor approval excluded.

Context of MGL c. 53, Sec 18A

All other state statutes are also excluded by c. 44B, but consider for context another common ballot question statute at c. 53 where there is a reference to possible mayoral approval, but in c. 44B mayoral approval is specifically excluded. See MGL c. 53, sec. 18A, "A nonbinding public opinion advisory question may be placed on the ballot for a regular municipal election in any city or town no later than the thirty-fifth day preceding such election: **by vote of the city council of such city, with approval of its mayor where so required by the city charter.**"

Whereas the legislature specifically excluded the mayoral approval under c. 44B, it really is not needed to look elsewhere but to the extent one did it should be noted that Holyoke has already previously examined the mayor's authority to veto ballot questions and it has been long acknowledged he or she cannot veto them.

C. 53, sec 18A addresses the authority of the City Council to place non-binding ballot questions at local elections. The law department in an opinion dated January 28, 2014 from City Solicitor Kara Cunha wrote, "I would just note that in the case of a non-binding ballot question (specifically the most recent ones addressing needle exchange and the casino), the mayor's signature was not needed because Ch. 53, Section 18A required approval of the mayor "where so required by Charter" and our Charter does not necessarily require the approval of the Mayor for something to become effective."

Likewise Mayor Alex Morse acknowledged he has no veto power over ballot questions in an email to City Clerk Brenna McGee dated January 20, 2015 when asked if he would be vetoing ballot questions passed by City Council, "No Veto Power over this – it can take effect."

Context of c. 43B, sec. 11

Section 11. Upon submission of the final report of a charter commission under section nine, **the city council** or board of selectmen shall order the proposed charter or charter revision to be submitted to the voters of the city or town for their approval at the first regular city election, or at the first annual or biennial town meeting for the election of town officers, held at least two months after such submission, but a charter commission report which does not recommend the adoption or revision of a charter shall not be submitted to the voters. **Such an order shall not require the concurrence of the mayor in cities and shall not be subject to referendum.**

Ballot questions from charter commissions also specifically require city council approval but exclude mayoral approval.

Context of Article. 89 Sec 8 of the Massachusetts Constitution

For a special act change to go to the legislature (and in the case of certain types of changes also to the ballot where a vote of the people is required) the law specifically requires the approval of the “Mayor ***and*** City Council or other legislative body of a city.” The Supreme Judicial Court has ruled the mayor has an absolute veto because his/her support is needed because the “and” means both Mayor and City Council. (429 Mass 1201 (1999)) Note the legislature or constitution does not require both in the case of the CPA referendum question only the legislative body’s approval. Where the legislature or constitution has wanted mayoral approval it is has expressly stated it.

Context of the City Charter

Moreover, the statute specifically says NOTWITHSTANDING any special act to the contrary which means any of the Mayor’s potential veto power under the charter is invalid since our charter is governed under the special act of Chapter 438 of the Acts of 1896. However in addition to this point, our charter also limits the mayoral veto in various relevant regards.

Sec 24 of the Holyoke City Charter states that “The veto power of the mayor shall not extend to elections.” As to votes of the people exercising their democratic rights at an election of the people of Holyoke, the mayor has no authority to veto political questions put to the voters or otherwise impede our Holyoke democracy. “The Community Preservation Act (CPA) ***can only be adopted by a municipality through a ballot election*** - and this means that any advocates that wish to run a local campaign in support of CPA adoption will typically need to register as a Municipal Ballot Question Committee (through OCPF). In most cases, local advocates will need to register their CPA adoption campaign as an official committee once the question of CPA has been placed on a local ballot election ***by the Legislative Body.***” (www.communitypreservation.org/ocpf)

For the aforementioned reasons, c. 44B is quite clear that only the approval of the legislative body is required. Likewise, every context, past ruling and review upholds that same view. Therefore, I would ask that you support the point of order and rule the question was duly adopted at our council meeting on April 4, 2023 and that the City Clerk is hereby instructed and ordered pursuant to state law to place the question on the ballot to be held in November.

Any questions, please let me know. Thank you for your assistance with this matter.

Sincerely,

Kevin A. Jourdain

Councilor At Large