




SELECTBOARD ESSENTIALS
"YOU ARE THE BOSS: PERSONNEL LEGAL GUIDANCE FOR SELECTBOARDS"


FRANKLIN REGIONAL COUNCIL OF GOVERNMENTS
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 **KOPELMAN AND PAIGE, P.C.**
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INTRODUCTION 

- Overview
 - Who Really is the Boss? - Selectboard's Role in Personnel Matters
 - Conflicts between Selectboard and other Elected Boards/Officials
 - Selectboard's Role with Respect to Union Employees
 - Classification and Compensation Plans
 - Performance Evaluations
 - Job Descriptions

WHO REALLY IS THE BOSS?



- By law, the Board of Selectmen is the default "chief executive officer" and "appointing authority" (i.e., the hiring authority), unless a charter provision or state statute says otherwise. See G.L. c. 4, §7(2A)
- There are numerous state statutes that confer hiring authority upon boards/officials other than the selectman, i.e.:
 - G.L. c. 40A, §12 (Zoning Board of Appeals may, subject to appropriation, employ experts and clerical and other assistants)
 - G.L. c. 41, §19 (Town Clerk may appoint an assistant town clerk)
 - G.L. c. 41, §81A (Planning Board may employ experts and clerical and other assistants)
 - G.L. c. 111, §27 (Board of Health may appoint a physician to the board, and other "necessary officers, agents and assistants to execute the health laws and its regulations"); G.L. c. 111, §30 (Board of Health may appoint agents and directors of public health)

ROLE OF SELECTMEN



- As appointing authority, Board of Selectmen has inherent authority to establish terms and conditions of employment for those employees that it appoints, subject to:
 - Appropriation
 - State Law limitations (i.e., c. 32B, statutory delegation of hiring authority to another board/official)
 - Local limitations (Town Meeting votes, charter, bylaws, special acts, classification/compensation plans, town policies)
 - And with respect to union employees, the terms of a collective bargaining agreement

AUTHORITY OF OTHER BOARDS/OFFICIALS



- Boards or officials with statutory hiring authority may challenge the Selectmen's ability to set terms and conditions of employment for employees that they hire
- Each enabling statute needs to be examined to determine the scope of the hiring authority
 - For example, G.L. c. 111, §27 expressly states that the Board of Health may fix the salary or other compensation of such physician, and clerks and other agents and assistants appointed by it. This language is absent from G.L. c. 40A, §12, G.L. c. 41, §19, and G.L. c. 41, §81A
 - Statutes like G.L. c. 41, §62 (Highway Surveyor) or G.L. c. 41, §69B (Board of Water Commissioners) may provide broad authority to an official or board to run a particular department, but do not include specific hiring authority

AUTHORITY OF OTHER BOARDS/OFFICIALS



- Conflicts often arise between the Selectboard and other Elected Boards/Officials
- There is no inherent appointment power vested in elected officials simply because they are elected
- Selectboard generally has authority to set hours of operation of town hall, determine whether to close town hall in inclement weather, and the like
- Of course, where there is a Town Manager/Town Administrator, some of this authority may be delegated to that individual

SELECTBOARD'S ROLE UNDER G.L. C. 150E



- The public sector collective bargaining statute, G.L. c. 150E, defines "public employer", as "...any county, city, town, district, or other political subdivision acting through its chief executive officer, and any individual who is designated to represent one of these employers and act in its interest in dealing with public employees..." G.L. c. 150E, §1
- This changes the landscape with respect to employees who might otherwise be appointed by a board/official other than the Selectboard

CLASSIFICATION/COMPENSATION PLANS



- One way to ensure uniformity of treatment among employees is through adoption of classification and compensation plans
 - Internal and External pay equity
 - Reduces subjectivity in pay determinations
 - Can help with compliance with applicable state and federal laws
 - Adoption (and periodic updating) requires continual assessment of job duties and pay scales
 - Can help in budget preparation
- By statute, do not apply to elected positions and school personnel
- Generally do not apply to union positions

CLASSIFICATION/COMPENSATION PLANS

- Adopted and amended by Town Meeting – G.L. c. 41, §108A – But NOT submitted to Attorney General
 - Classification – a plan classifying any or all positions into groups and classes doing substantially similar work or having substantially equal responsibilities
 - Compensation – a plan establishing minimum and maximum salaries to be paid to employees in positions so classified, which may provide for maximum salaries, and periodic step increases based upon length of service
- <http://www.amherstma.gov/documentcenter/View/23649>
- <https://amherstma.gov/DocumentCenter/View/25084>

PERFORMANCE EVALUATIONS




- Why do them?
 - No statutory requirement
 - May be required by virtue of collective bargaining agreement, personnel policies, special act, charter or bylaw
- Is there a preferred form of evaluation?
 - In writing
 - Placed in personnel file, with notice to employee of same
- Application of Open Meeting Law/Public Records Law to performance evaluations
 - Is the Appointing Authority a public body? If so, the "rules" are different than if the Appointing Authority is not a public body

PERSONNEL BYLAWS




- Why have them?
- Scope?
 - Identification of Selectboard Authority
 - Establishment of paid benefits – G.L. c. 40, §21A
 - Delegation to Selectboard of power to adopt personnel policies for all Town departments
 - Exceptions: School, Library
- Personnel Boards v. Personnel Relations Review Boards
 - PRRB – G.L. c. 40, §21B – power to "adjust grievances"
 - Personnel Board – no statutory definition


JOB DESCRIPTIONS 

- Why have them?
 - Again, no statutory requirement
 - May be required by virtue of collective bargaining agreement, personnel policies, special act, charter or bylaw
 - "Well-written and effectively-developed job descriptions are communication tools that allow both employees and candidates to clearly understand the expectations of the role, its essential duties, the competences [and] responsibilities, along with the required educational credentials and experience."
 - Pros and Cons
- Process for adoption?

* Mary Anne Kennedy, principal consultant at MAKER Consulting, LLC

APPOINTED VS. ELECTED PERSONNEL 

- Growing trend to convert elected positions to appointed positions, where the position is one that functions much like an employee
 - E.g., town clerk, treasurer, tax collector, assessors
- Such efforts are not always successful, though
- More common with Town Manager forms of government/in charter communities
- Pros and cons
- Process – G.L. c. 41, §1B, or special act

A FEW WORDS ABOUT HEALTH INSURANCE 

- Board of Selectmen is the "appropriate public authority" under G.L. c. 32B
- As such, has significant role in the setting of health insurance contribution rates, subject to certain necessary authorizations from Town Meeting
- Determines whether elected officials will be eligible for health insurance
- Setting/changing of contribution rates is, of course, subject to collective bargaining obligations
- Town Meeting does NOT set the employer/employee contribution rate split

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