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MEMORANDUM

TO: City Solicitors and Town Counsels

FROM: Louis A. Rizoli, Counsel to the House of Representatives *LAR*
David E. Sullivan, Counsel to the Senate *DES*

RE: Form of home rule petitions

DATE: March 24, 1998

We are writing to discuss issues that have arisen in the Legislature concerning the form of home rule petitions, which request enactment of a special law that relates only to a single city or town. We hope to share our thinking with you so that you may advise your municipal clients accordingly.

Section 8 of the Home Rule Amendment (Mass. Const. amend. art. 2, as appearing in amend. art. 89) requires special procedures -- either prior local government approval or a two-thirds vote by each house following the Governor's recommendation -- when the Legislature acts "in relation to" a single city or town. In particular, section 8(1) of the Home Rule Amendment provides that the Legislature may enact special laws relating only to a single city or town "on petition filed or approved by the voters of a city or town, or the mayor and city council, or other legislative body, of a city, or the town meeting of a town". This is usually known as a "home rule petition," and we will refer to the municipal council (with the mayor's approval if required by the charter) or town meeting as the "municipal legislative body."

Before it can pass a special law based on a home rule petition, the Legislature must have evidence of approval by the municipal legislative body. This should take the form of a copy of the body's vote, including the date, attested by the original signature of the city or town clerk. At the very least, this vote must request some action by the Legislature or "General Court."

Courts applying section 8(1) of the Home Rule Amendment have held that the municipal vote approving a home rule petition may be general or specific. Newell v. Rent Board of Peabody, 378 Mass. 443, 446-48 (1979); Opinion of the Justices, 356 Mass. 775, 791 (1969); Nugent v. Town of Wellesley, 9 Mass. App. Ct. 202 (1980). If the local approval is general (as it was in all three of these cases) -- or if the municipal vote does not restrict amendments -- the Legislature has considerable freedom to amend "within the scope of the general public objectives of the petition." Opinion of the Justices, 356 Mass. 775, 791 (1969). If the municipality wishes to restrict or preclude legislative amendments to its proposal, the municipal vote should say so in unambiguous terms.

Thus, in our view, a municipality has essentially three options when it approves a home rule petition:

1. General vote. The municipal legislative body may approve a vote requesting legislation to accomplish a general purpose. Draft legislation may be attached, but the mere approval of proposed legislation by the municipal legislative body does not, in our view, restrict legislative amendments. (See Special Commission on Implementation of the Home Rule Amendment, Second Report, Senate No. 10, at 11 [1967].) For example, if the vote sets forth the text of the proposed legislation and requests that the Legislature "enact the following", we would view this as a general vote because it does not specifically preclude legislative amendments. If a draft bill is not approved, the legislation may be drafted by the municipal executive (the mayor, manager or selectmen), the state legislator who files it, or their respective counsel. One town uses the following form for such a general vote:

Voted, to authorize the Selectmen to petition the Legislature to enact legislation to [insert purpose]; provided, that the Legislature may reasonably vary the form and substance of the requested legislation within the scope of the general public objectives of this petition.

2. Vote restricting amendments. The municipal vote may preclude substantive legislative amendments by clearly saying so. The City of Boston and some other municipalities routinely use this form:

Ordered: That a petition to the General Court, accompanied by a bill for a special law relating to the [city or town of] to be filed with an attested copy of this order be, and hereby is, approved under Clause (1) of Section 8 of Article 2, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:-
[insert text of bill].

The risk of using such language, especially for a town meeting that meets infrequently, is that an amendment necessary to secure passage of the bill may not be approved for many months.

Please do not use the phrase "in substantially the following form" or "substantially as follows", since the meaning of "substantially" is ambiguous. This phrase may mean that no amendments of "substance" are allowed, or that no "important" amendments are allowed. If the first meaning is desired, please use the Boston language above.

3. Vote allowing municipal executive to approve amendments. A third option is to use the restrictive language of the second option above, but also to include language allowing the municipal executive (especially the Selectmen in towns) to approve amendments within the scope of the general public objectives of the petition. The following form is suggested:

Voted, to petition the General Court to the end that legislation be adopted precisely as follows. The General Court may make clerical or editorial changes of form only to the bill, unless the Selectmen [or other municipal executive] approve amendments to the bill before enactment by the General Court. The Selectmen [or other municipal executive] are hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition. [insert text of bill]

We hope this analysis is helpful to you. Please feel free to call either of us to discuss this or any other subject (Louis Rizoli, 617-722-2360; David Sullivan, 617-722-1470).

Comm. & Rpts. from City Officers ^{S 241}
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Communication received from D.
Margaret Drury, transmitting a
memorandum from Louis A. Rizoli,
Counsel to the House of Representatives
and David E. Sullivan, Counsel to the
Senate, concerning the form of home
rule petitions, which request enactment
of a special law that relates only to
a single city or town.

In City Council April 6, 1998

PLACED ON FILE