



MICHAEL S. DUKAKIS
GOVERNOR

FRANCIS W. GENS
CHAIRMAN

CHARLES J. DINEZIO
EXECUTIVE DIRECTOR

*The Commonwealth of Massachusetts
State Building Code Commission
John W. McCormack State Office Building*

13th Floor

One Ashburton Place, Boston, 02108

M.B.T.A.

(617) 727-6916

May 19, 1978

Mr. Edward Cunningham
Legal Counsel/Law Department
City of Cambridge
Cambridge, Mass.

RE: Massachusetts Bay Transportation Authority

Dear Mr. Cunningham:

This is in response to your request for the Commission's interpretation of MGLA c 143 Section 3A. Because of the language and legislative intent, it is this Commission's feeling that the Massachusetts Bay Transportation Authority is not an authority of the Commonwealth but an authority established by the Commonwealth, thus completely under the authority of the Municipal Building Department. After informal discussion with the chief of inspectors of the Division of Inspection, Department of Public Safety, John Loynd and the Commission's Counsel, Paul J. Moriarty, it has been concluded that they share my view in that the Department of Public Safety has no direct authority over the M.B.T.A. It is to be noted further that the legislature gave additional authority to this Commission to regulate jurisdiction in the opening language of Section 3A, where it is stated:

"Unless otherwise provided by the provisions of the State Building Code, the local inspector shall enforce...."

On January 5, 1976, this Commission amended Section 108.1 of the Code and requires the local inspector to enforce the Building Code relative to all buildings and structures owned by the Massachusetts Bay Transportation Authority, Massachusetts Turnpike Authority, and the Massachusetts Port Authority.

I trust that this adequately explains the position of this Commission and the Division of Inspections, Department of Public Safety relative to the M.B.T.A.

Very truly yours,

STATE BUILDING CODE COMMISSION

A handwritten signature in cursive script, reading "Charles J. Dinezio".

Charles J. Dinezio, Executive Director

CJD:ps

cc: Joseph H. Elcock, Esq.
Charles Sprague, Building Commission, City of Cambridge
John T. Loynd, D.P.S. Division of Inspection

107.6 TRAINING: The Department of Community Affairs shall offer a continuing educational program designed to assist all building officials and state inspectors in executing their responsibilities as defined herein. Regular attendance at these programs shall be required of all building officials and state inspectors and no building official or state inspector who attends such course of instruction shall lose any rights relative to compensation or vacation time.

107.8 RESTRICTION ON EMPLOYEES: No full-time building commissioner, inspector of buildings, or full-time local inspector as defined herein shall be engaged in, or directly or indirectly connected with, the furnishing of labor, materials or appliances for the construction, alteration or maintenance of a building or structure, or the preparation of plans or of specifications therefor within the city, town or region for which he is appointed, unless he is the owner of the building or structure; nor shall any officer or employee associated with the building department engage in any work which conflicts with his official duties or with the interests of the department.

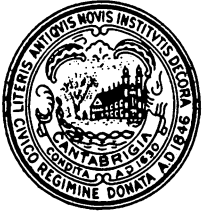
107.9 RELIEF FROM PERSONAL LIABILITY: Insofar as the law allows, while acting for the municipality, the building official, charged with the enforcement of the Basic Code shall not be deemed personally liable in the discharge of his official duties.

SECTION 108.0 DUTIES AND POWERS OF THE BUILDING OFFICIAL AND THE STATE INSPECTOR

108.1 THE BUILDING OFFICIAL: The building commissioner or inspector of buildings and the local inspector shall enforce all the provisions of the Basic Code and any other applicable state statutes, rules and regulations, or ordinances and by-laws, and act on any question relative to the mode or manner of construction, and the materials to be used in the construction, reconstruction, alteration, repair, demolition, removal, installation of equipment, and the location, use, occupancy, and maintenance of all buildings and structures, including any building or structure owned by any authority, established by the legislature but not owned by the Commonwealth, such authorities to include, but not be limited to the Massachusetts Bay Transportation Authority, Massachusetts Turnpike Authority and the Massachusetts Port Authority.

108.11 APPLICATIONS AND PERMITS: The building official shall receive applications and issue permits for the construction, reconstruction, alteration, repair, demolition, removal, and installation of equipment, and inspect the premises for which such permits have been issued and enforce compliance with the Basic Code provisions.

108.12 BUILDING NOTICES AND ORDERS: The building official shall issue all necessary notices or orders to remove illegal or unsafe conditions, to require the necessary safeguards during construction, to require adequate exitway facilities in new and existing buildings and structures, and to insure compliance with all the code requirements for the safety, health and general welfare of the public.



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
JAMES L. SULLIVAN
City Manager

April 2, 1979

To the Honorable, the City Council:

With respect to Awaiting Report Item No. 16 regarding the legal basis by which the MBTA alleges they are exempt from making application for building permits, etc., please be advised that the City is in the process of seeking a Bill for Declaratory Judgment on this issue.

It is the City's position that the Authority is not exempt from taking out building permits based on the attached documents: 1) Letter from the State Building Code Commission, and 2) Section 108.1 of the State Building Code.

Very truly yours,


James L. Sullivan
City Manager

JLS/mbf
Encs. 2

5-180

Response to Awaiting Report No. 16 re: legal basis by which the MBTA alleges they are exempt from making application for building permits, etc.

In City Council,

April 2, 1979

4/2/79

Placed on File