



MEMORANDUM

(VIA EMAIL)

To: David Ramsay, Dover Town Administrator

From: Nina Pickering-Cook
ANDERSON & KREIGER LLP

Re: Authority over Lease of the Rail Trail

Date: April 7, 2016

You have asked whether Town Meeting could require (*i.e.*, force) the Board of Selectmen to sign a particular lease (in this case, for the Rail Trail). The answer is no. Beyond being outside the scope of the current Warrant Article concerning the Rail Trail, the Supreme Judicial Court (“SJC”) has decided this very question and found that such a position with respect to Town Meeting’s power is contrary to the language of the statute granting the authority to enter into a lease to the Board of Selectmen.

In General Laws c. 40, § 14, the Legislature decided that “the **selectmen of a town may purchase**, or take by eminent domain under chapter seventy-nine, **any land, easement or right therein within the city or town** not already appropriated to public use, **for any municipal purpose** for which the purchase or taking of land, easement or right therein is not otherwise authorized or directed by statute.” *Id.* (emphasis added). The statute limits Town Meeting’s role to “authoriz[ing]” the purchase of the interest in land (in this case, a lease) and appropriating needed funds (if any). *Id.*

The SJC has held that such “authorization” by Town Meeting does not equate to the ability to direct or control any particular action. In *Twomey v. Town of Middleborough*, 468 Mass. 260, 269-70 (2014), the SJC, in ruling on whether Town Meeting could direct the amount of health care premiums paid by employees despite action by the Board of Selectmen on that issue, stated that “[g]enerally speaking, a municipality can exercise no direction or control over one whose duties have been defined by the Legislature. More specifically, a town meeting cannot exercise authority over a board of selectmen when the board is acting in furtherance of a statutory duty. *Id.* (quotations and citations omitted); *see also Anderson v. Selectmen of Wrentham*, 406 Mass. 508, 512 (1990) (board of selectmen not bound by town meeting vote to set rate of contribution for group insurance provided to town’s employees under G.L. c. 32B, § 7A). “The town meeting could not usurp the authority given to the board of selectmen by the Legislature [by statute].” *Twomey*, 468 Mass. at 269-70.

David Ramsay
April 7, 2016
Page 2

In fact, the SJC has explicitly stated Town Meeting does not have such power in ruling on a challenge concerning a board of selectmen's authority under G.L. c. 40, §14, the same provision granting the Board the power to enter into the Rail Trail lease). In *Russell v. Canton*, 361 Mass. 727, 730–731 (1972), the SJC held that in drafting G.L. c. 40, §14 the Legislature delegated to board of selectmen the right to take land by eminent domain and, therefore, town meeting could *authorize but not command* such taking. *Id.* (emphasis added). The SJC decisively stated:

Although G.L. c. 40, s 14 requires that before land is taken by eminent domain the taking be authorized by a vote of the town, it vests the power to make the taking in the selectmen of the town. There is nothing in s. 14 which makes such an authorization binding on the selectmen, or which prevents them from exercising their discretion and sound judgment in deciding whether to make a taking pursuant to the authorization. If the selectmen, being authorized by the town to make a taking, do not make it, the decision is not judicially reviewable as to its wisdom." *Id.*

I have attached a copy of the *Russell* case to this email for your reference.