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BOARD OF SELECTMEN
PEMBROKE, MA 02359

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January 15, 1998

BY FACSIMILE - (781)293-4650

Hon. William Cullity, Jr. and
Members of the Board of Selectmen
Pembroke Town Hall
100 Center Street
Pembroke, MA 02359

Re: Change from Executive Secretary to Town Administration

Dear Members of the Board of Selectmen:

You have requested an opinion regarding whether the Town can change the title of Executive Secretary to that of Town Administrator and transfer hiring/removal authority to the newly designated Town Administrator. You further ask if you can appoint an interim Executive Secretary on the departure of the incumbent. You also ask if once you advertise and appoint a permanent Executive Secretary if you can change that person to a Town Administrator without reopening and re-advertising the position.

This is to confirm my earlier telephone conversation with the Chairman regarding this matter.

In my opinion, the title of Executive Secretary and Town Administrator are interchangeable (see G.L. c.41, §23A and §108N). Under normal conditions, the Board of Selectmen could vote to make the change. Since the Town By-Laws do specify the name and duties of the Executive Secretary, however, I would recommend that the change in title and duties be made by a change to the By-Law at the next Special or Annual Town Meeting. The transfer of authority from the Board of Selectmen to the Town Administrator to appoint and remove employees, however, is more problematic. The change in appointing authority would require a charter change or special legislation.

KOPELMAN AND PAIGE, P.C.
Hon. William Cullity, Jr.

and Members of the Board of Selectmen

January 15, 1998

Page2

IMPORTANT IF WE WERE TO START THE PROCESS
NOW USING THE TITLE OF EX. SECT. AND
THEN WENT FOR A CHANGE AT TOWN MTG.

The Board has the authority under G.L. c.41, §23A and the Town By-Laws to appoint an Executive Secretary. In my opinion, this would include the authority to appoint an interim Executive Secretary which needs no additional specific authorization.

In response to your third inquiry, you can change the title of the person performing the functions of Chief Administrative Officer without changing the person. If you hire a permanent Executive Secretary to replace the incumbent, and, during his/her term, change the titles and some of the duties and the job description of the position, in my opinion, there is no need to reopen the position unless you choose to do so. If you should so choose, it would be necessary to advise in advance whomever you hire, that you intend to change the title and duties at some future date and that you intend to reopen the position when that is accomplished. The term of office and contract of the new Executive Secretary would then end on the date of the change or assumption of office of the Town Administrator. The incumbent Executive Secretary would not be excluded as a candidate for the changed position.

General Law c.41, §23A provides for the appointment by the Board of Selectmen of either an Executive Secretary or a Town Administrator. He or she shall act by and for the Selectmen in any manner which they may assign to him/her relative to the administration of the affairs of the Town or of any Town office or department under their supervision or control. The Town meeting may by a simple vote or by a By-Law authorize and empower the Selectmen to make such an appointment. Pembroke has chosen to pass a By-Law which uses the title "Executive Secretary". At the time the By-Law passed section 23A referred only to "Executive Secretary". That statute was changed in 1996 making the authority apply to either an "Executive Secretary" or a "Town Administrator". For that reason, in my opinion, it would now be appropriate for the By-Law to be changed either to allow the optional titles or to change the title to Town Administrator if that is what the Selectmen want. If it were not for the specific title in the By-Law, in my opinion, the change could be made by a vote of the Selectmen.

Although section 23A authorized the Selectmen to assign any duties to the Executive Secretary/Town Administrator relative to the administration of the affairs of the Town, it does not give the Executive Secretary/Town Administrator appointing authority. Appointing authority is granted by statute to the Board of Selectmen in most cases, e.g., police (G.L. c.41, §97A), fire (G.L. c.48, §42), etc. Appointing authority may only be changed by a charter change which would then prevail over the statute under the Home Rule Amendment (see G.L. c.43B, §20) or by special legislation. Special legislation does not necessarily require approval by a special town election. It does require approval in advance by Town meeting but can be made effective on passage.

General Law c.41, §108N authorizes the Board of Selectmen to establish an employment

KOPELMAN AND PAIGE, P.C.

Hon. William Cullity, Jr.

and Members of the Board of Selectmen

January 15, 1998

Page3

contract for its Town Manager, Town Administrator, Executive Secretary, Administrative Assistant or the person performing such duties. Once again, the titles are interchangeable. The Selectmen, by contract, can establish a job description and duties. The contract, if one is written, prevails over any By-Law. If it is your intent to hire a permanent Executive Secretary and then later change the title and duties to include granting appointing authority under a charter change or special legislation, I would recommend the terms of employment of the Executive Secretary be spelled out in a contract. Such contract could specify that it expires on the assumption of office of a newly authorized Town Administrator. If you choose otherwise, in my opinion, you can appoint a permanent Executive Secretary who would automatically, by contract, become the Town Administrator on the change of the title and duties.

Please feel free to call me with any questions in this regard. Please share this opinion with the Town Government Study Committee.

Very truly yours,

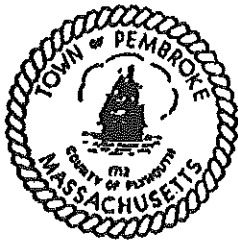


Everett J. Marder

EJM/js

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I don't know if the question was asked as to whether we can participate in this process, but no where in the letter indicates we can not. I feel we should proceed as we have.



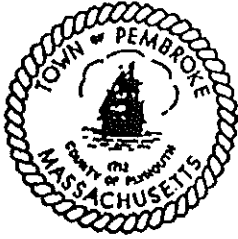
**TOWN of PEMBROKE
GOVERNMENT STUDY COMMITTEE**

**100 Center Street
Pembroke, Massachusetts
02359**

Arthur Boyle, Chairman
Elizabeth Bates
Michael Christie
Kevin MacRae
Russell Nekorchuk
Richard Nutter
Winthrop Sargent
Jim Wilson

To: Pembroke Board of Selectmen
From: Government Study Committee
Date: 11/26/97

Enclosed are DRAFTS of a letter to the Selectmen and a job description for the Inspector of Buildings which we plan to present to you formally next Monday during your scheduled meeting. We thought you would benefit by having a copy ahead of the meeting which would allow you to prepare for any discussion you may care to have during the meeting. We plan to meet at 6:30 just prior to your meeting for any last minute revisions but do not expect much to change. As you read both the letter and job description you will see some things that we are going to recommend which differs from status quo and expect to discuss with you.



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DRAFT

To: Pembroke Board of Selectmen
From: Government Study Committee
Date: 12/1/97

At your November 16th meeting you officially announced the retirement of the Inspector of Buildings, Mr. Al Cain effective January 1st, 1998. In conjunction with that announcement you also requested the assistance of the GSC to help develop a new job description for the Inspector of Buildings prior to initiating any hiring process for Mr. Cain's replacement. Since Mr. Cullity had previously brought this matter to our attention it did not take us by surprise and we had already planned to discuss the issue at our next meeting which was scheduled for the following evening on the 17th. For that meeting, we invited representatives from the Building Department to join us to talk about the role of Inspector of Buildings and the Zoning Code Enforcement Officer which is currently a combined position. Assistant Building Inspector George Verry did attend our meeting and was very informative, helpful and contributed greatly to our discussion.

Our discussions included a rather wide range of options that we felt could be taken to meet our increased needs for both building inspection and zoning enforcement and the options were as diverse as requiring a single full-time employee with some part time support staff; to two separate positions each with it's own support staff. The final consensus was that although there has been a significant increase in both building permits and zoning enforcement activity, the two roles should continue to be a combined effort, and an appropriate job description and compensation be established to assure that Pembroke attracts and hires a highly qualified individual to fulfill both roles.

When we reviewed other town's job descriptions and job responsibilities, one thing surfaced that seem quite sensible but not currently in place under the control of the Building Department; Sealer of Weights & Measurers. We feel that by incorporating this position we combine very similar responsibilities, provide for more flexible and in-depth coverage, combine two fee collection agencies under one department, and strengthen the position of Inspector of Buildings/Zoning Code Enforcement Officer which should demand higher compensation and hopefully more highly qualified candidates.

Also during our review, we learned that M.G.L. requires that the Zoning Code Enforcement Officer* must be either the inspector of buildings, a building commissioner or a local inspector and must be designated by the chief administrative officer or board of each city or town; in our case the Selectmen. With this being a requirement, we felt that even if an assistant to the Inspector of Buildings (i.e. a local inspector) was designated as the Zoning Code Enforcement Officer, not having zoning enforcement incorporated within the Inspector of Building's job description would be somewhat impractical. With that in mind and the comments above, we have drafted a new job description for an Inspector of Buildings/Zoning Code Enforcement Officer for your review.

Board of Selectmen	Board of Assessors	Appoint Chief Assessor	Financial
		Hire Clerical Staff	Financial
Appoints Executive Secretary	Board of Health	Appoint Health Agent	Safety
		Hire Clerical Staff	Safety
Hires Clerical Staff	Department of Public Works	Appoint Director DPW	Infrastructure
		Appoint Asst. Director	Infrastructure
Appoints All Non-Elected positions		Hire Clerical Staff	Infrastructure
	Treasurer/Collector	Hires Clerical Staff	Financial
	Planning Board	Hires Clerical Staff	Infrastructure
	Building Inspector	Appointed by Selectmen	Infrastructure
	Asst. Building Inspector	Appointed by Selectmen	Infrastructure
	Zoning Enforcement Officer*	Appointed by Selectmen	Infrastructure
	Gas Inspector	Appointed by Selectmen	Infrastructure
	Plumbing Inspector	Appointed by Selectmen	Infrastructure
	Wiring Inspector	Appointed by Selectmen	Infrastructure
	Town Accountant	Appointed by Selectmen	Financial
	Town Clerk		Administrative
	Assistant Town Clerk	Appointed by Selectmen	Administrative
	Police Department		Safety
	Police Chief	Civil Service - Appt. by Selectmen	Safety
	Lieutenant	Civil Service - Appt. by Selectmen	Safety
		Civil Service - Appt. by Selectmen	Safety
	Fire Department		Safety
	Fire Chief	Civil Service - Appt. by Selectmen	Safety
	Lieutenant	Appointed by Selectmen	Safety
		Appointed by Selectmen	Safety
	Constable		Administrative

PEMBROKE TOWN GOVERNMENT ORGANIZATIONAL STRUCTURE

1997

Advisory	Joint Appointment by Selectmen & Moderator	Financial
Animal Inspector	Appointed by Selectmen	Safety
Board of Registrars		Administrative
Cemetary Restoration Commis	Appointed by Selectmen	Administrative
Conservation Commission	Appointed by Selectmen	Administrative
Council on Aging	Appointed by Selectmen	Administrative
	Appoint Director COA	
Dog Officer	Appointed by Selectmen	Safety
Drainage	Appointed by Selectmen	Infrastructure
Emergency Management	Appointed by Selectmen	Safety
Herring Run Superintendants	Appointed by Selectmen	Infrastructure
Historic District Commission	Appointed by Selectmen	Administrative
Historical Commission	Appointed by Selectmen	Administrative
RecreationCommission	Appointed by Selectmen	Administrative
Recycling Committee		Safety
Sealer of Weights & Measures	Appointed by Selectmen	Administrative
Town Counsel	Appointed by Selectmen	Administrative
Town Forest Committee	Appointed by Selectmen	Administrative
Town Landing Committee	Appointed by Selectmen	Administrative
Town Memorial Committee	Appointed by Selectmen	Administrative
Veterans Agent & Vet. Burial Agent		Administrative
Veterans Neglected Graves Officer		Administrative
Wage & Personnel	Appointed by Selectmen	Financial
Waterways Superintendant	Appointed by Selectmen	Safety
Zoning Board of Appeals	Appointed by Selectmen	Administrative
Town Clock	Appointed by Selectmen	Infrastructure
Cultural Council	Appointed by Selectmen	Administrative
Cable Advisory	Appointed by Selectmen	Administrative
Cuomputer Study Committee	Appointed by Selectmen	Administrative
Fiscal Planning & Management	Appointed by Selectmen	Administrative
Silver Lake Withdrawal Commi	Appointed by Selectmen	Financial
OCPJ Joint Transportation Co	Appointed by Selectmen	Administrative
Ply. County Aid to Agriculture		Administrative
Ply. County Advisory		Administrative
North River Commission		Administrative
YMCA Study Committee		Administrative
911 Ad Hoc Committee		Administrative

Library Building Committee	-	Appointed by Selectmen	Infrastructure
Golf Study Committee	-	Appointed by Selectmen	Infrastructure
Open Space Committee	-	Appointed by Selectmen	Administrative