



KOPELMAN AND PAIGE, P.C.
The Leader in Municipal Law

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October 22, 2008

John W. Giorgio
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Hon. John Henshaw and
Members of the Board of Selectmen
Templeton Town Hall
690 Patriots Road
P.O. Box 250
Templeton, MA 01468

OCT 23 '08 AM 10:53

Re: Templeton Landfill – Mutual Release of Claims

Dear Members of the Board of Selectmen:

This is in response to your request for an opinion whether town meeting authorization is necessary for the Board of Selectmen to execute the release between the Town and Casella Waste Systems regarding past landfill related claims. In my opinion, town meeting approval is not required.

In my prior opinion letter dated September 22, 2008, I provided comments on the draft release of claims that Casella Waste Systems is proposing. You have now asked whether the Town By-law, Article VII Legal Affairs, Section 2, requires town meeting approval of the release. The by-law provides as follows:

The Selectmen may at their discretion compromise or settle any claim or suit to which the Town is a party, which does not require the payment by the town of an amount in excess of one thousand dollars. No settlement of a claim or suit obligating the town in an amount in excess of one thousand dollars shall be made, except as authorized by law, without the consent of the town meeting.

In my opinion, the first sentence of the by-law authorizes the Board of Selectmen, on its own, to settle claims against the Town. The only exception is contained in the second sentence of the bylaw which states that a town meeting vote is required to settle a claim where the Town is required to pay in excess of \$1,000. Here, the Town is not obligated to pay Casella any amount for the purpose of settling the claim. Therefore, in my opinion, the by-law is inapplicable. Moreover, the fact that the Town is agreeing to return to Casella the unspent amount of the funds provided by Casella to the Town for the purpose of studying the landfill proposal does not change my opinion. The unspent funds have been held in escrow by the Town, and the parties intended that they would be used for the landfill studies. It is not unusual in such a situation for a town to agree to return unspent funds, and, in my opinion, the funds are not being returned to "settle a claim" as that term is defined in the Town's by-law. Of course, there is nothing that would prevent the Board of

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October 22, 2008 John W. Giorgio ' ' jgiorgio@k-plaw.c.0m

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m410:53 Templeton, MA 01468

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Selectmen from seeking a non-binding advisory vote of Town Meeting prior to returning the funds. Furthermore, I understood that the Town had been consulting with the Department of Revenue as to whether the unspent funds must be appropriated by Town Meeting before they can be returned to Casella. If the Department of Revenue requires an appropriation vote, then such vote should be obtained from Town Meeting.

Please let me know if you have any additional questions.

Very truly yours,



John W. Giorgio

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Hon. John Henshaw and

Members of the Board of Selectmen October 22, 2008

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