

8. Under the provisions of G.L. c. 41, Section 113 the District may vote that official ballots are used for its elections. If that vote occurs, which must be done at an annual or special meeting of the District, then the District must follow the legal requirements of the state election laws.
9. These state election law requirements include but are not limited to ballot access, the timely and proper submission of nomination papers for certification and the filing of certified papers, printing and distribution of ballots, including absentee ballots, and voting .
10. The District never voted at a special or annual meeting to use official ballots. As such, the election of the Prudential Committee members is limited to a District Meeting vote.
11. Although the bylaws state that elections shall be conducted in accordance with the provisions of the General Laws of the Commonwealth of Massachusetts governing elections, there are inconsistencies within the bylaw with state election law.
12. For example, in Article II (which is titled "Meetings") it specifically states that the election of officers of the District shall be held at the Annual Meeting or any special meeting called for the purpose of filling an elected vacancy.
13. Additionally, in Article I, Section VI, it states that candidates aspiring for elected office within the District shall file nomination papers available from the District Clerk no later than 30 days prior to the election.
14. This statement is inconsistent with state election laws which require certified nomination papers to be filed with the District Clerk at least 35 days before the election (G. L. c. 53, § 10 and G. L. c. 41, § 115).
15. Finally, according to the Secretary of State Elections Division and the Massachusetts Attorney General, the enactment of a bylaw cannot apply the state election law where a specific provision of law already dictates its application, as is the case with the Three Rivers Fire District and Chapter 325 of the Acts of 1943.
16. In May 2015, incumbent Prudential Committee member Domey faced re-election and was opposed by Mr. Dennis Moynahan.
17. Absentee ballots are not permitted under Chapter 325 of the Acts of 1943 or the bylaws of the District.
18. Prior to the election date, Domey solicited and received a large number of absentee ballots and, on information and belief, went door to door in the District having those absentee ballots allegedly filled out and returned the absentee ballots at the District meeting.

19. The actions of Domey in securing and having those ballots voted are completely inconsistent with State Election Law.
20. Moreover, neither the enabling legislation nor the bylaws of the Prudential Committee permit State Election Law to be utilized in voting for the Prudential members. Under the law, only members present at the District Meeting are available to vote.
21. To compound the illegality of the election, it was announced at the district meeting on the date of the election when the votes were counted that there were allegedly "additional" absentee ballots which would need to be counted. The alleged additional absentee ballots were not present on the night of the count.
22. Therefore, the final vote tally was not announced on the night of the election, but rather was announced three (3) days later.
23. On information and belief, after the district meeting Domey took additional blank absentee ballots and secured votes after the District election for himself, thus securing re-election to the Prudential Committee.
24. Under either state election law, the bylaws or Chapter 325 of the Acts of 1943, the election was illegal, and in particular the activities of Domey in taking blank absentee ballots and having them allegedly voted both before and after the district election was illegal.
25. Commonwealth of Massachusetts State Election Law has precise and particularized requirements concerning official absentee voting ballots, none of which were followed, and assuming State Election Law applied to this election, none of which were followed whatsoever.
26. G.L., Chapter 54, § 92, requires that the "official absent voting ballot" be marked privately "in the presence of no other person" and that the ballot be sealed in an envelope. None of the alleged absentee ballots in the election complied with this provision of the law.
27. The provisions of G. L. c. 54, § 91, require that prior to receiving an absentee ballot, a signed application for a "official absent voting ballot" be delivered prior to the issuance of a ballot. The provisions of this law were not followed in this instance.
28. Under G. L. c. 54, § 93, it is required that "all absent voting ballots...shall be received by the city or town clerk before the hour fixed for closing the polls."
29. The provisions of G. L. c. 54, § 95 require that all "official absent voting ballots" be "processed" immediately "after the hour of the closing of the polls". That section requires that all "official absent voting ballots" be received prior to the election. The ballots allegedly gathered and counted in the three calendar days

after the Prudential Committee election were not authorized by the enabling legislation, the bylaws nor the state election law.

30. Finally, the provisions of G. L. c. 54, § 105 require that all ballots be counted immediately after the polls closed.
31. Permitting alleged absentee ballots to be collected and counted up to three days after the polls closed violated this provision of the state election law.
32. Almost half of the ballots allegedly cast were absentee ballots voted in some irregular fashion.
33. The number of absentee ballots cast does not match the voters on the voting list who voted absentee.
34. The May 19, 2015 election of Domey did not meet the legal requirement of either the state election laws or the enabling legislation.
35. Moreover, there were serious irregularities with the process calling into question whether the alleged absentee votes were even cast.
36. On the night of the May 19, 2015 election, the ballots were counted by two election clerks out of eyesight of the voters. When they emerged Domey announced that the count could not be "final" because "not all ballots had been received".
37. On one of the succeeding days, the clerks were summoned back to the office at the fire station for Friday evening May 22, 2015 for a "final count" as "additional absentee ballots had been received".
38. When the May 22, 2015 meeting was convened, a large stack of additional alleged absentee ballots was presented and counted and Domey declared the winner.
39. Thereafter the alleged absentee ballots were destroyed.
40. Thereafter concerned citizens attempted to gain information about the election and resorted to involving the Massachusetts Secretary of State's office in seeking the information.
41. On September 9, 2015 the Massachusetts Secretary of State's office wrote the District and advised that the election was wrongful stating "it does not appear that the District had the authority to conduct an 'election' in the manner which occurred in May". See Exhibit C.
42. The District took no steps to comply with the Secretary of State.

43. On December 9, 2015 Stephen Chiacchia made a Public Records request for "street lists, voting lists, and absentee ballots" for the May election. See Exhibit D.
44. The District failed to comply.
45. On January 13, 2016 the Secretary of State ordered the District to comply with the request within ten days. See Exhibit E.
46. Subsequently some, but not all, of the alleged records were provided but the District still refused to provide the absentee ballots at issue since they contained "personal medical information".
47. The District has stonewalled legal requests for information and has failed to rectify the legal errors identified by the Secretary of State.

COUNT I

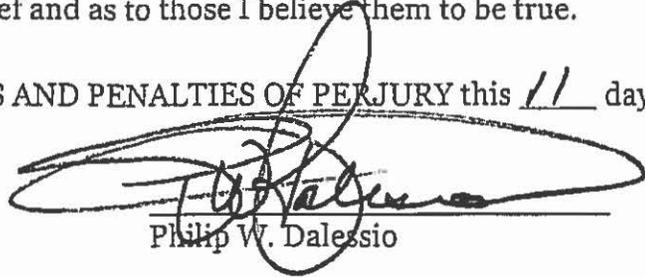
(Request for Declaratory Judgment, Order for Compliance Under G.L. c. 66 and Permanent Injunctive Relief)

48. The Plaintiff repeats and realleges Paragraphs 1 through 47 as though set forth fully herein.
49. A real and actual controversy exists as to whether the May 19, 2015 election was valid either under State Election law or under Chapter 325 of the Acts of 1943.
50. The Plaintiff seeks a declaration from this Court pursuant to G. L. c. 231A, that the May 2015 election was invalid and seeks a permanent injunction invalidating the results of the election and removing Domey from office.
51. The Plaintiff is entitled to an Order under the provisions of G.L. c. 66, § 10(b) for compliance in full with the public records request.
52. The Plaintiff seeks such further and other relief from this Court as justice and equity require under the circumstances.

VERIFICATION

I, Philip W. Dalessio, plaintiff in the above matter, state that I have read the foregoing Verified Complaint and the facts set forth therein are true except for those stated upon information and belief and as to those I believe them to be true.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY this 11 day of February, 2016.



Philip W. Dalessio

THE PLAINTIFF, PHILIP W. DALESSIO,
BY HIS ATTORNEY

By:  _____

Michael K. Callan
Doherty, Wallace, Pillsbury & Murphy, P.C.
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Email: mcallan@dwpm.com
B.B.O. Number: 558912

Dated: February 11, 2016

EXHIBIT A

Chap. 324 AN ACT AUTHORIZING THE CITY OF PEABODY TO APPROPRIATE MONEY FOR THE PAYMENT OF, AND TO PAY, CERTAIN UNPAID BILLS.

Be it enacted, etc., as follows:

SECTION 1. The city of Peabody is hereby authorized to appropriate money for the payment of, and after such appropriation the treasurer of said city is hereby authorized to pay, such of the unpaid bills incurred during the year nineteen hundred and forty-one by said city, the total of such bills being one thousand and fifty-seven dollars and sixty-eight cents, as set forth in the list on file in the office of the director of accounts in the department of corporations and taxation, as are legally unenforceable against said city, either by reason of their being incurred in excess of available appropriations or by reason of the failure of said city to comply with the provisions of its charter, and as are certified for payment by the heads of the departments wherein the bills were contracted; provided, that the money so appropriated to pay such bills shall be raised by taxation in said city in the current year.

SECTION 2. No bill shall be approved by the city auditor of said city for payment or paid by the treasurer thereof under authority of this act unless and until certificates have been signed and filed with said city auditor, stating under the penalties of perjury that the goods, materials or services for which bills have been submitted were ordered by an official or an employee of said city, and that such goods and materials were delivered and actually received by said city or that such services were rendered to said city, or both.

SECTION 3. Any person who knowingly files a certificate required by section two which is false and who thereby receives payment for goods, materials or services which were not received by or rendered to said city shall be punished by imprisonment for not more than one year or by a fine of not more than three hundred dollars, or both.

SECTION 4. This act shall take effect upon its passage.
Approved May 25, 1943.

Chap. 325 AN ACT AUTHORIZING THE THREE RIVERS FIRE DISTRICT OF THE TOWN OF PALMER TO ESTABLISH A SYSTEM OF WATER SUPPLY.

Be it enacted, etc., as follows:

SECTION 1. The Three Rivers Fire District of the town of Palmer located within the following boundary lines, to wit: — beginning at a stone monument near the intersection of the road leading from Palmer to Three Rivers with the road leading from Palmer to Bondsville, said intersection being just southerly from a crossing at grade of said

Three Rivers road and the track of the Ware River railroad known as Burleigh's crossing; thence in a course south seventy-one and one half degrees ($71\frac{1}{2}^{\circ}$) west to a stone monument on the town line between Palmer and Wilbraham, said monument being four hundred fifty (450) feet northerly measured along said town line, from a stone monument set to mark an angle in the town lines between Palmer and Monson; thence northerly on said town line between Palmer and Wilbraham to a stone monument set to mark a corner of the towns of Palmer, Wilbraham, Ludlow and Belchertown; thence easterly along the town line between Palmer and Belchertown to the Swift river, nearly opposite its junction with the Ware river; thence crossing said Swift river and following up the Ware river easterly to the southerly end of a bridge crossing said river, known as Dutton's bridge; thence southeasterly in a straight line to the center line of track of the Ware River railroad at a point where said center line crosses at grade the center line of the main road leading from Three Rivers to Thorndike; thence southerly along said center line of said Ware River railroad to its crossing at grade with the road leading from Palmer to Three Rivers; thence along said road southeasterly to the place of beginning, — may supply itself and its inhabitants with water for the extinguishment of fires and for domestic and other purposes, and is hereby empowered to establish fountains and hydrants and to relocate and discontinue the same, to regulate the use of such water and to fix and collect rates to be paid therefor, and to assess and raise taxes as provided herein for the payment of such services, and for defraying the necessary expenses of carrying on the business of said district, subject to all general laws now or hereinafter in force relating to water districts, water supply districts or fire districts supplying water to their inhabitants, except as otherwise provided herein. The district shall have power to prosecute and defend all actions relating to its property and affairs.

SECTION 2. For the purposes aforesaid, the district, acting by and through its board of water commissioners hereinafter provided for, may contract with any municipality, acting through its water department, or with any water company, or with any water district, for whatever water may be required, authority to furnish the same being hereby granted, and may take by eminent domain under chapter seventy-nine of the General Laws, or acquire by lease, purchase or otherwise, and hold, the waters, or any portion thereof, of any pond, spring or stream, or of any ground sources of supply by means of a driven, artesian or other well, within the town of Palmer not already appropriated for the purposes of a public supply, and the water and flowage rights connected with any such water sources; and for said purposes may take as aforesaid, or acquire by purchase or otherwise, and hold, all lands, rights of way and other easements necessary for collecting, storing, holding, purify-

ing and preserving the purity of the water and for conveying the same to any part of said district; provided, that no source of water supply or lands necessary for preserving the quality of the water shall be so taken or used without first obtaining the advice and approval of the state department of public health, and that the location and arrangement of all dams, reservoirs, springs, wells, pumping, purification and filtration plants and such other works as may be necessary in carrying out the provisions of this act shall be subject to the approval of said department. The district may construct and maintain on lands acquired and held under this act proper dams, wells, springs, reservoirs, standpipes, tanks, pumping plants, buildings, fixtures and other structures, including also the establishment and maintenance of filter beds and purification works or systems, and may make excavations, procure and operate machinery and provide such other means and appliances, and do such other things as may be necessary for the establishment and maintenance of complete and effective waterworks; and for that purpose may construct pipe lines, wells and reservoirs and establish pumping works, and may construct, lay, acquire and maintain aqueducts, conduits, pipes and other works under or over any land, water courses, railroads, railways and public or other ways, and along such ways, in said town, in such manner as not unnecessarily to obstruct the same; and for the purposes of constructing, laying, maintaining, operating and repairing such aqueducts, conduits, pipes and other works, and for all proper purposes of this act, the district may dig up or raise and embank any such lands, highways or other ways in such manner as to cause the least hindrance to public travel on such ways; provided, that the manner in which all things are done upon any such way shall be subject to the direction of the selectmen of the town of Palmer. The district shall not enter upon, or construct or lay any conduit, pipe or other works within, the location of any railroad corporation except at such time and in such manner as it may agree upon with such corporation, or, in case of failure so to agree, as may be approved by the department of public utilities. The district may enter upon any lands for the purpose of making surveys, test wells or pits and borings, and may take or otherwise acquire the right to occupy temporarily any lands necessary for the construction of any work or for any other purpose authorized by this act.

SECTION 3. Any person sustaining damages in his property by any taking under this act or any other thing done under authority thereof may recover such damages from the district under said chapter seventy-nine; but the right to damages for the taking of any water, water right or water source, or for any injury thereto, shall not vest until water is actually withdrawn or diverted under authority of this act.

SECTION 4. Any land taken or acquired under this act shall be managed, improved and controlled by the board of

surety company authorized to transact business in the commonwealth as surety. A majority of the commissioners shall constitute a quorum for the transaction of business. Any vacancy occurring in said board from any cause may be filled for the remainder of the unexpired term by said district at any legal meeting called for the purpose. No money shall be drawn from the treasury of the district on account of its waterworks except upon the written order of said water commissioners or a majority of them.

SECTION 7. Said board of water commissioners shall fix just and equitable prices and rates for the use of water, and shall prescribe the time and manner of payment. The income of the waterworks shall be appropriated to defray all operating expenses, interest charges and payments on the principal as they shall accrue upon any bonds or notes issued under authority of this act. If there should be a net surplus remaining after providing for the aforesaid charges, it may be appropriated for such new construction as said water commissioners may recommend, and in case a surplus should remain after payment for such new construction the water rates shall be reduced proportionately. Said water commissioners shall annually, and as often as the district may require, render a report upon the condition of the works under their charge, and an account of their doings including receipts and expenditures.

SECTION 8. The district may adopt by-laws governing the conduct of its water department and may establish rules and regulations for the management of the same, not inconsistent with this act or any other provision of law, and may choose such other officers not provided for in this act as it may deem necessary or proper.

SECTION 9. The district may, by vote, in lieu of electing a board of water commissioners under this act, delegate to the prudential committee of the Three Rivers Fire District of the town of Palmer all the powers and duties of said board of water commissioners. In such event, the said prudential committee shall have all the powers and duties of the said board of water commissioners as given under this act.

SECTION 10. Nothing in this act shall authorize the district to supply water for the extinguishment of fires or for domestic or other purposes to the inhabitants of the area served on the effective date of this act by George B. Cheney or of the area served on said date by Palmer Industries, Inc., without first having acquired by purchase, or by eminent domain under chapter seventy-nine of the General Laws, as the occasion may arise, all of the properties of said George B. Cheney or said Palmer Industries, Inc., as the case may be, on said date appurtenant to the business of water supply and located within the area served by said George B. Cheney or said Palmer Industries, Inc., as the case may be. In case of dispute as to the area served by either said George B. Cheney or said Palmer Industries, Inc. on said date, the department of public utilities, upon application of the dis-

trict or of said George B. Cheney or said Palmer Industries, Inc., as the case may be, shall determine such area and such determination shall be final.

SECTION 11. Whoever wilfully or wantonly corrupts, pollutes or diverts any water obtained or supplied under this act, or wilfully or wantonly injures any reservoir, well, stand-pipe, aqueduct, pipe or other property owned or used by the district for any of the purposes of this act, shall forfeit and pay to the district three times the amount of damages assessed therefor, to be recovered in an action of tort, and upon conviction of any of the above wilful or wanton acts shall be punished by a fine of not more than three hundred dollars or by imprisonment for not more than one year, or both.

SECTION 12. Upon a petition in writing addressed to said board of water commissioners requesting that certain real estate, accurately described therein, located in said town and abutting on said district and not otherwise served by a public water supply, be included within the limits thereof, and signed by the owners of such real estate or a major portion of such real estate, said water commissioners shall cause a duly warned meeting of the district to be called, at which meeting the voters may vote on the question of including said real estate within the district. If a majority of the voters present and voting thereon vote in the affirmative the district clerk shall within ten days file with the town clerk of said town and with the state secretary an attested copy of said petition and vote; and thereupon said real estate shall become and be part of the district and shall be holden under this act in the same manner and to the same extent as the real estate described in section one.

SECTION 13. The question of the acceptance of this act shall be submitted to the duly qualified voters of the district at any annual or special meeting called by the district in accordance with section sixty-six of chapter forty-eight of the General Laws and held within four years after the passage of this act, and if it is accepted by a majority of the voters present and voting thereon it shall thereupon take full effect.

Approved May 25, 1943.

AN ACT PLACING CERTAIN POSITIONS IN THE HEALTH DEPARTMENT OF THE CITY OF BOSTON UNDER THE CIVIL SERVICE LAWS.

Chap. 326

Be it enacted, etc., as follows:

The positions of dentists, dental hygienists and supply clerks in the health department of the city of Boston shall, upon the effective date of this act, become subject to the civil service laws and rules and regulations, and the tenure of office of any incumbent thereof shall be unlimited, subject, however, to said laws. The persons holding said positions on said effective date may continue to serve therein, but

EXHIBIT B

7-11-11

Three Rivers Fire District By-Laws

ARTICLE I OFFICERS:

Section 1 The Officers of the District shall consist of:

- a) A Prudential Committee of three (3) members (elected)
- b) Clerk (elected)
- c) Fire Chief (appointed)
- d) Water Superintendent (appointed)
- e) Treasurer (appointed)

The elected Officers of the District shall be registered voters of the Town of Palmer and reside within Three Rivers Fire District.

Section 2 The members of the Prudential Committee shall be elected: one every year for a term of three years. The Clerk shall be elected for a term of one (1) year. The above-named elected Officers shall hold office until their successors are chosen and qualified.

Section 3 The Officers of the District shall receive for their services such compensation as the District may determine.

Section 4 Any vacancy occurring in the Prudential Committee;

- a) more than six (6) months prior to the Annual District Meeting may be temporarily filled for a period not exceeding forty-five (45) days by the remaining members of the Prudential Committee. A special election shall be called to fill the vacancy for the remainder of that term.
- b) six (6) months or less prior to the Annual District Meeting shall be filled by the Prudential Committee until the Annual District Meeting where by vote, the remainder of that vacancy shall be filled by election in accordance with Article I, Section 6.
- c) if less than forty-five (45) days before the Annual District Meeting, the vacancy shall be filled in accordance with Article I, Section 6.

Section 5 The Elected Officers of the District shall not be eligible for appointed positions in the District.

Section 6 All candidates aspiring for elective office within the District shall file nomination papers available from the District Clerk. Each candidate shall collect at least fifteen (15) signatures of voters residing within the District and shall be submitted no later than 5:00 pm, thirty (30) days prior to the election.

ARTICLE II MEETINGS:

Section 1 The Annual Meeting shall be held on the third Tuesday in May. The election of Officers of the District shall be held at the Annual Meeting or any Special Meeting called for the purpose of filling an elected vacancy. Any meeting of the District may be adjourned from time to time as voters may direct. The elections shall be conducted in accordance with the provisions of the general laws of the Commonwealth of Massachusetts governing elections. The Election and Business Meeting shall be held at 7:00 pm, polls shall be kept open for the election of Officers for at least two (2) hours.

Section 2 Every District Meeting, except as otherwise provided by special law, shall be called in pursuance of a warrant under the hands of the Prudential Committee and;

(a) notice of which shall be given seven days at least before such meeting. The Warrant shall be directed to the Clerk of the District, who shall forthwith give notices of such meetings by posting in two (2) or more public places in the District and by advertising in a newspaper published in the Town of Palmer in one issue preceding the date of the meeting

(b) The warrant for all District meetings shall state the date, the time and place of holding the meeting and the articles to be acted upon thereat.

(c) The Prudential Committee shall insert in the warrant for the Annual Meeting all articles, the insertion of which (shall be those which) they consider necessary or those requested of them in writing, at a regular meeting, by ten or more registered voters of the Town at Palmer residing in the Territory comprising the District, and in the warrant for every Special District Meeting, all subjects of the insertion of which shall be requested of them in writing at a regular Prudential Committee meeting by fifty (50) registered voters.

(d) The Prudential Committee shall call a Special Meeting of the District upon request in writing at a regular Prudential Committee meeting of one hundred (100) registered voters residing within the Territory comprising the District. Such meeting to be held not later than forty-five (45) days after the receipt of such request, at a regular Prudential Committee meeting, and shall insert in the warrant therefore all articles the insertion of which shall be requested by said petition.

Section 3 At every meeting a Moderator shall be chosen by vote. The Moderator shall have the powers of the moderator of a town meeting.

Section 4 All District Warrants shall be closed sixty (60) days before the date of an annual meeting and thirty (30) days for a special meeting.

Section 5 Any petition or plan proposing to extend the limits or boundaries of the District shall be submitted in writing to the Prudential Committee at least ninety (90) days before the Annual District Meeting or any special meeting. Upon receipt of such proposal or

plan, the Prudential Committee shall hold a public hearing at least thirty (30) days before the Annual Meeting or any Special Meeting to hear and study the proposal or plan and to make recommendations thereon at the Annual Meeting or any Special Meeting.

Section 6 The quorum for any District Meeting shall be fifteen (15) registered voters of the District. District Meetings shall be governed by Roberts Rules of Order.

ARTICLE III FINANCES:

Section 1 The financial year of the District shall begin with the first day of July and end with the last day of June of the following year.

Section 2 No money shall be paid out of the Treasury without approval or order of the Prudential Committee. The Prudential Committee, the Fire Chief and the Water Superintendent shall keep a record of all expenditures in accordance with Massachusetts General Laws governing municipal finances. The Prudential Committee shall confirm the selection of the services of a bookkeeper or accountant to provide these services for the District.

Section 3 The District will have a Finance Committee, whose membership shall total seven (7); all of whom shall be appointed by the Prudential Committee, and whose term of office shall be for one (1) year. This Finance Committee shall be responsible for the final review of all proposed items in the warrant of the Annual District Meeting. The Finance Committee shall submit their recommendations 45 days prior to said meeting.

Section 4 The Prudential Committee shall cause an audit of the District's books and records at least once every three (3) years to be performed by an independent CPA or auditing firm.

ARTICLE IV FIRE DEPARTMENT:

Section 1 The Fire Department shall consist of a Fire Chief, two (2) Deputy Chiefs and as many Officers and Members as shall be necessary to manage the fire apparatus and equipment within the District, not exceeding the number authorized by the Prudential Committee.

Section 2 The Prudential Committee shall appoint the position of Fire Chief. The Fire Chief shall become a resident of the Three Rivers Fire District within twelve (12) months of appointment. The candidate of Fire Chief shall comply with the specifications and standards set forth by Massachusetts General Laws and the Rules and Regulations of the Three Rivers Fire Department.

Section 3 The Fire Department shall be under the control of an officer to be known as the Fire Chief and;

- (a) The Chief shall be appointed by the Prudential Committee, and shall receive such salary as the Prudential Committee may from time to time determine, not exceeding in the aggregate the amount annually appropriated therefore.
- (b) The Chief may be removed with just cause by the Prudential Committee at any time after a hearing.
- (c) The Chief shall have charge of extinguishing fires in the District and the protection of life and property in case of fire.
- (d) The Chief shall purchase subject to the approval of the Prudential Committee and keep in repair all property and apparatus used for and by the Fire Department.
- (e) The Chief shall have and exercise all the powers and discharge all the duties conferred or imposed by statute upon fire chiefs in towns except as herein provided, and shall appoint Deputy Chiefs and such officers and firemen as necessary, and may remove the same at any time for cause after a hearing.
- (f) The Chief shall have full and absolute authority in the administration of the department, shall make all rules and regulations for its operation, shall report to the Prudential Committee from time to time as they may require, and shall annually report to the District the condition of the Fire Department with recommendations thereon.
- (g) The Chief shall fix the compensation of the permanent and call members of the Fire Department subject to the approval of the Prudential Committee.
- (h) In the expenditure of money the Chief shall be subject to such further limitations as the District may from time to time prescribe.
- (i) The Chief shall keep thoroughly informed of the condition of the fire apparatus, personnel and all equipment of the Fire Department and to report thereon, to the Prudential Committee annually, to include an inventory of all property belonging to the Fire Department including that on loan to department personnel.

Section 4 The compensation for service for members of the Fire Department shall be as the District shall from time to time determine by vote.

ARTICLE V WATER DEPARTMENT:

Section 1 The Prudential Committee shall act as the Board of Water Commissioners of the District and shall exercise all powers and duties conferred by these By-Laws or by state or federal statute and to do all things necessary, convenient or desirable for carrying out the purpose of providing water for fire, domestic use and other purposes.

Section 2 The Prudential Committee shall control, operate, maintain, construct or improve the District's water works system and shall adopt rules, regulations and procedures in connection thereof and;

- (a) shall fix, revise, charge, collect and abate fees, rates, rents, assessments, delinquency charges and other charges for water and other services furnished or supplied by it including penalties for violations of such regulations as the Commission may promulgate under this chapter. The fees, rates, rents, assessments and other charges established by the Prudential Committee shall be so fixed and adjusted so as to provide revenues at least sufficient to pay the current expenses of the Commission, to pay the principal and interest of indebtedness issued by the Commission, to create and maintain reasonable reserves, to provide funds for paying the cost of all necessary repairs, replacements and renewals of the water works system and to pay for any amounts which the Commission may be obligated to pay by law or contract.
- (b) shall appoint, employ and determine the compensation, duties and conditions of employment of a Water Superintendent and other employees as the Prudential Committee shall deem necessary. The Water Superintendent shall be the executive officer of the Water Department and shall administer and direct its affairs as authorized or approved by the Prudential Committee.
- (c) may from time to time hire, transfer or otherwise appoint or employ special legal counsel, financial advisors and such other experts, engineers, agents, accountants, clerks, and other consultants and employees as it deems necessary and determine their duties.
- (d) shall maintain an office at such place or places as it may determine;
- (e) may apply for, receive, accept, administer, expend and comply with the conditions of any grant, gift, loan, donation or appropriation of any property or money in aid of the purposes of the Commission
- (f) may acquire by purchase, lease, lease-purchase, or other options for the acquisition of, any water or water rights and any other property, real or personal in the exercise of its powers and the performance of its duties;
- (g) may enter onto any land to make surveys, borings, soundings and examinations thereon, provided that the Prudential Committee shall make reimbursements for any injury or actual damage resulting to such lands and premises caused by any act of its authorized agents or employees;
- (h) may acquire by eminent domain any interest in real property within the District in accordance with the provisions provided by law;
- (i) may purchase water in bulk or by volume or to sell water to any person, private or public when necessary or convenient for the safe and reliable operation of the water works system;
- (j) may make contracts and to execute and deliver all instruments necessary or convenient for carrying out any of its purposes including entering into

agreements with other cities, towns or commissions to provide for the joint operation of public activities.

ARTICLE VI CLERK OF THE DISTRICT:

Section 1 The Clerk, in addition to the duties of this office as required by law and as prescribed by the Prudential Committee, shall keep on file at the District Office all reports, certificates and inventories submitted to the District by any officer or committee thereof, which record shall be open at all reasonable times to the inhabitants of the District qualified to vote in District affairs.

ARTICLE VII TREASURER OF THE DISTRICT:

Section 1 The Treasurer shall be appointed by the Prudential Committee and shall be a resident of the District. The Treasurer shall be knowledgeable in the area of finance and be required to give bond in such a sum as the Prudential Committee may require, with sureties to their satisfaction, for the faithful performance of the duties of the office. The Treasurer shall receive and take charge of all sums of money belonging to the District, and pay over and account for the same according to its order, or to the order of the Prudential Committee. The Treasurer shall keep a regular account of all monies received and expended by the Treasurer and will make monthly reports to the Prudential Committee of funds available, expenditures to date, and monies remaining in areas of concern. The Treasurer shall also submit a detailed report at the Annual Meeting and at such other times as the District by vote may require. The Treasurer shall retain and employ the services of a bookkeeper or accountant who has been confirmed by the Prudential Committee to provide these services for the District.

ARTICLE VIII PRUDENTIAL COMMITTEE:

Section 1 The Prudential Committee shall act as the Board of Fire Commissioners and the Board of Water Commissioners and shall exercise all powers and duties conferred by these By-Laws or by state or federal statute and to do all things necessary, convenient or desirable for carrying out the purpose of providing for fire protection, water supply, and other purposes. They shall carry identification of their office furnished by and shall remain the property of the District.

Section 2 The Prudential Committee shall expend for the purposes prescribed by the District money so raised or borrowed. They shall have jurisdiction and control of all District property, real and personal, not otherwise designated.

Section 3 The Prudential Committee shall direct the Treasurer of the District to borrow money as authorized at a District Meeting; the members of the Prudential Committee shall sign all District Bonds.

Section 4 The Prudential Committee shall recommend all expenditures for the operation of the Fire Department and Water Department to the Finance Committee.

Section 5 The Prudential Committee will review and approve the rules and regulations and operations of the Fire Department and the Water Department before they are published. The Prudential Committee shall have final authority in disputes between members of the Fire Department and the Fire Chief; or between the Water Superintendent and employees of the Water Department.

Section 6 The Prudential Committee shall appoint the members to the District Finance Committee.

Section 7 The Prudential Committee shall retain the services of an attorney who shall serve as District Counsel and shall be appointed annually.

Section 8 The Prudential Committee will keep minutes of all meetings in writing and will submit these minutes to the Clerk of the District for filing.

ARTICLE IX BY-LAWS COMMITTEE:

Section 1 A standing By-Laws Committee of the District, consisting of seven (7) members, appointed by the Prudential Committee for a term of one (1) year will review the current By-Laws of the District at least annually to establish any necessary additions and deletions.

ARTICLE X AMENDMENTS TO BY-LAWS:

Section 1 These By-Laws may be revised, amended or repealed by warrant at any annual meeting or at a special meeting called for the purpose, by a two-thirds vote of those present and voting and will become effective ninety (90) days from date of approval unless it is declared to be an emergency nature and should be effective immediately or earlier than ninety (90) days.

Section 2 The elected Treasurer shall serve to the expiration of their term of office with all authority granted by the vote of the District.

Section 3 The elected Board of Water Commissioners shall serve to the expiration of their term of office as advisors to the Prudential Committee concerning all Water Department matters.

ARTICLE XI BY-LAWS

Section 1 These By-Laws when approved by the District, supersede all By-Laws already in existence.

EXHIBIT C

From: Tassinari, Michelle (SEC) [mailto:michelle.tassinari@sec.state.ma.us]
Sent: Wednesday, September 09, 2015 2:30 PM
To: Three Rivers
Cc: Murray, Rebecca (SEC)
Subject: RE: FW: Three Rivers Fire District Election Practices

Good Afternoon Sara-

I am writing to follow-up on our previous conversation regarding the "election" of the Three Rivers Fire District in May. It was reported to us (and confirmed by at least one candidate) that blank absentee ballots were provided to candidates for distribution to voters, absentee voters were not required to complete applications prior to receiving ballots and that ballots were being distributed by the candidates up until the night before the "election." These allegations raise serious concerns about the conduct of the "election" and may raise issues of potential violations of criminal statutes relative to elections.

The Secretary of the Commonwealth possesses the authority to investigate complaints and order local election officials to comply with the law in appropriate cases. See G. L. c. 56, § 60 (2014 ed.); see also 950 C.M.R. § 56.02 (defining complaint pursuant to G. L. c. 56, § 60). Any person may complain to the Secretary that a pattern of conduct, or a standard, practice or procedure, of a local official is contrary to election laws. Also, the Secretary's Office may initiate a complaint. 950 C.M.R. § 56.02. The Secretary does not have the authority to invalidate an election or order a new election—that authority is limited to the courts—and even if a violation is confirmed, the Secretary's authority is limited to ordering compliance moving forward. The first determination that must be made, however, is under what authority and provisions the "election" of the District officers is made.

Since our last conversation, I've reviewed Chapter 325 of the Acts of 1943 to which you referred me (which is copied below). As we previously discussed, we must determine the process by which the Three Rivers Fire District "elects" the officers—the prudential committee and clerk. Based on what we've researched thus far, it appears that the authority of the election of the prudential committee is at a district meeting and not at an election under the state election laws.

Under the provisions of General Laws chapter 41, section 113, a district may vote that official ballots are used for their elections. If that vote occurs, which must be done at an annual or special meeting, the district must follow the provisions of the state election laws. This would include the general laws relative to ballot access (submission of nomination papers for certification and filing certified papers), printing and distribution of ballots, including absentee ballots, and voting.

However, the District has been unable to confirm that a vote to use official ballots has taken place. As such, it appears that the election of the prudential committee is limited to at the District meeting.

I have been provided with a copy of the District by-laws, which it is my understanding were enacted in 2013. While section 1 of Article II states that the elections shall be conducted in accordance with the provisions of the general laws of the Commonwealth of Massachusetts governing elections, there are inconsistencies within the remaining provisions of the by-laws.

First, in that same section of Article II (which is titled "Meetings"), it specifically states that the election of officers of the district shall be held at the annual meeting or any special meeting called for the purpose of filling an elected vacancy.

Additionally, in section 6 of Article I, it states that candidates aspiring for election office within the District shall file nomination papers, available from the district clerk, no later than 30 days prior to the election. This is inconsistent with the state election laws, which require certified nomination papers be filed with the district clerk at least 35 days before the election (General Laws chapter 53, section 10 and General Laws chapter 41, section 115).

Finally, I have confirmed with the Attorney General's office that enactment of a by-law cannot apply the state election law where a specific provision of law already dictates its application.

As outlined above, it does not appear that the District had the authority to conduct an "election" in the manner in which occurred in May. As the application of the state election laws was not valid, the complaint does not fall within the

10/29/2015

Three Rivers "Election" of May 2015

authority of General Laws chapter 56, section 60 for investigation by this Office. Even though this Office may not have authority to order the District to follow the election laws or take further action relative to the "election" of District officers, we would recommend creating a transparent process moving forward.

It is my understanding that the District will be re-convening a by-law review committee to make recommendations for new by-laws that will set a more detailed process for "electing" officers at the district meetings. The District could also request legislation to create a specific process for the election of district officers. This would require a district vote to submit a request for special legislation. Through this process, the District could apply provisions of the election laws and could seek to have a "re-do" of the election from last May, which raised serious concerns about transparency and the validity of the elected officers. We are happy to review any proposed by-laws or legislation for conformity with the election laws or for best practices.

Please confirm that the District has not voted at a District meeting to use official ballots. Additionally, please provide this Office with an update as to what actions the District intends to take to clarify the "election" process moving forward since the by-laws for the "election" of members are not valid.

I look forward to your response within 14 business days.

Thank you for your attention to this matter.

Michelle K. Tassinari
Director and Legal Counsel, Elections Division
Office of the Secretary of the Commonwealth
One Ashburton Place, Room 1705
Boston, MA 02108
617-727-2828

EXHIBIT D

STEPHEN R. CHIACCHIA, CPA
358 SPRINGFIELD STREET
PALMER, MASSACHUSETTS 01069
413-283-7671
(FAX)-283-4088

December 9, 2015

Raymond Domey, Chairman
Three Rivers Fire District
50 Springfield Street
Three Rivers, MA 01080

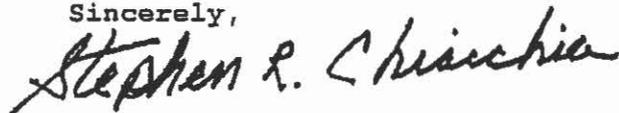
Re: Voting Records

Dear Mr. Domey:

Under the Freedom of Information Act, I respectfully request copies of and access to the voting records, including, but not limited to, street lists, voting lists and absentee ballots of the annual election that took place last May 2015 when residents voted for Prudential Committee Member and Clerk.

Thank you for your cooperation.

Sincerely,



Stephen R. Chiacchia

EXHIBIT E



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Shawn A. Williams
Supervisor of Records

January 13, 2016
SPR15/941

Ms. Carolyn Scott-Howe, Esq.
53 Empire, Suite G
Chicopee, MA 01013

Dear Attorney Scott-Howe:

I have received the petition of Stephen Chiacchia appealing the nonresponse of the Three Rivers Fire Department (Department) to a request for public records. G. L. c. 66 § 10(b); see also 950 C.M.R. 32.08(2). Specifically, Mr. Chiacchia requested a copy of the voting records, voting lists, street lists, absentee ballots of the May 2015 annual election where the voters voted for a particular committee member. Despite our letter to the Department dated December 29, 2015 acknowledging the opening of this appeal, as well as a follow-up conversation with a member of my staff and a January 6, 2016 email memorializing that conversation, no response was provided.

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10(c); 950 C.M.R. 32.08(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(c); see also District Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption).

I find the Department has failed to respond to a request for public records. Accordingly, the Department is hereby ordered, within ten (10) days of this order, to provide Mr. Chiacchia with a response to the request, provided in a manner consistent with this order, the Public Records Law and its Regulations. If the Department maintains that any portion of the responsive records are exempt from disclosure it must, within ten (10) days provide to Mr. Chiacchia a written explanation, *with specificity*, how a particular exemption applies to each record. To meet the specificity requirement a custodian must not only cite an exemption, but must also state why

Ms. Carolyn Scott-Howe

SPR15/941

Page 2

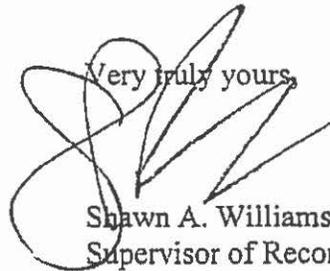
January 13, 2016

the exemption applies to the withheld or redacted portion of the responsive record. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

If there are any fees associated with this response a written, good faith estimate must be provided. G. L. c. 66, § 10(a); see also 950 C.M.R. 32.06(2) (where cost of complying with a request for public records is expected to exceed ten dollars (\$10.00), custodian of records shall provide written good faith estimate). Once the fees are paid, you must provide the responsive records.

To assist the Department in responding to requests for public records I have enclosed a copy of our publication, *A Guide to the Massachusetts Public Records Law*. This document is also available on the Internet, free of charge, at <http://www.sec.state.ma.us/pre/prepdf/guide.pdf>. Attorneys on my staff are available during regular business hours to answer general questions regarding the Public Records Law. In addition, members of my staff will visit a records custodian in person to conduct training workshops on the Public Records Law upon request. Please contact my office directly at the telephone number provided in this determination for further information.

Very truly yours,



Shawn A. Williams
Supervisor of Records

cc: Mr. Stephen Chiacchia
Three Rivers Fire Department