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Chapter 18: State and Municipal Government

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CHAPTER 18

State and Municipal Government

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A. Court Decisions: State Government

§18.1. Massachusetts Parking Authority: Eminent domain power. The independent power of a parking authority created by the state legislature to take land by eminent domain without approval of a city was decided in *Appleton v. Massachusetts Parking Authority*.[1] Mandamus proceedings were brought by residents of the Commonwealth, protesting a taking order by the Massachusetts Parking Authority, which had been authorized, pursuant to the statute[2] creating it, to construct and operate the Boston Common Garage.

In determining that the Parking Authority had the power to take the locus by eminent domain, the Supreme Judicial Court held that in passing the statute, the legislature did not intend to give the city of Boston veto power except in cases in which the land sought to be taken or conveyed fell within the purview of Sections 5(i) and 7 of the Parking Authority Act. The Court further stated that when, as in the present case, the Authority withdrew its application for a conveyance under these sections, it could then proceed under the general eminent domain power contained in Section 5(k) of the Parking Authority Act, without the necessity of any permission or approval by the city of Boston.

§18.2. State jurisdiction over milk control. In *Cumberland Farms, Inc. v. Milk Control Commission*,[1] a decision of the Superior Court reviewing an order of the Milk Control Commission fixing minimum retail milk prices was not reviewed because the Commission order had been repealed before the case was considered by the Supreme Judicial Court. Because certain provisions of the Milk Control Act required proper interpretation, however, the Court felt that expression of its views thereon would be desirable for future guidance of the parties. Accordingly, the Court determined that:

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§18.1. [1] 340 Mass. 303, 164 N.E.2d 137 (1960), also noted in §§12.8, 13.9 *supra*.
[2] Acts of 1958, c. 606.

§18.2. [1] 1960 Mass. Adv. Sh. 541, 166 N.E.2d 356, also noted in §12.9 *supra*.

(1) The jurisdiction of the Commonwealth over the field of milk control was not superseded or pre-empted by the federal Agricultural Adjustment Act under which the Federal Government exercises jurisdiction in the same area.

(2) The provision in the statute, G.L., c. 94A, §12, conferring authority upon the Milk Control Commission to amend or rescind the prices fixed by its order, should be construed to require approval by the Milk Regulation Board of each amendment to an original order of the Milk Control Commission containing findings that a state of emergency exists and that minimum retail milk prices must be fixed.

(3) Since Section 12 is the only section conferring authority upon the Milk Control Commission to establish minimum retail prices, failure to comply with that section in amending the original order invalidates the amended order; the Court ruled that a majority of the members of the Milk Regulation Board would be required to confer approval within the meaning of the statute and, consequently, a two-to-two vote was without effect.

(4) The word "consumers" as used in the context of Section 11 of the Milk Control Act refers to processors of such milk products as butter, ice cream, cheese, and the like; the legislative intent was not to include retail buyers within the definition of the word "consumers." As a result, therefore, Section 11 of the act concerns only the fixing and control of minimum wholesale prices.

B. Court Decisions: Municipal Government

§18.3. **Public works: School contract.** In *J. D. Ahern Co. v. Acton-Boxborough Regional School District*,[1] the Supreme Judicial Court was faced with a situation in which a painting contractor had submitted a subbid on a school contract and filed bid security in the amount of $1000 with the bid. Before the contract was awarded, the plaintiff sought to withdraw its bid on the ground that it contained figures that were grossly erroneous. Withdrawal was not allowed and the officials of the regional school district accepted the plaintiff's bid. The plaintiff thereupon refused to execute the contract.

Award of the contract was made to the next lowest bidder at an additional cost of $1000 over the bid of the plaintiff. The plaintiff thereupon sued to recover its bid deposit, its principal contention being that the general contract was invalid because the defendant school district had rejected all bids for heating and ventilation, and, consequently, any subcontract between the plaintiff and the general contractor would have been illegal and void.

In the court below, judgment was rendered for the defendant school district, and in affirming the judgment, the Supreme Judicial Court concluded that the plaintiff failed to demonstrate or prove that it was aggrieved by the action of the defendant in its rejection of the heating

§18.3. 1 340 Mass. 355, 164 N.E.2d 313 (1960).

and ventilation bids. The Court further pointed out that the plaintiff was dilatory in raising this contention; had it done so at the time it refused to perform the contract awarded to it, the defendant could probably have avoided the improper procedure.

§18.4. Collection of municipal taxes. In a case confirming the plenary power of a municipality to collect taxes due, even though statutorily required procedural requirements are not complied with, the Supreme Judicial Court decided that failure to send out tax bills on or before the date required by law did not prevent or bar collection by the city. In *City of Boston v. DuWors,*[1] the defendant landowner received a bill for taxes which was not mailed until September 22, although the governing statute provided that tax bills "shall be sent out" not later than June 14 and are payable on July 1. The defendant refused to pay the tax, and suit for recovery was commenced by the city; while the suit was pending, the defendant applied for an abatement. The District Court below found for the city, and the Appellate Division dismissed the report.

In affirming the order dismissing the report, the Supreme Judicial Court determined that a collector of taxes can sue for their recovery any time after they become due and payable; the city's right to recover was not affected either by the fact that the statutory provision on the date of billing was not complied with or the fact that the defendant applied for abatement after commencement of the suit.

§18.5. Workmen's compensation for public officer. In *Bruno's Case,*[1] the factual situation presented was that of a town selectman who was injured while performing his statutory obligation to perambulate the town boundaries and who, while in the performance of this duty, received an injury. The selectman applied for workmen's compensation and was refused payment. In holding that the selectman was not entitled to compensation, the Supreme Judicial Court stated that an elected officer performing official duties is not an employee within the meaning or scope of the workmen's compensation law, even though the selectman could have hired an employee to perform the boundary inspection task for him.

§18.6. Standing of town as an aggrieved party in Department of Public Utilities dispute. Under G.L., c. 25, §5, the town of Wilmington filed a petition of appeal, seeking a review of a decision of the Department of Public Utilities on a petition of the Boston and Maine Railroad for discontinuance of certain passenger stations and passenger service. The Department and the railroad demurred on the ground that the town had no standing under Section 5 to obtain a review of the Department's decision.

The case and the question involved were reported by a single Justice without decision and were considered by the Supreme Judicial Court

§18.4. [1] 340 Mass. 402, 164 N.E.2d 311 (1960).

§18.5. [1] 340 Mass. 420, 165 N.E.2d 93 (1960).

on the petition for appeal and the demurrers.[1] In deciding the issue, the Court first ruled out the contention of the town that it could be a party in the case by virtue of the provisions of G.L., c. 40, §5(16), which defines the purposes for which a town may spend money and, by including litigation, does not purport to define the nature of proceedings in which a town may have power to bring suit. To uphold the contention of the town in this regard, the Court said, would result in "bypassing" Section 1(3) of G.L., c. 30A (State Administrative Procedure Act), which defines parties who may intervene in adjudicatory proceedings.

Under the Administrative Procedure Act §1(4)(c), it was determined that the town was a person allowed by the agency to intervene in the original proceeding, and accordingly it became an "aggrieved party in interest" under G.L., c. 25, §5.

Noting that the town was uniquely qualified to present the views and interest of that portion of the commuting public residing therein, the Court approved the exercise of discretion by the Department of Public Utilities in permitting the town to intervene, and pointed out that while the Attorney General customarily represents the "public interest," such representation very often is not adequate when various contrary interests each assert that their position is the one in the "public interest." The Court noted that, upon appeal of a decision by the Department of Public Utilities, the Department would be represented by the Attorney General, and, consequently, he could not represent commuters whose interest would conflict with the decision of the Department.

§18.7. Merger of easement in tax title. In 1934, the city of Boston acquired tax title to a certain locus, and in 1941, by order of the Street Commissioners, the city took an easement to lay and maintain a sewer through the locus. The order provided that no betterments were to be assessed for the making of the improvement, and shortly thereafter the city took an easement to lay and maintain sewage works on a portion of a private way, in part at least on the locus.

After the recording of the second taking in March, 1941, all rights to redeem the tax title were foreclosed, and, subsequently, the interest of the city in the locus, acquired by tax title in foreclosure, was conveyed to two contractors as tenants in common. The contractors thereupon started to construct houses on the locus, and drains from these houses were connected to the city sewer in the private way. The Street Commissioners informed the contractors that they would be required to pay an "entrance fee" for the sewer connections from the houses to the sewer.

In determining the issue, the Court held that the city, by its deed, conveyed all interest in the locus acquired under the tax title and foreclosure, and that this prevented any question from arising as to whether

§18.6. [1] Town of Wilmington v. Department of Public Utilities, 340 Mass. 432, 165 N.E.2d 99 (1960), also noted in §15.1 *supra*.

the easement was merged in the fee while the city held the property.[1] While determining that there was no statutory authority for the city to require either a permit or a fee for connection with the existing sewer, the Court observed that since the locus had not been burdened with any assessment for betterment which had been paid (one made in 1950 was subsequently abated), the city could still impose an assessment for betterment. The Court further held that the deed from the city to the contractors implied a reservation of the recorded sewer easement.

§18.8. Police pension under "Heart Law." The widow of a retired city policeman brought an action in contract to recover damages for refusal of the city manager to award her an annuity. The husband of the plaintiff, a police officer, had been retired because of affliction with a heart disease, and died two years later of a heart attack. The plaintiff applied for an annuity under G.L., c. 32, §89, which grants annuities to widows of municipal employees who die as a result of exposure to hazards peculiar to their employment while in the performance of official duties. Section 94 of Chapter 32 states that impairment of the health of policemen caused by heart disease is "presumed to be sustained in the line of duty unless the contrary be shown by competent evidence." The plaintiff's application was referred to a medical panel, which certified that there was no evidence showing that the plaintiff's deceased husband died from injuries received in the performance of his duties as a police officer. Therefore, the city manager rejected the plaintiff's application; the court below ordered judgment for the plaintiff.

The defendant city filed exceptions to the judgment, and in a decision sustaining the exceptions, the Supreme Judicial Court determined that since no annuity was granted, there was no indebtedness from the city to the plaintiff, and, consequently, she had no action at law as a basis for her suit.[1] The Court, however, then proceeded to indicate that the plaintiff widow would have a right (which apparently could still be enforced in a proper action) to require the medical panel to determine specifically whether the death of her husband was the result of a different heart disease from that with which he was afflicted at the time of his retirement. If the heart disease causing the husband's death was not different from that for which he was retired, the presumption of Section 94 would still be operative, and presumably the plaintiff would be entitled to the annuity.

§18.9. Demolition of building by municipal order. The Building Commissioner of the city of Boston, after condemning a building as unsafe and dangerous, and notifying the owner by mail (the letter was never received by the owner), posting notice on the building itself, and obtaining approval from the mayor, entered into a contract with a

§18.7. [1] O'Malley v. Commissioner of Public Works of Boston, 340 Mass. 542, 165 N.E.2d 113 (1960), also noted in §1.9 *supra*.

§18.8. [1] McLean v. City of Medford, 1960 Mass. Adv. Sh. 483, 166 N.E.2d 219.

wrecking company to demolish the building. The owner subsequently sued in tort against the wrecking company, with his declaration containing counts for trespass, damage to real estate, and conversion of personal property.[1] In holding that the defendant wrecking company was authorized to proceed as it did under its contract with the city, the Court decided that the plaintiff could not raise collaterally the issue of whether the building was in fact dangerous and unsafe.

The Court distinguished the situation in the present case from that in *Miller v. Horton*,[2] which dealt with a statute authorizing destruction of horses afflicted with glanders without notice to the owners. The owner of a destroyed horse was allowed to sue and raise the question whether the horse was afflicted with the disease at all. The *Miller* case was not followed because the building condemnation statute provided the property owner with the opportunity in the original proceeding for hearing and review on the question whether the building should be demolished. Since the plaintiff failed to exhaust his administrative remedies, he was not permitted to raise the question in a suit against the present defendant, who acted in good faith under an official order.

With regard to the count concerning conversion of personal property, the Court decided that the provision in the demolition contract authorizing the defendant to remove all materials from the premises, these materials to become his property, did not confer upon him the right to remove lumber stored in the basement of the demolished building. Noting that nothing in the evidence indicated an abandonment of the lumber, and that the building code was silent upon the question of personal property found in the condemned building, the Court ruled that the city could have stored this personal property at the expense of the plaintiff and, consequently, the defendant was not entitled to a directed verdict on the conversion count.

§18.10. Municipal water contract. Under a special statute enacted in 1915, the Salisbury Water Supply Company was organized to supply water under contract to the town of Salisbury. From 1949 to 1956 the company made contracts with the town to construct water line extensions, which were installed at an aggregate cost of $91,000. Each contract provided that the town would pay annually to the company a sum which, when added to the company's operating revenues from the particular extension, would provide the company with a net return of 6 percent of the actual cost of the extension. In 1957, the town refused to make further payments on current contracts, and suit was brought by the water company to recover from the town the payments it alleged were due under the contracts.[1]

The town defended on the ground that G.L., c. 44, §31, as amended, rendered the contracts void by prohibiting towns from incurring liabili-

§18.9. [1] DiMaggio v. Mystic Building Wrecking Co., 1960 Mass. Adv. Sh. 555, 166 N.E.2d 213, also noted in §12.10 *supra*.
[2] 152 Mass. 540, 26 N.E. 100 (1891).

§18.10. [1] Salisbury Water Supply Co. v. Town of Salisbury, 1960 Mass. Adv. Sh. 715, 167 N.E.2d 320.

ties in excess of an annual appropriation. The Court disposed of this defense by stating that the water company contracts were not in any degree affected by Section 31, and that such town contracts, designed to induce local public utilities to provide facilities for services to be furnished to the town and its inhabitants, where the services are to be paid for in part by the town currently from year to year, may be regarded as within the express or implied contract authority of towns.[2] Accordingly, the water bills and taxes each year covered the town's current obligation under the contracts, thus making the payment arrangements between the town and the Water Company a cash transaction.

§18.11. Referendum on subject of vetoed city ordinance. In December, 1958, which was a year "other than a regular municipal election year" under G.L., c. 44, §33A, by an affirmative vote of more than two thirds of the city council there was passed over the veto of the mayor, an ordinance to become effective January 1, 1959, which granted a 10 percent wage increase to New Bedford policemen and fire fighters. Two days after this action, on December 17, 1958, a referendum petition was filed protesting the ordinance. Several members of the police and fire departments brought a bill of complaint seeking to restrain the city council and the city clerk from further action upon the ordinance, and a restraining order issued.[1] The bill of complaint was amended to ask for a declaratory decree, and the same plaintiffs sought a writ of mandamus to command the same officials not to proceed further in respect of the ordinance. After hearing in the Superior Court upon an agreed statement of facts, the referendum petition was determined to be valid, and the bill was dismissed as to matters not pertinent to the bill for declaratory relief. In the mandamus proceedings, there was an order for judgment for the respondents. On appeal, the plaintiffs presented the question of the effect of G.L., c. 44, §33A, upon the referendum provisions of the New Bedford Plan "B" Charter, G.L., c. 43, §42.

The provision in Section 33A relied upon by the plaintiffs provides as follows:

> Notwithstanding any contrary provision of any city charter, no ordinance providing for an increase in the salaries or wages of municipal officers or employees shall be enacted except by a two thirds vote of the city council, nor unless it is to be operative for more than three months during the financial year in which it is passed; provided, however, that in any year other than a regular municipal election year, ordinances may be enacted by a two thirds vote during the month of December providing for an increase in the salaries and wages of officers and employees, to become effective as of January first of the next ensuing year.

2 Smith v. Town of Dedham, 144 Mass. 177, 10 N.E. 782 (1887).

§18.11. 1 Morra v. City Clerk of New Bedford, 340 Mass. 240, 163 N.E.2d 268 (1960).

In affirming the order for judgment below, the Supreme Judicial Court decided that the provisions for a referendum were not contrary to the requirements of Section 33A, and that the referendum petition forces reconsideration by the city council and provides in effect a voters' veto,[2] and that there was nothing in the nature of Section 33A calling for its exemption from the referendum procedure.

C. Legislation: State Government

§18.12. Priority of candidates' names on state primary ballots. Chapter 216 of the Acts of 1960 amended G.L., c. 53, §34 by providing that the names of the candidates for offices of which they are elected incumbents or incumbents chosen by the General Court, appointed by the Supreme Judicial and Superior Courts, or appointed by the Governor, are to be placed first in alphabetical order on state primary ballots and the names of other candidates are to follow in like order.

§18.13. Registration of motorboats. Chapter 275 of the Acts of 1960, approved on April 1, 1960, placed the use and operation of motorboats under a broad regulatory scheme similar to that governing the use and operation of motor vehicles. Just as the use and operation of motor vehicles are regulated by Chapter 90 of the General Laws, the use and operation of motorboats and certain other vessels are regulated and controlled by the new legislation, which constitutes Chapter 90B. As enacted, the statute subjects motorboats, divided into four classes according to length, to regulatory controls when used or operated in all coastal and inland waters of the Commonwealth except in ponds less than 10 acres in area, owned by one person and not open to the public.

The new statute requires registration of motorboats, and is replete with provisions designed to insure their operation in accordance with strict standards providing for the safety of the operator, passengers, and the public. An administrative agency, designated as the Division of Motor Boats, is created within the structure of the Registry of Motor Vehicles, and is administered by a director, appointed by the Governor for a term of seven years, who is the executive and administrative head of the division.

§18.14. Merit rating under the Highway Safety Act. Chapter 390 of the Acts of 1960, in summary language, repealed Sections 5 to 10, inclusive, and Section 16 of G.L., c. 90A, thus abolishing the point system under which the operating record of owners and licensees of motor vehicles were evaluated for determination of the continuing qualifications of such persons for the rights and privileges granted by virtue of motor vehicle registrations and licenses to operate.

2 Section 42 of the City Charter and Chapter 43 of the General Laws provide that, upon filing of the referendum petition, the ordinance shall be suspended from taking effect, and that the city council shall reconsider it, and if it is not entirely rescinded, the city council shall submit the same to the voters, and the ordinance shall become null and void unless a majority of the registered voters vote in favor of it.

D. Legislation: Municipal Government

§18.15. Hearing aids for needy school children. Chapter 3 of the Acts of 1960 amended G.L., c. 40, §5, Cl. 40, by authorizing cities and towns to appropriate money to provide needy school children with hearing aids in addition to the existing authority to provide eyeglasses and spectacles.

§18.16. Time of application for absentee ballots. Chapter 16 of the Acts of 1960 amended G.L., c. 54, §89, by providing that no application for an absentee voting ballot will be deemed to be seasonably filed unless received by the city or town clerk before noon on the day preceding the election for which the absentee ballot is required.

§18.17. Vacations for permanent policemen and fire fighters. The two weeks' vacation period for regular or permanent police officers or fire fighters who have served for at least six months will henceforth accrue on January 1 of each year. Chapter 154 of the Acts of 1960 conferred this benefit by amending G.L., c. 41, §111A, to provide that January 1 in each year will replace April 1 as the effective date for accrual of vacation benefits.

§18.18. Power of local health boards to enforce minimum housing standards. Section 2 of Chapter 172 of the Acts of 1960 clarified the powers of local boards of health to enforce minimum standards and other provisions of the state sanitary code, by conferring upon them power to require, upon proper notice, the owner or occupant of any type of structure either to vacate or to put the premises in a clean condition, upon a determination that the structure or building is unfit for human habitation, is or may become a nuisance, or is or may be a cause of sickness or accident to the occupants or the public. The act requires a copy of the notice to be served upon any mortgagee of record. In the event of failure to comply with the order of the board of health, the occupant may be forcibly removed from the premises or the premises may be properly cleaned at the expense of the owner. If within one year from the date of closing the premises, compliance with minimum standards of fitness for human habitation has not been effected, the board of health may remove or demolish the building, and the expense of the removal or demolition will constitute a debt owing to the city or town from the owner, who may be sued in an action of contract.

§18.19. Signatures required for nomination of town officers. Chapter 224 of the Acts of 1960 amended the election laws by providing that nominations of candidates for city or town elections, except where city charters or the law provides otherwise, may be made by procuring signatures of a number of voters equal to 1 percent of the entire vote cast for governor at the preceding biennial state election in the district or division wherein the candidate is to be elected; but in any case no less than twenty nor more than fifty signatures of votors are required on the nomination papers for such town office.

§18.20. Additional salary for municipal treasurers for services as

custodians of retirement funds. Under the provisions of Chapter 240 of the Acts of 1960, cities and towns are authorized to compensate their treasurer in an amount not to exceed $500 per annum for services rendered as custodian of the funds of municipal retirement systems. The act provides that the additional compensation is to be paid from the expense account fund of the retirement system.

§18.21. Minimum annual compensation for fire fighters. Section 108D of G.L., c. 41, was amended by Acts of 1960, c. 260, to provide that, after affirmative vote by a majority of the members of the city council, subject to charter provisions, and in a town by a majority vote of the town meeting, the minimum annual compensation of permanent fire fighters will be not less than $5500.

§18.22. The "Open Meeting" law. The first paragraph of G.L., c. 39, §23a, was rewritten by the provisions of Acts of 1960, c. 274. The amendment reflects an attempt on the part of the General Court to clarify and define the instances when city and town boards, commissions, and agencies must conduct their proceedings in sessions open to the public and to the press. Prior statutory law was somewhat ambiguous as to when a municipal board, commission, or agency could invoke parliamentary procedure to convene in executive session. Since every municipal agency which convenes in regular session is affected by the new statute, its full text is set out below:

> All meetings of every district, city and town board, commission and school committee, and the meetings of the governing board of every local housing authority, shall be open to the public and to the press unless such board, commission or school committee shall vote to go into executive session. Such executive session may be held only for the purpose of discussing, deliberating or voting on those matters which by general or special statute, or federal grant-in-aid requirements, cannot be made public, and those matters which if made public might adversely affect the public security, the financial interest of the district, city, town or local housing authority, or the reputation of any person; provided, however, that the meetings of any such board, commission or school committee, or any sub-committee thereof, which shall be investigating any board or agency of a municipal government, and the meetings of any committee however appointed or constituted which shall be investigating any legislation which could ultimately change or alter the existing governmental structure of a city or town, shall, at all times, be open to the public and to the press, notwithstanding a vote of such board, commission or school committee to go into executive session.

Later on in the session, the General Court again amended the "Open Meeting" law by enacting Chapter 437 of the Acts of 1960, wherein provision is made for: (1) at least twenty-four hours' notice of each meeting of any county board or commission and appropriate posting

of such notice; (2) the procedure for giving notice, the proper posting thereof, and filing of the minutes of boards or agencies of municipalities with the city or town clerk; (3) the maintenance of accurate records setting forth the acts taken at said meetings; (4) the regulation of the parliamentary procedure of such public open meetings; and (5) a provision for issuance of appropriate orders by Justices of the Supreme Judicial or Superior Court to compel compliance with the "Open Meeting" law.

§18.23. Wage increases for city employees in years other than municipal election years. Section 33A of G.L., c. 44, which has proved to be a fruitful source of litigation in many cities and towns, provided that, inter alia, no ordinance increasing salaries of municipal officers or employees could be enacted unless it was to be operative during the financial year in which it was passed, with the proviso, however, that in any year other than a regular municipal election year, ordinances could be enacted by a two-thirds vote of the city council during the month of December providing for such increase to become effective on January 1 of the next ensuing year. Chapter 301 of the Acts of 1960, from the viewpoint of the time element involved, changed Section 33A by providing that these salary increase ordinances may be enacted during the month of November as well as December.

§18.24. Recording of vital statistics. Chapter 342 of the Acts of 1960 amended the law relative to recording births, marriages, and deaths by providing that the city and town clerks may receive affidavits containing the proper facts required by record if the existing record concerning the birth, marriage, or death does not contain all of the required facts. Section 2 of Chapter 342 provides an explicit method of correcting the record of birth of an adopted person upon request of the adopting parents or the person adopted. The statute requires receipt of a certified copy of the Probate Court decree or affidavits, filed and sworn to by the adopting parents or by the person adopted, or, in the discretion of the clerk, affidavits by credible persons having personal knowledge of the case, and documentary evidence substantiating the necessary facts beyond reasonable doubt.

§18.25. Collective bargaining between cities and towns and their employees. Chapter 561 of the Acts of 1960 amended G.L., c. 40, by adding a new section providing that any city or town may engage in collective bargaining with labor organizations representing its employees, except police officers, and may enter into agreements with such organizations. The amendatory act contains a home rule clause, providing that the new section is to take effect only when accepted by the city council or by the town meeting.

§18.26. Equal pay for men and women teachers. Chapter 344 of the Acts of 1960 requires that each city and town where the provisions of G.L., c. 71, §40, relative to equal pay for men and women teachers (or similar provisions) are not already in force submit Section 40 for acceptance, in a city by a vote at its next city election and in a town

by a vote at the annual town election held after the effective date of the chapter.

§18.27. Counting of votes in town elections. Section 51 of G.L., c. 513, was amended by Acts of 1960, c. 434, to provide that no ballots cast at a state primary in cities or towns can be counted until after the close of the polls.