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COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

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January 27, 2009

Robert J. Drew, Chairman  
 Natick Retirement Board  
 13 East Central Street  
 Natick, MA 01760

BY MAIL and FAX: 1 (508) 647-6443

Dear Mr. Drew:

It has been brought to the attention of the Commission that the Natick Retirement Board, at an emergency meeting convened Monday, January 26, 2009 with only three of its members present, purported to select a fifth member of the Board as provided for in G.L. c. 32, § 20(4)(b). If this is in fact the case, the Natick Retirement Board has acted in a manner contrary to the dictates of Chapter 32.

Pursuant to our authority to review all determinations made by retirement boards under G.L. c. 32, § 21(4), we have reviewed this purported selection of the fifth member and have determined that this attempted selection is NOT VALID for the following reasons.

General Laws, Chapter 32, Section 20, Subsection 4(b) provides in pertinent part that as to the composition of the retirement board, there shall be:

...[A] fifth member who shall not be an employee, a retiree, or official of the governmental unit and shall be chosen by the other four for a term of three years. If the fifth member is not chosen by the other four members within thirty days after the expiration of the term of the fifth member, said member shall be appointed in a city by the mayor, subject to confirmation by the city council, or in a town by the board of selectmen.... (Emphasis supplied.)

The statute unambiguously provides that the fifth member "shall be chosen by the other four members." In the case at hand, only three members were present at the emergency board meeting, including the incumbent fifth member who has no right to vote on his own selection. This left the selection of the fifth member to only two of the four members of the Natick

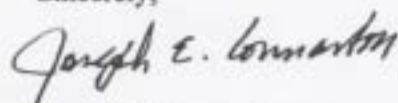


Robert J. Drew, Chairman  
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Page Two

Retirement Board, a blatant violation of the statute, which is clear that the fifth member must be chosen by the other four members. As such, this purported selection is invalid. The fifth member purported to have been selected on January 26, 2009 should not be allowed to participate in a Board meeting as a member and will not be eligible to vote, and any attempted action of the Natick Retirement Board which is dependent upon this purported fifth member's vote will be invalid.

The attempt to appoint a fifth member in the absence of two of the members of the board is invalid as a matter of law. If the four members of the Natick Retirement Board charged with the selection of the fifth member do not act together to choose a fifth member within the statutory time frame, the Board of Selectmen must select the fifth member.

Sincerely,



Joseph E. Connarton  
Executive Director

JEC/jac  
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cc:

John Ciccariello, Chairman, Natick Board of Selectmen  
Judith A. Kuhn, Natick Town Clerk  
John Flynn, Esq.  
Michael Sacco, Esq.