DAVID Z.
FYI.
Epn

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Community Sanitation
305 South Street, Jamaica Plain, MA 02130-3597
(617) 983-6761 (617) 983-6770 - Fax

May 25, 2000

Mary E. McEneany
Environmental Health and Safety
University of Massachusetts
N414 Morrill Science Center
Box 35710
Amherst, Massachusetts 01003-5710

Dear Mary:

We are in receipt of the complete copy of the University of Massachusetts Emergency Preparedness Plan. Thank you.

A review of the other sections of the documents previously sent to us, raises the following questions and comments:

Fire Drill Plan/Evacuation

The fire drill plan calls for the drills to be conducted in the evenings between 9:30 and 10:30 p.m. and does not indicate that the plan has been reviewed and approved by the Amherst Fire Department. Can we assume that the day camps do not occupy any buildings and therefore fire drills are not applicable?

Permits

It is noted on the permits that it is "granted in conformity with the statutes and ordinances relating thereto". It was also noted that the permits expire on July 1, 2000. What are the statutes and ordinances referred to on the permit and where is the authority for the Division of Environmental Health and Safety to issue these permits? Will new permits be issued effective July 2?

We have received several calls from individuals who are planning to operate camps at UMASS Amherst this summer relative to health care issues. There continues to be significant confusion relative to the responsibility of the program and of University Health Services. Has a

Health Care Consultant Agreement been established as yet by the University. If so could we have a copy?

We look forward to your reply.

Sincerely,

Howard S. Wensley

Howard S. Wensley, M.S., C.H.O.
Director

cc: Amherst Board of Health

824/umacamp.doc

CLOUGH, HARBOUR & ASSOCIATES LLP
ENGINEERS, SURVEYORS, PLANNERS & LANDSCAPE ARCHITECTS

171 PARK AVENUE
P.O. BOX 626
WEST SPRINGFIELD, MASSACHUSETTS 01090-0626
TEL: 413-746-0796 • FAX: 413-746-0995

October 22, 1998

Epi Bohdi, Director
Amherst Board of Health
Bangs Community Center
Amherst, Massachusetts 01035

RE: UNIVERSITY OF MASSACHUSETTS – SOFTBALL FIELDS
CHA FILE: 7136.53

Dear Mr. Bohdi:

Enclosed please find two (2) copies of the plans and application for the variance from the Plumbing Code for the new softball dugouts at the University of Massachusetts for your review. We would like to request a letter from your Board stating that you are considering this application. This letter is a mandatory requirement from the Board of State Examiners. We have included a draft letter that may satisfy this requirement for your use.

If you should have any questions, please do not hesitate to contact our office.

→ would asking for 1 bathroom for women only.
– Bruce Thomas 577-0109
– BOH just has to indicate aware seeking variance

Very truly yours,

CLOUGH, HARBOUR & ASSOCIATES LLP
Engineers, Surveyors, Planners
& Landscape Architects

William R. Garrity, ASLA
Associate

EJO/np
u:\civil\site\7136\crspdnce\amherhe
Encl.

cc: University of Massachusetts
Facilities Planning Division
Bruce Thomas
Andrew French
Robert Pariseau, Amherst D.P.W.

CLOUGH, HARBOUR & ASSOCIATES LLP
ENGINEERS, SURVEYORS, PLANNERS & LANDSCAPE ARCHITECTS

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TEL: 413-746-0796 • FAX: 413-746-0995

File Copy.

October 21, 1998

Robert Pariseau, P.E.
Director of Water Resources
586 South Pleasant
Amherst, Massachusetts 01002

RE: UNIVERSITY OF MASSACHUSETTS – NEW SOFTBALL FIELDS
CHA FILE: 7136.53

Dear Mr. Pariseau:

Enclosed please find two (2) sets of plans for the sanitary sewer disposal for the two new softball dugouts on Stadium Drive for your review. The plan is to install a small pump station adjacent the two dugouts with a 1 1/4" force main across Stadium Drive to the Town of Amherst's 15" sanitary sewer interceptor. Once the proposed sports stadium has been completed in this area, a new pumping station will be installed and a larger force main will be utilized.

We have also included a copy of an Application for Variance from the Plumbing Code for your review.

If you should have any comments, please contact our office.

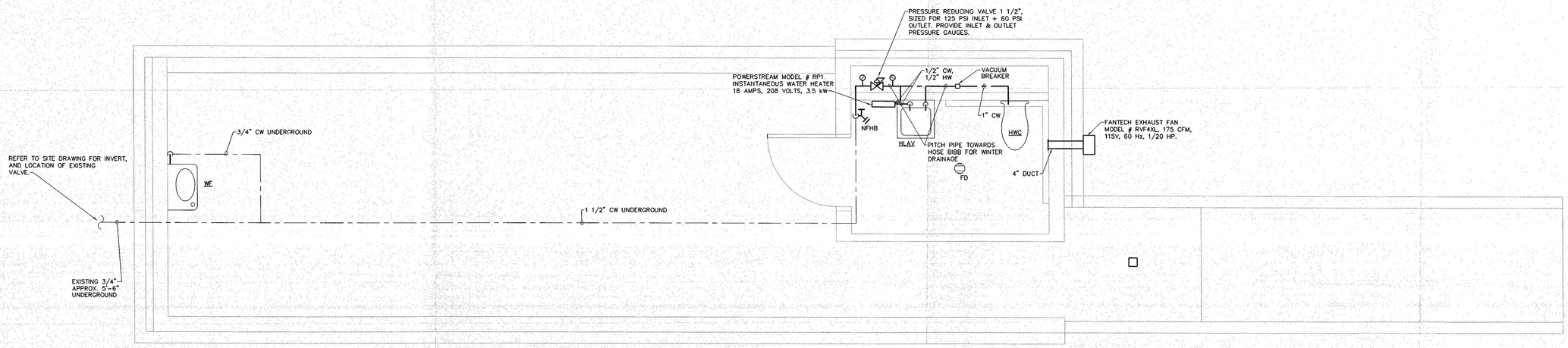
Very truly yours,

CLOUGH, HARBOUR & ASSOCIATES LLP
Engineers, Surveyors, Planners
& Landscape Architects

William R. Garrity, ASLA
Associate

EJO/np
u:\civil\site\7136\crspdnce\amherst
Encl.

cc: University of Massachusetts
Facilities Planning Division
Bruce Thomas
Epi Bohdi, Dir. A.B.H.

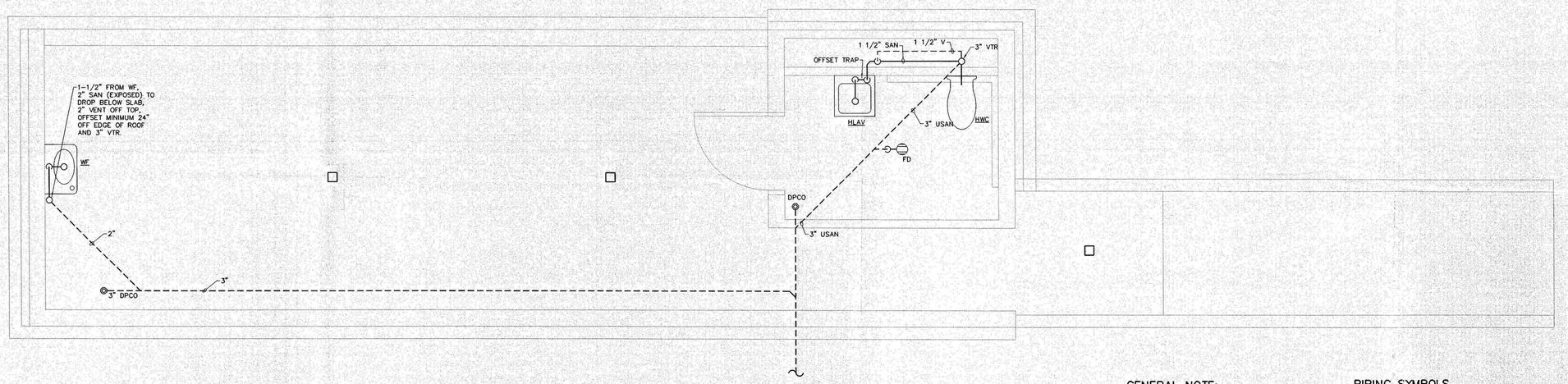


POTABLE WATER PLUMBING PLAN

SCALE: 1/2"=1'-0"

NOTES:

1. RESTROOM ACCESSORIES BY OWNER (TOILET TISSUE DISPENSER, SOAP DISPENSER, HAND TOWEL DISPENSER & MIRROR).
2. ALL RESTROOM FIXTURES & ACCESSORIES TO BE ADA COMPLAINT FOR TYPES & LOCATION.
3. EXISTING SHUT-OFF VALVE SHALL BE CLOSED PRIOR TO WINTER SEASON.
4. ALL LINES SHALL BE DRAINED, INCLUDING TRAPS PRIOR TO WINTER SEASON.



SANITARY PLAN

SCALE: 1/2"=1'-0"

GENERAL NOTE:

1. RESTROOM IN HOME DUGOUT ONLY – STUB ALL PLUMBING FOR FUTURE RESTROOM IN VISITOR TEAM DUGOUT.

PIPING SYMBOLS

- PRESSURE REDUCING VALVE – SELF-CONTAINED
- PIPING CONTINUES
- PIPING ELBOW UP
- PIPING ELBOW DOWN
- CO — CLEANOUT
- FD — FLOOR DRAIN
- DPCO — DECK PLATE CLEANOUT
- SANITARY LINE
- UNDERGROUND SANITARY LINE
- DOMESTIC COLD WATER
- DOMESTIC HOT WATER
- SANITARY VENT LINE

ABBREVIATIONS

HLAV	HANDICAP LAVATORY
HWC	HANDICAP WATER CLOSET
NFHB	NON-FREEZE HOSE BIB
USAN	UNDERGROUND SANITARY
WF	WATER FOUNTAIN

COMMONWEALTH OF MASSACHUSETTS JOHN G. RAYMOND 23205 REGISTERED PROFESSIONAL ENGINEER

PLUMBING FIXTURE SCHEDULE

TAG #	ITEM	MANUFACTURER & MODEL	WASTE	VENT	CW	HW	FITTINGS/ACCESSORIES OR DESIGN DATA	ITEM DESCRIPTION
HWC	WALL-HUNG HANDICAP WATER CLOSET	AMERICAN STANDARD AFWALL AQUAMETER #2257.103	3"	2"	1"	NA	SLOAN ROYAL LC-111-1.6 FLUSH VALVE OLSONITE #95 SEAT	VITREOUS CHINA, WATER SAVER, SIPHON JET ACTION, ELONGATED BOWL, MEETS ANSI A112.19.2M (MOUNT TO HANDICAP CODE)
HLAV	WALL HUNG HANDICAP LAVATORY	AMERICAN STANDARD LUCERNE #0356.015	1-1/4"	1-1/4"	1/2"	1/2"	DELTA MODEL 523 HDF-ELH SINGLE HANDLE FAUCET AND AMERICAN STANDARD #7723.018 OFFSET DRAIN ASSEMBLY, 1/2" VACUUM BREAKER	SELF-RIMMING ACID RESISTANT ENAMELED CAST IRON WITH FRONT OVERFLOW, 4" CENTER FAUCET HOLES MEETS ANSI A112.19.1M
FD	FLOOR DR IN (NON-SHOWER ROOMS)	JOSAM 36000 & 36200 SERIES	SEE PLAN	NA	NA	NA	SERIES "A" SATIN NIKALOY STRAINER (IN MECHANICAL ROOM PROVIDE FLOOR DRAIN WITH FUNNEL USE SERIES "E2" STRAINER)	TWO-PIECE BODY WITH ADJUSTABLE STRAINER, WITH WEEPHOLES AND INVERTIBLE COLLAR
WF	HANDICAP WATER FOUNTAIN	HAWS MODEL # 1107FR	1 1/4"	NA	1/2"	NA	1/2" VACUUM BREAKER	WALL MOUNTED, STAINLESS STEEL, FREEZE RESISTANT, MEETS ANSI A112.19.2M
NFHB	NON-FREEZE HOSE BIBB	JR SMITH FIGURE 5509	NA	NA	3/4"	NA	NA	INTEGRAL VACUUM BREAKER

CHA — CLOUGH, HARBOUR & ASSOCIATES LLP
ENGINEERS, SURVEYORS, PLANNERS & LANDSCAPE ARCHITECTS
171 PARK AVENUE – W. SPRINGFIELD, MA – 01090
P.O. BOX 626 413-746-0796

CHA Project No. 7136

REV. NO.	DESCRIPTION	BY	APP'D	DATE
1	DUGOUT RESTROOMS	GKW	JJT	10/28/98

UNIVERSITY OF MASSACHUSETTS
FACILITIES PLANNING DIVISION

BUILDING NAME

SOCCER & SOFTBALL FIELDS

PLUMBING AND SANITARY PLAN

	BY	DATE	APP'D	DATE	WORK ORDER NO.	PROJ.-CONTRACT NO.
DRN.	GKW	10/98			98-19043-00	UMASS-21
TRD.					SCALE 1/2"=1'-0"	SHEET 14 OF 14
CKD.					DRAWING NUMBER	
DES.					E-A-Q-D16-98-19043-00	

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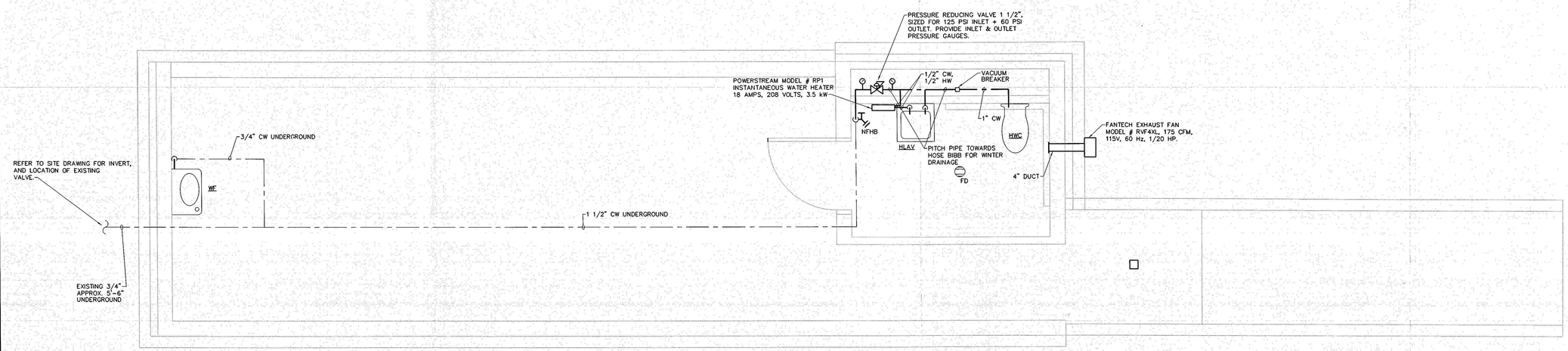

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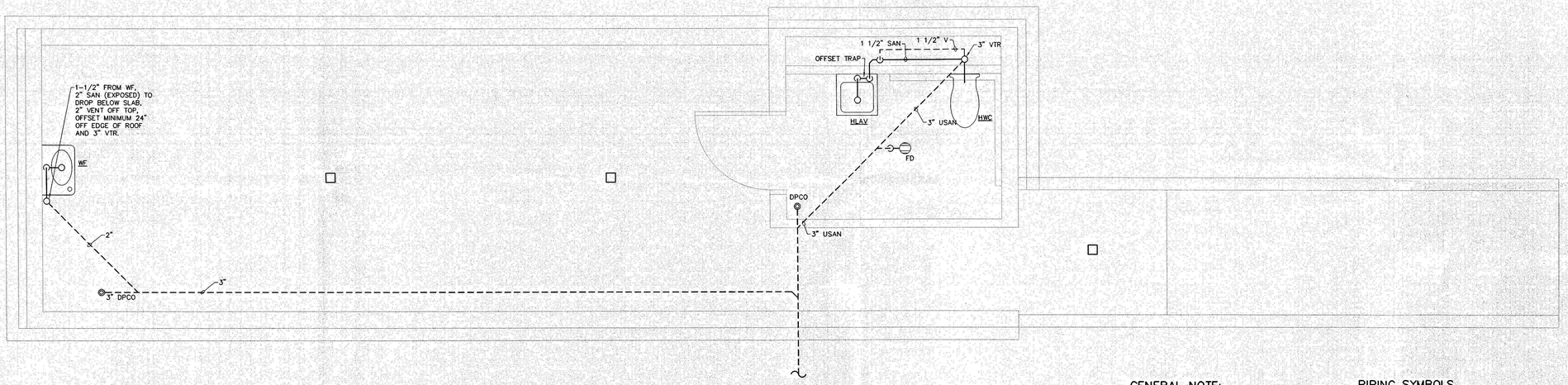

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COMMONWEALTH OF MASSACHUSETTS JOHN G. RAYMOND 29205 REGISTERED PROFESSIONAL ENGINEER

MECHANICAL

PLUMBING FIXTURE SCHEDULE

TAG #	ITEM	MANUFACTURER & MODEL	WASTE	VENT	CW	HW	FITTINGS/ACCESSORIES OR DESIGN DATA	ITEM DESCRIPTION
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NFHB	NON-FREEZE HOSE BIBB	JR SMITH FIGURE 5509	NA	NA	3/4"	NA	NA	INTEGRAL VACUUM BREAKER

CHA
DRAWING COPYRIGHT © 1998
CLOUGH, HARBOUR & ASSOCIATES LLP
ENGINEERS, SURVEYORS, PLANNERS & LANDSCAPE ARCHITECTS
171 PARK AVENUE - W. SPRINGFIELD, MA - 01090
P.O. BOX 626
413-746-0796

CHA Project No. 7136

REV. NO.	DESCRIPTION	BY	APP'D	DATE
1	DUGOUT RESTROOMS	GKW	JJT	10/26/98

UNIVERSITY OF MASSACHUSETTS
FACILITIES PLANNING DIVISION

BUILDING NAME

SOCCER & SOFTBALL FIELDS

PLUMBING AND SANITARY PLAN

	BY	DATE	APP'D	DATE	WORK ORDER NO.	PROJ.-CONTRACT NO.
DRN.	GKW	10/98			98-19043-00	UMA98-81
TRD.					SCALE 1/2"=1'-0"	SHEET 14 OF 14
CKD.					DRAWING NUMBER	
DES.					E-A-Q-D16-98-19043-00	

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BOARD OF STATE EXAMINERS OF PLUMBERS AND GAS FITTERS

Leverett Saltonstall Building, 100 Cambridge Street, Room 1511
Government Center, Boston, Massachusetts 02202

Application for Variance from Plumbing Code. $50.00 FEE

1. Name and address of party (AGENT) EDWARD O'HARA
requesting variance: CLOUGH, HARBOUR AND ASSOC. LLP
171 PARK AVENUE
WEST SPRINGFIELD MA. 01090

2. Daytime phone: area code: (413) Number: 746-0796

3. Title or position: ASSOCIATE

4. LOCATION OF VARIANCE REQUEST STADIUM DRIVE
AMHERST, MA 01003

Present owner of Property COMMONWEALTH OF MASSACHUSETTS

5. Name and address of proposed or
~~current~~ occupier (tenant) of building
where variance is requested: UNIVERSITY OF MASSACHUSETTS
MORRIS SOFTBALL TEAM

6. Name of other parties involved included:
Engineers: CLOUGH HARBOUR AND ASSOCIATES LLP
Contractors: WARNER BROS.
Plumbers:
Brief description of variance: 1) ONLY 1 WATERCLOSET AND 1 LAVATORY IS BEING
requested and code section (attach plans): PROPOSED; BASED ON TABLE 1 (248 CMR
2.10) 6 OF EACH ARE REQUIRED FOR AN OCCUPANCY LOAD UP TO 400.
2) ONLY 1 UNISEX RESTROOM IS BEING PROPOSED; BASED ON TABLE 1 (248 CMR 2.10
NOTE 2) A MINIMUM OF ONE WATERCLOSET AND ONE LAVATORY FOR EACH SEX

7. Reason(s) why variance 1) THIS IS A TEMPORARY SITUATION, ATTACHED YOU WILL FIND A
requested-state-hardship: CONCEPT PLAN FOR BUILD OUT OF THE ENTIRE FACILITY
AT WHICH TIME THE REQUIRED RESTROOMS WILL BE PROVIDED. 2) PORTABLE TOILETS
WILL BE INSTALLED FOR EVENTS 3) WITHOUT A RESTROOM IN THE DUGOUT, THE
TEAM IS REQUIRED TO GO BACK TO CAMPUS (≈1,300') TO UTILIZE FACILITIES
DURING DAILY PRACTICES

OVER

8. Has plumbing project for which variance requested been completed? Yes____ No ✓

9. Proposed variance is considered: new construction ✓ or renovation ____.

10. Date of letter local Board of Health or Health Department considered your request: _____ (Mandatory, attach copy of letter)

10/27/98 — Date of Application

Edward O'Hara — Signature of Requesting Party

NOTE

1. Attach more information, if necessary to this application and deliver or mail to: State Board of Examiners of Plumbers and Gasfitters. Room 1511, 100 Cambridge Street, Boston, MA 02202, (617) 727-9952.

2. Current fee is fifty dollars, make check or money order payable to Commonwealth of Massachusetts.

3. Variances are customarily first heard last Wednesday of every month at Plumbing Subcommittee meeting, call (617) 727-9952 for meeting location. Full Board meets on first Wednesday of every month and makes final decision after considering plumbing subcommittee recommendation.

4. Copies of state plumbing code regulations (called 248 CMR) are available at State Bookstore, Room 116, State House, Boston, MA 02133, call (617) 727-2834 for current cost plus mailing charge.

5. Mail or deliver copy of this application (no fee or plans) to local plumbing inspector.

6. This form may be photocopied. Revised 3/90.

IMPORTANT NOTICE TO THE APPLICANT

A copy of the Board's approval of this variance request must be filed by the applicant with the local plumbing and/or gas inspector before the start of any work.

Enclosure: plans, fee, Health Department letter

BOARD OF STATE EXAMINERS OF PLUMBERS AND GAS FITTERS

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OVER

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Date of Application

Edward O'Hara
Signature of Requesting Party

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Enclosure: plans, fee, Health Department letter

Health

Town of

AMHERST Massachusetts

TOWN COUNSEL

FACSIMILE TRANSMITTAL SHEET

To: Barry

Fax: 256-4006

Phone:

Re: Health Inspections - UMass

From: Alan Seewald, Acting Town Counsel

Pages: 10 including cover sheet

Date: June 16, 1998

CC: Epi Bodhi

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Barry and Epi

[illegible] PH to Lawrence T. Bench, [illegible] advisory [illegible] be in order.

Epi –
I am sending only the enclosed letter (2 pages [illegible]). The other pages are the memo that was attached to the Worsley letter you sent me –
Al

Five East Pleasant Street, Amherst, Massachusetts 01002 (413) 549-0041 (413) 549-3818 (Facsimile)

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

ARGEO PAUL CELLUCCI
GOVERNOR

WILLIAM D. CARY
SECRETARY

HOWARD K. KOH, MPH
COMMISSIONER

Office of the General Counsel
Second Floor (617) 624-5220

Via Facsimile and First Class

[illegible] June 1998

Nancy Lawrence T. Bench
Assistant General Counsel
Office of the General Counsel
University of Massachusetts
One Beacon Street, 26th Floor
Boston, MA 02108

Re: State Sanitary Code

Dear Nancy:

This is in response to your letter of [illegible] regarding the issue of whether facilities owned and/or operated by the University of Massachusetts fall within the jurisdiction of the State Sanitary Code.

As we discussed, it is the position of the Department of Public Health that the facilities owned and/or operated by the University fall within this statute's scope based on the analysis outlined in the attached memo, and that the legislature did not intend to exempt the University from meeting the basic health and safety requirements set in the Code for the protection of the Commonwealth's citizens.

At our meeting, you stated that your response to this position was based on the decision in Hannigan v. New Gamma-Delta Chapter of Kappa Sigma Fraternity, Inc., 327 NE2d 882, 367 Mass. 658 (1975). The Department believes that Hannigan is not dispositive on establishing the University's immunity to the State Sanitary Code. The case is distinguishable from the present issue in that the Department is not bringing an action in tort against the University, nor is it

naming the University and the Trustees as separate defendants in any type of civil action. Moreover, the Supreme Judicial Court in Hannigan does not state that sovereign immunity is total and complete. It considers abolishing sovereign immunity but then opts to allow the legislature to first demonstrate that it has no intention of doing so before abolishing the doctrine itself. Justice Hennessey refers to an earlier decision to limit sovereign immunity when writing that:

> "Plaintiffs urge that at this time we should make this major change in the law toward which in the Morash case, we took one step when we said: "We disagree with the Commonwealth's argument that it cannot be sued without legislative consent. Since governmental immunity is a judicially created concept, it can be discarded by the courts *and we do so now to the limited extent of holding that the Commonwealth is not immune from liability if it creates or maintains a private nuisance which causes injury to the real property of another.*" Morash & Sons, Inc. v. Commonwealth, 296 NE2d 861, at 465 (1973)." Hannigan v. New Gamma-Delta, 327 NE2d 882, at 884, 367 Mass 658, at 660.

[illegible] Court ruling in the Treio v. Fenza decision discussed in our earlier memorandum [illegible] Hampshire County, Civil Action No. 16871, (1983)), highlighted this very point by finding [illegible] that the Sanitary Code did apply to university-owned dormitories and apartments and ordering the inspector to perform the requested inspections. The Court order [illegible] ***The Board of Health of the Town of Amherst has the legal duty pursuant to 105 CMR 410.820 to inspect any dwelling or dwelling unit located within that town, upon the written, oral or telephone [illegible] owned or controlled by [illegible]***

[illegible] would be best [illegible] but only in a [illegible] inspections and [illegible] appropriate recommendations to ensure that the regulatory [illegible] have been met. Because the underlying concern of the Department is to ensure the public's health and safety and because of the obvious time constraints in resolving this issue fully, we agree with your suggestion and think this interim approach should be implemented expeditiously. However, as the agency ultimately responsible for the enforcement of the State Sanitary Code, the Department will continue to seek clarification on this matter. To that end, we are advising you that we will contact the State Attorney General's office which may be able to assist the Department and the University in resolving this issue.

It is our understanding that several privately operated camps make use of University property under a lease agreement. Could you please explain whether it is also your position that these camps are also beyond the scope of the State Sanitary Code and, if so, the basis for that conclusion?

Thank you for your time and attention in this matter and to your consideration in reaching resolution concerning the jurisdiction of the State Sanitary Code.

Sincerely,

Juan C. Bellido, Esq.
Deputy General Counsel

cc: Howard Wendler, Director
Division of Community Sanitation, DPH

Donna Levin, Esq.
General Counsel, DPH

Alan Seewald, Esq.
Amherst Town Counsel

Tom Gallagher
Health and Human Services

Enclosure

Health

Massachusetts
Department of Public Health

RECEIVED MAY 26 1998

Division of Community Sanitation
305 S[illegible] Street
Jamaica Plain, MA 02130
Phone 617 983-6761, 6762, 6763
Fax: 617 983-6770 or 617 524-8062

FAX

To: Tai Bodhi

FROM: Howard S. Wensley, Director

Fax number: 303 256-4061

Pages (excluding cover):

Date: May 26, 1998

Re:

CC:

Please Advise

ADVISORY RULING

Applicability of the STATE SANITARY CODE to the University of Massachusetts, The Massachusetts State Colleges, and their Respective Building Authorities

[illegible] ruling issued pursuant to c.30A, s.8. The Department has [illegible] the State Sanitary Code, as promulgated by the Department of [illegible] and enforced by local boards of health, is applicable to the facilities [illegible] Massachusetts, the University of Massachusetts Building Authority, [illegible] State Colleges, and the Massachusetts State College Building [illegible] resolving this issue, I consider at length the legislature intent [illegible] of the State Sanitary Code, the specific exemption and autonomy [illegible] of the state university, colleges and their building [illegible] nature of these bodies, and the authority of local boards of [illegible] the Sanitary Code.

[illegible] intended for the State Sanitary Code to be universally enforced [illegible] Commonwealth.

[illegible] Health is delegated the power to promulgate a State [illegible] 8, [illegible] incorporated in G.L. c.111, s.127A:

> [illegible] shall [illegible] and may from time [illegible] regulations to be [illegible] Code, which may pro- [illegible] thereof [illegible]. Said [illegible] and have the force [illegible]

[illegible] of the State [illegible] conflict with [illegible]

[illegible] of the enabling statute reveals that this delegation of [illegible] was motivated by an intent to remedy a long-standing problem [illegible] regulations promulgated by various local boards of health. Report of the Special Commission to Study and Investigate Public Health Laws and Policies, 1957 House Doc. No. 1200. Report Submitted by the Legislative Research Council Relative to the Establishment of a Uniform Sanitary Code for the Commonwealth, 1957 House Doc. No. 2833. In the latter [illegible] the intended universality of the Sanitary Code was expressly stated. The [illegible] uniformly applicable [illegible] the entire state." 1957 House Doc. No. 2833, [illegible] uniform applicability [illegible] apparently meant geographical universality [illegible] of applicability [illegible] municipal boundaries. While the legislative records do not speak specifically to the issue of applicability to state institutions of higher education and their building authorities, the exemption of state college campuses from Sanitary Code enforcement would seem contrary to the express legislative intent of uniform applicability. Functionally, a college campus is analogous to a city or town, with a geographical boundary, a community, and residential and dining facilities. Not enforcing the Sanitary Code on state college campuses would, therefore, pose [illegible] threat to the public health as excluding a city or town from Sanitary Code enforcement, and thus defeat the purpose of the legislation.

Logic and Purpose of Establishing a Universally Applicable Sanitary Code

[illegible] of the Commonwealth by the universality of the Sanitary Code would be seriously impaired by its non-enforcement on the several college campuses. Disease may be spread to the public at large from any single unsanitary location.

Since public health problems are difficult to isolate or control with limited power, interpreting legislative mandates of public health regulatory authority as grants of plenary power seems necessary to insure effective health protection.

The [illegible] Court relied on such reasoning in sustaining the universal application of department air pollution regulations. "Thus, in the present case, the legislature by c.11, ss.142A-142E, has authorized and directed the creation of a comprehensive regulatory scheme for attacking the state-wide problem of air pollution. This legislation on its face demonstrates a legislative awareness that any scheme to control and prevent air pollution must apply to all sources of such pollution, whether privately or publicly controlled." City of Boston v. Massachusetts Port Authority, [illegible] N.E. 2d 488, 490 (1975).

[illegible] applicability of State Sanitary [illegible] committees, adopted such an interpretation [illegible] "Had the legislature intended to exempt school [illegible] or individuals from the provisions of the Code, it [illegible] specific provisions to such effect." Opinion of [illegible]

Legislative Interpretation of the Statute

[illegible] administrative [illegible] of c.111, s.127A [illegible] to adopt [illegible] Article I, Reg. 1.1 (1960) states that, "This Sanitary Code shall apply [illegible] Commonwealth unless and to the extent that the provisions of any article are expressly [illegible]." The express limitations of applicability are few: for example, Article VIII, "Minimum Standards for Bathing Beaches" (1969) does not apply to [illegible] beaches. More common are statements of the Code's breadth: Article II, Reg. 1 defines "dwelling" as "every building or shelter . . . intended for human habitation."; legal entities falling within its scope including a "city, town, county or other governmental unit" Reg. 1; Article X, Reg. 1.1 defines "food service establishment" as including "private, public or non-profit organization or institution customarily serving the public"; and Article XI, Reg. 1.1, 2.1 specifically [illegible] publicly-owned buildings." That the Legislature intended the Sanitary Code [illegible] applicable throughout the Commonwealth, including state college facilities, is suggested by the language of the regulations promulgated by the Department pursuant to c.111, s.127A.

On its face, G.L. c.111, s.127A appears to authorize the Department to promulgate a sanitary code which is to be universally enforced throughout the Commonwealth. The legislative history of the enabling statute, proper statutory interpretation of public health legislation, and contemporaneous administrative interpretation support applicability of the Sanitary Code throughout the state, including buildings located on state college and university campuses.

(2) Neither the exemption provisions of the University of Massachusetts Building Authority and the Massachusetts State College Building Authority charters, nor the autonomy provisions of the charters of Massachusetts enabling statute grant exemption from enforcement of the State Sanitary Code.

Since the scope of the Sanitary Code can be limited by other specific provisions of law, G.L. c.111, s.127A, it is necessary to examine the legislative sources of the state university and colleges and their building authorities to determine whether such limitations exist.

The charters of the University of Massachusetts Building Authority (UMBA) and the Massachusetts State College Building Authority (MSCBA) contain virtually identical provisions exempting the bodies from supervision or regulation by other state [illegible]. The provision of the UMBA charter, St. 1960, c.773, s.2 or M.G.L. c.75 [illegible]:

> [illegible] hereby created and placed in the department of education a body politic and corporate to be known as the University of Massachusetts Building Authority, which shall not be subject to the supervision or regu- [illegible] any department, commission, [illegible] except as [illegible] and as [illegible]

[illegible] for MSCBA as St. 1963, c.[illegible], App., [illegible] the exemption provision, indeed the entire charter [illegible] of legislative [illegible] used in chartering state authorities. The form [illegible] used in the charter of the Massachusetts Turnpike Authority, St. [illegible], s.3 and later adopted for the charters of other authorities including the Massachusetts Port Authority, St. 1956, c.456, s.2.

An interpretation of the exemption provision as providing exemption from Sanitary Code enforcement is simply without basis. In City of Boston v. Massachusetts Port Authority, 308 N.E. 2d 488 (1975) the Supreme Judicial Court held that the exemption provision in the Massport charter did not exempt the authority from Department of Public Health (DPH) air pollution regulations. While the court relied on the broad authority given DPH by the air pollution regulation enabling statute, G.L. c.111, s.142E, it also focused on the interpretation of the exemption provision.

> The consequences of the defendant's interpretation of s.2 of the Authority's enabling act would be that a small group of State authorities would have a unique exemption from the regulatory power of the State, an exemption available to no other person or legal entity, public or private . . .
> City of Boston v. Massachusetts Port Authority, 308 N.E. 488, 499 (1975).

In rejecting such a broad interpretation of the exemption provision, the court stressed that the purpose of the provision was not to grant regulatory immunity, but merely to provide for the Authority's financial and managerial independence, so that it might function like a private business.

Such a narrow reading of the exemption provision is readily applicable to the enabling statutes of UMBA and MSCBA. The exemption provision language is identical, the purpose of providing financial and managerial autonomy appears the same, and the Supreme Judicial Court even referred in its decision to other authorities' enactments. The legislative history of UMBA and MSCBA supports the analogy to Massport. The predecessor of both UMBA and MSCBA, the Massachusetts State College Building Association, was chartered (without an exemption provision) by St. 1939, c. 388, for the purpose of holding land, and constructing and maintaining dormitories for the state college system. In 1960 the Legislature voted to extend the association's powers to include U. Mass. facilities, but the Governor vetoed the bill, 1960 House Doc. No. 1347. The reason for the veto was that the association's charter resembled the State Office Building Association's (SOBA) charter, which had recently been held unconstitutional because SOBA was not sufficiently financially independent from the Commonwealth. Iyer v. Commissioner of Administration, 340 Mass. 586 (1960). Therefore, instead of extending the power of the Massachusetts State College Building Association, which was of questionable constitutionality, the Legislature chartered UMBA, with provisions, including the exemption, that assured UMBA's financial autonomy. And three years later, the Legislature abolished the Massachusetts State College Building Association and chartered the Massachusetts State College Building Authority, with the same provisions assuring financial independence. Thus the primary reason for the inclusion of the exemption provisions in the UMBA and MSCBA charters was simply to provide for the authorities' financial and managerial independence, and not to grant blanket exemption from state regulation.

A secondary purpose of the exemption provision was to insure the constitutionality of the UMBA and MSCBA charters under Massachusetts Constitution Amend. Art. 66 (which was annulled in 1966 by Amend. Art. 87, s.3). Article 66 required that each administrative office, board or commission had to be placed under the jurisdiction of one of the executive departments. For this reason, both UMBA and MSCBA were "placed" in the department of education, M.G.L. c.73, App., s.1-2 and c.75 App., s.1-2. However, since the Legislature wished for UMBA and MSCBA to be autonomous bodies, the language "shall not be subject to the supervision or regulation of the department of education or of any department, . . .of the commonwealth" was added. The exemption provision should, therefore, be interpreted as standing in opposition to the placing of the authorities within the department of education. The Legislature was sufficiently concerned with this function of the exemption provision to request the Supreme Judicial Court's opinion concerning its constitutionality. In Opinion of the Justices, 334 Mass. 721, 136 N.E. 2d 223 (1956), the court held that the exemption provision in the Massport charter did not violate Article 66, because the

authority was not an executive or administrative office, board or commission, but an independent corporation, and therefore Article 66 was not even applicable. In the UMBA and MSCBA charters, use of the "placing" language followed by the exemption provision was not even necessary under Article 66.

The exemption provision of the UMBA and MSCBA charters was intended to serve two functions: insure the financial and managerial autonomy of the authorities, and avoid violation of Article 66. Immunity from State Sanitary Code enforcement cannot be justified by a broad interpretation of the exemption provisions of the UMBA and MSCBA charters.

Attention must be given to the enabling statutes of the University of Massachusetts (U. Mass.) and Massachusetts State College (MSC). The laws establishing the MSC system, G.L. c.15, s.20A and c.73 contain no exemption or autonomy provisions concerning the colleges. However, the statute governing U. Mass. does contain an autonomy provision:

> In exercising such authority, responsibility, powers and duties said board shall not in the management of the affairs of the university be subject to, or superseded in any such authority by any other state board, bureau, department [illegible] provided [illegible]

That autonomy provision is even less problematic than the exemption provision of the UMBA charter. First, the language of the autonomy provision is less restrictive than the language of the exemption provision: c.75, s.1 speaks of the superseding of authority in management, and does not mention regulation. Enforcing the State Sanitary Code cannot be [illegible] the authority of the university, and therefore does not [illegible] the legislative history of c.75, s.1, as shown [illegible] Commission on Budgetary Powers of the University of Massachusetts and Certain Related Matters, 1962 House Doc. 3350, suggests that the purpose of the autonomy provision was to insure the financial, managerial, and academic independence of the university, so that it might compete with private universities. The autonomy provision does not reflect any intent to provide blanket regulatory immunity, and therefore does not prevent enforcement of the Sanitary Code on the U. Mass. Campus.

(III) <u>In enforcement of the State Sanitary Code, the state University and colleges and their building authorities should be treated as municipal or private corporations.</u>

Authorities, such as UMBA and MSCBA, and state institutions of higher education, such as U. Mass. and MSC, are distinct forms of legal entities which may be best analogized to municipal corporations. In determining the applicability of the Sanitary Code to these institutions' facilities, it is necessary to first characterize the legal nature of these bodies.

UMBA and MSCBA closely resemble municipal corporations: they are chartered as bodies "politic and corporate"; their source of power is the Commonwealth; and they perform limited governmental functions. The Supreme Judicial Court has analogized Massport, an authority with a charter almost identical to UMBA and MSCBA, to a municipal corporation. <u>Opinion of the Justices</u>, 334 Mass. 721, 136 N.E. 2d 232 (1956). The court first noted that the authority performs a governmental function, but added that the authorities' financial and managerial independence means that it [illegible] merely a board or commission of the State government." Attributes of a private corporation were also cited, but because of the authority's public function

the court concluded, "We regard the Authority as a purely public corporation for public purposes - an arm of the State - analogous to a municipal corporation." Opinion of the Justices, 334 Mass. [illegible] 735. Although there are no precedents analogizing U.Mass. or MSC to municipal corporations, the structure and functions of these bodies supports the analogy. U. Mass. is organized in a corporate structure, with a board of trustees governing the body, G.L. c.75, s.1, and its autonomy provision gives the institution financial and managerial independence. But because the university performs a public function, it is more like a municpal than a private corporation.

Since the state university and colleges and their building authorities provide the same general educational services as the private universities with which they compete, these institutions may also be analogized to private corporations. In City of Boston v. Massachusetts Port Authority, the Supreme Judicial Court used the similarity of function of an authority to a private corporation to determine regulatory applicability. "Because private businesses are subject to air pollution control regulation under s 142A-142E, it follows that the Authority should also be subject to such regulation." 308 N.E. 2d 499. Similarly, since the State Sanitary Code is applicable to private universities, there seems to be no justification in terms of public function for not applying the Code to state universities.

Legal entities falling within the scope of State Sanitary Code, Art. II are specified in the definition of "person" in Reg. 1:

> Person means [illegible] partnership, corporation, firm, association, [illegible] group, including a city, town, county or [illegible] governmental unit, owning property or carrying on an activity regulated by this article.

The state universities and their building authorities qualify under this definition in two ways. "Other governmental unit" appears to encompass at least all types of municipal corporations, if not all governmental bodies, including state authorities. Considering the state university and colleges and their building authorities as "public corporation(s). . .analogous to. . . municipal corporation(s)." would bring them within the definition of "other governmental unit." Alternatively, the analogy of these bodies to private corporations may be sufficient to qualify them under "corporation." Under either analysis, the state university and colleges and their building authorities satisfy the broad regulatory definition of "person", and therefore the State Sanitary Code Article II is applicable to state campus facilities.

(IV) <u>The Legislature has delegated the enforcement of the State Sanitary Code to local boards of health.</u>

The authority to enforce the State Sanitary Code has been specifically delegated to local boards of health G.L. c.111, s.127A:

> Local boards of health shall enforce said code in the same manner in which local health rules and regulations are enforced, but, if any local boards fail after the lapse of a reasonable length of time to enforce the same, the department may in like manner enforce said code against any violation.

This provision, which was added by St. 1971, c.261, only made express that which was already implied. Previous specific health statutes had provided for enforcement by local boards of health, and the regulations initially promulgated by DPH pursuant to c.111, s 127A specified local enforcement (see State Sanitary Code, Art. I).

Although local health boards are appointed by local government officials, G.L. c.111, s.26-27C, it is established that local boards are independent authorities with delegated powers of the state. Local governments cannot order actions by local boards of health, Breault v. Town of Auborn, 303 Mass. 424, 22 N.E. 2d 48 (1939); and local boards may, in fact, order actions, including the expenditure of funds, by local governments. Board of Health of North Adams v. Mayor of North Adams, 334 N.E. 2d 34 (1975). In the North Adams case, the Supreme Judical Court explicitly adopted an agency theory with respect to local boards, "We can say that the General Court may, when necessary or convenient, delegate a particular job or function to a local body, the local body becoming for the purpose an 'agent' of the State," p.42. Although the case dealt specifically with the delegation of power to local boards under c.111, s.30, and referred to a similar delegation under c.111, s.160 and c.140, s.122, the agency analysis is equally applicable to enforcement of the Sanitary Code under c.111, s.127A

As long as the local board is enforcing only the State Sanitary Code, it would appear to be clothed with the authority of DPH. This opinion does not reach the question of the power of local boards to enforce local health regulations, promulgated pursuant to c.111, s.31, [illegible] The provision of c.111, s.127A which specifies Sanitary Code enforcement by local boards "in the same manner" as local regulation enforcement should not be interpreted as a substantive limitation on the local board's power to enforce the Code; rather, the term should be interpreted as merely requiring the same procedure for Sanitary Code and local regulation enforcement. In short, there is no obstacle to the enforcement of the Sanitary Code by local boards of health on state university campuses. However, if the local boards fail to enforce the Sanitary Code on state campuses, c.111, s.127A provides that DPH may undertake such enforcement.

(V) Conclusions

In my opinion:

(1) The Legislature intended for the State Sanitary Code to be applied throughout the Commonwealth, including state college and university campuses.

(2) The enabling legislation for the University of Massachusetts, the University of Massachusetts Building Authority, the Massachusetts State Colleges, and the Massachusetts State College Building Authority does not exempt these bodies from Sanitary Code enforcement.

(3) The state university and its [illegible] and their building authorities are liable to Sanitary Code enforcement, in the same manner as municipal corporations or private universities.

(4) Local boards of health have authority, as agents of the state, to enforce the Sanitary Code on state campuses.

Copies of this advisory opinion will be forwarded to all interested parties.

FOR THE DEPARTMENT OF PUBLIC HEALTH

Gerald S. Billow
General Counsel

Date: November 9, 1978

Health

MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH
OFFICE OF THE GENERAL COUNSEL
250 Washington Street, 2nd Floor
Boston, Massachusetts 02108-4619
Telephone No. (617) 624-5220
Facsimile No. (617) 624-5234

TO: Ms. Epi Bodhi, Director
Amherst Health Department

FR: Juan C. Bellido, Deputy General Counsel

RE: UMass and the State Sanitary Code

RECEIVED MAY 26 1998

DA: 26 May 1998

Number of pages being transmitted, including cover: 5

Facsimile number of recipient: (413) 256-4061

Dear Ms. Bodhi:

As you requested, please find copies of the last four pages of the material Mr. Wensley sent you. Please call me if these pages are still not legible. If there is anything else I can provide you with, please do not hesitate to ask. My direct number is (617) 624-5210.

Thank you for your time and attention in this matter.

Sincerely,

JCB

authority was not an executive or administrative office, board or commission, but an independent corporation, and therefore Article 66 was not even applicable. In the UMBA and MSCBA charters, use of the "placing" language followed by the exemption provision was not even necessary under Article 66.

The exemption provision of the UMBA and MSCBA charters was intended to serve two functions: insure the financial and managerial autonomy of the authorities, and avoid violation of Article 66. Immunity from State Sanitary Code enforcement cannot be justified by a broad interpretation of the exemption provisions of the UMBA and MSCBA charters.

Attention must be given to the enabling statutes of the University of Massachusetts (U. Mass.) and Massachusetts State College (MSC). The laws establishing the MSC system, G.L. c.15, s.20A and c.73 contain no exemption or autonomy provisions concerning the colleges. However, the statute governing U. Mass. does contain an autonomy provision:

> In exercising such authority, responsibility, powers and duties said board shall not in the management of the affairs of the university be subject to, or superseded in any such authority by, any other state board, bureau, department or commission, except as herein provided.
> G.L. c.75, s.1.

This autonomy provision is even less problematic than the exemption provision of the UMBA charter. First, the language of the autonomy provision is less restrictive than the language of the exemption provision: c.75, s.1 speaks of the superseding of authority in management, and does not mention regulation. Enforcing the State Sanitary Code cannot be considered superseding the authority of the university, and therefore does not come within the scope of c.75, s.1. Second, the legislative history of c.75, s.1, as shown by Report of the Special Commission on Budgetary Powers of the University of Massachusetts and Certain Related Matters, 1962 House Doc. 3350, suggests that the purpose of the autonomy provision was to insure the financial, managerial, and academic independence of the university, so that it might compete with private universities. The autonomy provision does not reflect any intent to provide blanket regulatory immunity, and therefore does not prevent enforcement of the Sanitary Code on the U. Mass. Campus.

(III) In enforcement of the State Sanitary Code, the State University and colleges and their building authorities should be treated as municipal or private corporations.

Authorities, such as UMBA and MSCBA, and state institutions of higher education, such as U. Mass. and MSC, are distinct forms of legal entities which may be best analogized to municipal corporations. In determining the applicability of the Sanitary Code to these institutions' facilities, it is necessary to first characterize the legal nature of these bodies.

UMBA and MSCBA closely resemble municipal corporations: they are chartered as bodies "politic and corporate"; their source of power is the Commonwealth; and they perform limited governmental functions. The Supreme Judicial Court has analogized Massport, an authority with a charter almost identical to UMBA and MSCBA, to a municipal corporation. Opinion of the Justices, 334 Mass. 721, 136 N.E. 2d 232 (1956). The court first noted that the authority performs a governmental function, but added that the authorities' financial and managerial independence means that it "is not merely a board or commission of the State government." Attributes of a private corporation were also cited, but because of the authority's public function

the court concluded, "We regard the Authority as a purely public corporation for public purposes - an arm of the State - analogous to a municipal corporation." Opinion of the Justices, 334 Mass. 721, 735. Although there are no precedents analogizing U.Mass. or MSC to municipal corporations, the structure and functions of these bodies supports the analogy. U. Mass. is organized in a corporate structure, with a board of trustees governing [illegible] G.L. c.75, s.1, and its autonomy provision gives the institution financial and managerial independence. But because the university performs a public function, it is more like a municipal than a private corporation.

Since the state university and colleges and their building authorities provide the same general educational services as the private universities with which they compete, these institutions may also be analogized to private corporations. In City of Boston v. Massachusetts Port Authority, the Supreme Judicial Court used the similarity of function of an authority to a private corporation to determine regulatory applicability. "Because private businesses are subject to air pollution control regulation under s.142A-142E, it follows that the Authority should also be subject to such regulation." 308 N.E. 2d 499. Similarly, since the State Sanitary Code is applicable to private universities, there seems to be no justification in terms of public function for not applying the Code to state universities.

Legal entities falling within the scope of State Sanitary Code, Art. II are specified in the definition of "person" in Reg. 1:

> Person means every individual, partnership, corporation, firm, association, or group, including a city, town, county or other governmental unit, owning property or carrying on an activity regulated by this article.

The state universities and colleges [illegible] under this definition in two ways. "Other governmental unit" [illegible] at least all types of municipal corporations, if not all [illegible] governmental bodies [illegible] state authorities. Considering the state university and colleges and their building authorities as "public corporation(s) [illegible] analogous to [illegible] municipal corporation(s)." would bring them within the definition of "other governmental unit." Alternatively, the analogy of these bodies to private corporations may be sufficient to qualify them under "corporation." Under either analysis, the state university and colleges and their building authorities satisfy the broad regulatory definition of "person", and therefore the State Sanitary Code Article II is applicable to state campus facilities.

(IV) <u>The Legislature has delegated the enforcement of the State Sanitary Code to local boards of health.</u>

The authority to enforce the State Sanitary Code has been specifically delegated to local boards of health G.L. c.111, s.127A:

> Local boards of health shall enforce said code in the same manner in which local health rules and regulations are enforced, but, if any local boards fail after the lapse of a reasonable length of time to enforce the same, the department may in like manner enforce said code against any violation.

This [illegible] which was added [illegible] 262, only made express that which was already implied. Previous specific health statutes had provided for enforcement by local boards of health, and the regulations initially promulgated by DPH pursuant to c.111, s.127A specified local enforcement (see State Sanitary Code, Art. I).

Although local health boards are appointed by local government officials, G.L. c.111, s.26-27C, it is established that local boards are independent authorities with delegated powers of the state. Local governments cannot order actions by local boards of health, Breault v. Town of Auburn, 301 Mass. 424, 22 N.E. 2d 48 (1939); and local boards may, in fact, order actions, including the expenditure of funds, by local governments. Board of Health of North Adams v. Mayor of North Adams, 334 N.E. 2d 34 (1975). In the North Adams case, the Supreme Judical Court explicitly adopted an agency theory with respect to local boards. "We can say that the General Court may, when necessary or convenient, delegate a particular job or function to a local body, the local body becoming for the purpose an 'agent' of the State," p.42. Although the case dealt specifically with the delegation of power to local boards under c.111, s.30, and referred to similar delegation under c.111, s.160 and c.140, s.[illegible] the agency analysis is equally applicable to enforcement of the Sanitary Code under c.111, s.127A.

[illegible] a board in enforcing only the State Sanitary Code, it would [illegible] other with the authority of DPH. This opinion does not reach the question of the power of local boards to enforce local health regulations, promulgated pursuant to c.111, s.31, on the state campuses. The provision of c.111, s.127A which specifies that the Code is to be enforced by local boards "in the same manner" as local regulations [illegible] interpreted as a substantive limitation on the [illegible] power [illegible] the term should be interpreted as merely [illegible] the manner in which, [illegible] local regulation enforcement. [illegible] there is no [illegible] of the Sanitary Code by local [illegible] because no state university campuses [illegible] If the local boards fail to enforce the Sanitary Code on state campuses, c.111, s.[illegible]A provides that DPH may undertake such enforcement.

(V) Conclusions

In my opinion:

(1) The Legislature intended for the State Sanitary Code to be applied throughout the Commonwealth, including state college and university campuses.

(2) The enabling legislation for the University of Massachusetts, the University of Massachusetts Building Authority, the Massachusetts State Colleges, and the Massachusetts State College Building Authority does not exempt these bodies from Sanitary Code enforcement.

(3) The state universities and [illegible] their building authorities are liable to Sanitary Code enforcement in the same manner as private corporations or private universities.

(4) Local boards of health have authority, as agents of the state, to enforce the Sanitary Code on state campuses.

Copies of this sanitary opinion will be forwarded to all interested parties.

FOR THE DEPARTMENT OF PUBLIC HEALTH

Donald A. Pillow
General Counsel

DAP:[illegible]

Health

Town of

AMHERST Massachusetts

TOWN COUNSEL

FACSIMILE TRANSMITTAL SHEET

To:	Barry	**From:**	Alan Seewald, Acting Town Counsel
Fax:	256-4006	**Pages:**	10 including cover sheet
Phone:		**Date:**	June 16, 1998
Re:	Health Inspections - UMass	**CC:**	Epi Bodhi

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

Barry and Epi:

I enclose a copy of a letter from Juan C. Bellido, Dep. Gen Counsel of DPH, to Lawrence T. Bench, General Counsel to the University. Let's discuss whether we want to proceed in a "limited advisory capacity" as is set forth in the letter. Perhaps a call to local counsel at the University would be in order.

Alan

Epi -
I am sending only the enclosed letter (3 pages plus cover). The other pages are the memo that was attached to the wonsley letter you sent me -
Alan

Five East Pleasant Street, Amherst, Massachusetts 01002 (413) 549-0041 (413) 549-3818 (Facsimile)

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

ARGEO PAUL CELLUCCI
GOVERNOR

WILLIAM O'LEARY
SECRETARY

HOWARD K. KOH, MD, MPH
COMMISSIONER

Office of the General Counsel
Second Floor (617) 624-5220

Via Facsimile and First Class

15 June 1998

Mr. Lawrence T. Bench
Associate General Counsel
Office of the General Counsel
University of Massachusetts
One Beacon Street, 26th Floor
Boston, MA 02108

Re: State Sanitary Code

Dear Mr. Bench:

This is a follow-up to our brief meeting at your office the 19th of May, 1998, regarding the issue of whether facilities owned and/or operated by the University of Massachusetts fall within the jurisdiction of the State Sanitary Code.

As we discussed, it is the position of the Department of Public Health that the facilities owned and/or operated by the University fall within this statute's scope based on the analysis outlined in the attached memo, and that the legislature did not intend to exempt the University from meeting the basic health and safety requirements set in the Code for the protection of the Commonwealth's citizens.

At our meeting, you stated that your response to this position was based on the decision in Hannigan v. New Gamma-Delta Chapter of Kappa Sigma Fraternity, Inc. 327 NE2d 882, 367 Mass 658 (1975). The Department believes that Hannigan is not dispositive in establishing the University's immunity to the State Sanitary Code. The case is distinguishable from the present issue in that the Department is not bringing an action in tort against the University, nor is it

naming the University and the Trustees as separate defendants in any type of civil action. Moreover, the Supreme Judicial Court in Hannigan does not state that sovereign immunity is total and complete. It considers abolishing sovereign immunity but then opts to allow the legislature to first demonstrate that it has no intention of doing so before abolishing the doctrine itself. Justice Hennessey refers to an earlier decision to limit sovereign immunity when writing that:

> "... plaintiffs... urge that at this time... we should make this major change in the law toward which, in the Morash case, we took one step when we said: 'We disagree with the Commonwealth's argument that it cannot be sued without legislative consent. Since governmental immunity is a judicially created concept, it can be discarded by the courts ***and we do so now to the limited extent of holding that the Commonwealth is not immune from liability if it creates or maintains a private nuisance which causes injury to the real property of another.***' Morash & Sons, Inc. v. Commonwealth, 296 NE2d 461, at 465 (1973)." Hannigan v. New Gamma-Delta, 327 NE2d 882, at 884, 367 Mass 658, at 660.

A lower court ruling in the Treio v. Penza decision discussed in our earlier memorandum on this issue, (Hampshire County, Civil Action No. 16871, (1983)), highlighted this very point by finding unequivocally that the Sanitary Code did apply to university-owned dormitories and apartments and ordering the inspector to perform the requested inspections. The Court order stated: "... ***The Board of Health of the Town of Amherst has the legal duty pursuant to 105 CMR 410.820 to inspect any dwelling or dwelling unit located within that town, upon the written, oral or telephonic request of the occupant, including any dwelling unit owned or controlled by the Trustees of the University of Massachusetts.***" Id. at 1.

Nearing the conclusion of our discussion, you mentioned that all parties could be best served by allowing the local boards of health to perform the required inspections, but only in a limited advisory capacity. You suggested that the local boards of health perform inspections and provide the University with the appropriate recommendations to ensure that the regulatory requirements have been met. Because the underlying concern of the Department is to ensure the public's health and safety, and because of the obvious time constraint in resolving this issue fully, we agree with your suggestion and think this interim approach should be implemented expeditiously. However, as the agency ultimately responsible for the enforcement of the State Sanitary Code, the Department will continue to seek clarification on this matter. To that end, we are advising you that we will contact the State Attorney General's office which may be able to assist the Department and the University in resolving this issue.

It is our understanding that several privately operated camps make use of University property under a lease agreement. Could you please explain whether it is also your position that these camps are also beyond the scope of the State Sanitary Code and, if so, the basis for that conclusion?

Thank you for your time and attention in this matter and to your consideration in reaching resolution concerning the jurisdiction of the State Sanitary Code.

Sincerely

Juan C. Bellido, Esq.
Deputy General Counsel

cc. Howard Wensley, Director
Division of Community Sanitation, DPH

Donna Levin, Esq.
General Counsel, DPH

Alan Seewald, Esq.
Amherst Town Counsel

Tom Coffil
Inspectional Health Services

Enclosure

Health

Massachusetts
Department of Public Health

RECEIVED MAY 26 1998

Division of Community Sanitation
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FAX

TO: Epi Bochi

FROM: Howard S. Wensley, Director

Fax Number: 413 256-4061

Pages (excluding cover):

Phone:

Date: May 26, 1998

Re:

CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Advise

* Comments: "THIS IS THE BEST I CAN GET"

ADVISORY RULING

Applicability of the STATE SANITARY CODE to the University of Massachusetts The Massachusetts State Colleges, and Their Respective Building Authorities

This is an advisory ruling issued pursuant to c.30A, s.8. The Department has been asked whether the State Sanitary Code, as promulgated by the Department of Public Health and enforced by local boards of health, is applicable to the facilities of the University of Massachusetts, the University of Massachusetts Building Authority, the Massachusetts State Colleges, and the Massachusetts State College Building Authority. In clarifying this issue, I consider at length the legislature intent concerning the scope of the State Sanitary Code, the specific exemption and autonomy provisions of the charters of the state university, colleges and their building authorities, the legal nature of these bodies, and the authority of local boards of health to enforce the Sanitary Code.

(I) The Legislature intended for the State Sanitary Code to be universally enforced throughout the Commonwealth.

The Department of Public Health was delegated the power to promulgate a State Sanitary Code in St. 1957, c.678, which is incorporated in G.L. c.111, s.127A:

> Said department shall adopt, and may from time to time amend, public health regulations to be known as the state sanitary code, which may provide penalties for violations thereof . . . Said code shall become effective and have the force of law . . .

This enabling statute contains no limitations on the applicability of the State Sanitary Code, other than "Nothing contained in the code shall be in conflict with any general or special law." G.L. c.111, s.127A.

Legislative History

The legislature history of the enabling statute reveals that this delegation of power to the Department was motivated by an intent to rectify a long-standing problem of multiple and inconsistent sanitary regulations promulgated by various local boards of health. Report of the Special Commission to Study and Investigate Public Health Laws and Policies, 1957 House Do. No. 1200. Report Submitted by the Legislative Research Council Relative to the Establishment of a Uniform Sanitary Code for the Commonwealth, 1957 House Doc. No. 2833. In the latter report, the intended universality of the Sanitary Code was expressly stated, "These rules are uniformly applicable to the entire state." 1957 House Doc. No. 2833, p.8. By uniform applicability the report apparently meant geographical universality in the sense of applicability across all municipal boundaries. While the legislative records do not speak specifically to the issue of applicability to state institutions of higher education and their building authorities, the exemption of state college campuses from Sanitary Code enforcement would seem contrary to the express legislative intent of uniform applicability. Functionally, a college campus is analogous to a city or town, with a geographical boundary, a community, and residential and dining facilities. Not enforcing the Sanitary Code on state college campuses would, therefore, pose as great a threat to the public health as excluding a city or town from Sanitary Code Enforcement, and thus defeat the purpose of the legislation.

Logic and Purpose of Establishing a Universally Applicable Sanitary Code

The protection afforded the citizens of the Commonwealth by the universality of the Sanitary Code would be seriously impaired by its non-enforcement on the several college campuses. Disease may be spread to the public at large from any single unsanitary location.

Since public health problems are difficult to isolate or control with limited power, interpreting legislative mandates of public health regulatory authority as grants of plenary power seems necessary to insure effective health protection.

The Supreme Judicial Court relied on such reasoning in sustaining the universal application of department air pollution regulations. "Thus, in the present case, the Legislature by c.11, ss.142A-142E, has authorized and directed the creation of a comprehensive regulatory scheme for attacking the state-wide problem of air pollution. This legislation on its face demonstrates a legislative awareness that any scheme to control and prevent air pollution must apply to all sources of such pollution, whether privately or publicly controlled." City of Boston v. Massachusetts Port Authority, 308 N.E. 2d 488, 499 (1975).

The Attorney General, in dealing with the applicability of State Sanitary Code Article X to facilities of local school committees, adopted such an interpretation of the enabling legislation, "Had the Legislature intended to exempt school committees or any other groups or individuals from the provisions of the Code, it would presumably have included specific provisions to such effect." Opinion of the Attorney General, June 3, 1966.

Administrative Interpretation of the Statute

Contemporaneous and long-standing administrative interpretation of c.111, s.127A by the Department has been that the statute authorizes the Department to adopt regulations of universal applicability. State Sanitary Code, Article I, Reg. 1.1 (1960) states that, "This Sanitary Code shall apply throughout the Commonwealth unless and to the extent that the provisions of any article are expressly limited." The express limitations of applicability are few: for example, Article VIII, "Minimum Standards for Bathing Beaches" (1969) does not apply to private beaches. More common are statements of the Code's breadth: Article II, Reg. 1 defines "dwelling" as "every building or shelter . . . intended for human habitation."; legal entities falling within its scope including a "city, town, county or other governmental unit" Reg. 1; Article X, Reg. 1.1 defines "food service establishment" as including "private, public or non-profit organization or institution routinely serving the public"; and Article XI, Reg. 1.1, 2.1 specifically includes "publicly-owned buildings." That the Legislature intended the Sanitary Code to be applicable throughout the Commonwealth, including state college facilities, is suggested by the language of the regulations promulgated by the Department pursuant to c.111, s.127A.

On its face, G.L. c.111, s.127A appears to authorize the Department to promulgate a sanitary code which is to be universally enforced throughout the Commonwealth. The legislative history of the enabling statute, proper statutory interpretation of public health legislation, and contemporaneous administrative interpretation support applicability of the Sanitary Code throughout the state, including buildings located on state college and university campuses.

(II) Neither the exemption provisions of the University of Massachusetts Building Authority and the Massachusetts State College Building Authority charters, nor the autonomy provision of the University of Massachusetts enabling statute grant exemption from enforcement of the State Sanitary Code.

Since the scope of the Sanitary Code can be limited by other specific provisions of law, G.L. c.111, s.127A, it is necessary to examine the legislative sources of the state university and colleges and their building authorities to determine whether such limitations exist.

The charters of the University of Massachusetts Building Authority (UMBA) and the Massachusetts State College Building Authority (MSCBA) contain virtually identical provisions exempting the bodies from supervision or regulation by other state bodies. The provision of the UMBA charter, at 1960, c.773, s.2 or M.G.L. c.75 App., s.1-2 is:

> There is hereby created and placed in the department of education a body politic and corporate to be known as the University of Massachusetts Building Authority, which shall not be subject to the supervision or regulation of the department of education or of any department, commisison, board, bureau or agency of the commonwealth except to the extent and in the manner provided in this act.

The analogous provision for MSCBA is St. 1963, c.703, s.2 or M.G.L. c.73, App., s.1-2. The exemption provision, indeed the entire charter, is a bit of legislative boilerplate used in chartering state authorities. The form was initially used in the charter of the Massachusetts Turnpike Authority, St. 1952, c.354, s.3, and later adopted for the charters of other authorities including the Massachusetts Port Authority, St. 1956, c.456, s.2.

An interpretation of the exemption provision as providing exemption from Sanitary Code enforcement is simply without basis. In City of Boston v. Massachusetts Port Authority, 308 N.E. 2d 488 (1975) the Supreme Judicial Court held that the exemption provision in the Massport charter did not exempt the authority from Department of Public Health (DPH) air pollution regulations. While the court relied on the broad authority given DPH by the air pollution regulation enabling statute, G.L. c.111, s.142E, it also focused on the interpretation of the exemption provision:

> The consequences of the defendant's interpretation of s.2 of the Authority's enabling act would be that a small group of State authorities would have a unique exemption from the regulatory power of the State, an exemption available to no other person or legal entity, public or private . . .
> City of Boston v. Massachusetts Port Authority, 308 N.E. 488, 499 (1975).

In rejecting such a broad interpretation of the exemption provision, the court stressed that the purpose of the provision was not to grant regulatory immunity, but merely to provide for the Authority's financial and managerial independence, so that it might function like a private business.

Such a narrow reading of the exemption provision is readily applicable to the enabling statutes of UMBA and MSCBA: the exemption provision language is identical, the purpose of providing financial and managerial autonomy appears the same, and the Supreme Judical Court even referred in its decision to other authorities' charters. The legislative history of UMBA and MSCBA supports the analogy to Massport. The predecessor of both UMBA and MSCBA, the Massachusetts State College Building Association, was chartered (without an exemption provision) by St. 1939, c.388, for the purpose of holding land, and constructing and maintaining dormitories for the state college system. In 1960, the Legislature voted to extend the association's powers to include U. Mass. facilities, but the Governor vetoed the bill, 1960 House Doc. No. 3347. The reason for the veto was that the association's charter resembled the State Office Building Association's (SOBA) charter, which had recently been held unconstitutional because SOBA was not sufficiently financially independent from the Commonwealth. Ayer v. Commissioner of Administration, 340 Mass. 586 (1960). Therefore, instead of extending the power of the Massachusetts State College Building Association, which was of questionable constitutionality, the Legislature chartered UMBA, with provisions, including the exemption clause, insuring UMBA's financial autonomy. And three years later, the Legislature abolished the Massachusetts State College Building Association and chartered the Massachusetts State College Building Authority, with the same provisions assuring financial independence. Thus the primary reason for the inclusion of the exemption provisions in the UMBA and MSCBA charters was simply to provide for the authorities' financial and managerial independence, and not to grant blanket exemption from state regulation.

A secondary purpose of the exemption provision was to insure the constitutionality of the UMBA and MSCBA charters under Massachusetts Constitution Amend. Art. 66 (which was annulled in 1966 by Amend. Art. 87, s.3). Article 66 required that each administrative office, board or commission had to be placed under the jurisdiction of one of the executive departments. For this reason, both UMBA and MSCBA were "placed" in the department of education, M.G.L. c.73, App., s.1-2 and c.75 App., s.1-2. However, since the Legislature wished for UMBA and MSCBA to be autonomous bodies, the language "shall not be subject to the supervision or regulation of the department of education or of any department . . . of the commonwealth" was added. The exemption provision should, therefore, be interpreted as standing in opposition to the placing of the authorities within the department of education. The Legislature was sufficiently concerned with this function of the exemption provision to request the Supreme Judicial Court's opinion concerning its constitutionality. In Opinion of the Justices, 334 Mass. 721, 136 N.E. 2d 223 (1956), the court held that the exemption provision in the Massport charter did not violate Article 66, because the

authority was not an executive or administrative office, board or commission, but an independent corporation, and therefore Article 66 was not even applicable. In the UMBA and MSCBA charters, use of the "placing" language followed by the exemption provision was not even necessary under Article 66.

The exemption provision of the UMBA and MSCBA charters was intended to serve two functions: insure the financial and managerial autonomy of the authorities, and avoid violation of Article 66. Immunity from State Sanitary Code enforcement cannot be justified by a broad interpretation of the exemption provisions of the UMBA and MSCBA charters.

Attention must be given to the enabling statutes of the University of Massachusetts (U. Mass.) and Massachusetts State College (MSC). The laws establishing the MSC system, G.L. c.15, s.20A and c.73 contain no exemption or autonomy provisions concerning the colleges. However, the statute governing U. Mass. does contain an autonomy provision:

> In exercising such authority, responsibility, powers and duties said board shall not in the management of the affairs of the university be subject to, or superseded in any such authority by, any other state board, bureau, department or commission, except as herein provided.
> G.L. c.75, s.1.

This autonomy provision is even less problematic than the exemption provision of the UMBA charter. First, the language of the autonomy provision is less restrictive than the language of the exemption provision: c.75, s.1 speaks of the superseding of authority in management, and does not mention regulation. Enforcing the State Sanitary Code cannot be considered superseding the authority of the university, and therefore does not come within the scope of c.75, s.1. Second, the legislative history of c.75, s.1, as shown by Report of the Special Commission on Budgetary Powers of the University of Massachusetts and Certain Related Matters, 1962 House Doc. 3350, suggests that the purpose of the autonomy provision was to insure the financial, managerial, and academic independence of the university, so that it might compete with private universities. The autonomy provision does not reflect any intent to provide blanket regulatory immunity, and therefore does not prevent enforcement of the Sanitary Code on the U. Mass. Campus.

(III) In enforcement of the State Sanitary Code, the state University and colleges and their building authorities should be treated as municipal or private corporations.

Authorities, such as UMBA and MSCBA, and state institutions of higher education, such as U. Mass. and MSC, are distinct forms of legal entities which may be best analogized to municipal corporations. In determining the applicability of the Sanitary Code to these institutions' facilities, it is necessary to first characterize the legal nature of these bodies.

UMBA and MSCBA closely resemble municipal corporations: they are chartered as bodies "politic and corporate"; their source of power is the Commonwealth; and they perform limited governmental functions. The Supreme Judicial Court has analogized Massport, an authority with a charter almost identical to UMBA and MSCBA, to a municipal corporation. Opinion of the Justices, 334 Mass. 721, 136 N.E. 2d 232 (1956). The court first noted that the authority performs a governmental function, [illegible] that the authorities' financial and managerial independence means that it [illegible] Attributes of a

the court concluded, "We regard the Authority as a purely public corporation for public purposes - an arm of the State - analogous to a municipal corporation," Opinion of the Justices, 334 Mass. 721, 735. Although there are no precedents analogizing U.Mass. or MSC to municipal corporations, the structure and functions of these bodies supports the analogy. U. Mass. is organized in a corporate structure, with a board of trustees governing the body, G.L. c.75, s.1, and its autonomy provision gives the institution financial and managerial independence. But because the university performs a public function, it is more like a municpal than a private corporation.

Since the state university and colleges and their building authorities provide the same general educational services as the private universities with which they compete, these institutions may also be analogized to private corporations. In City of Boston v. Massachusetts Port Authority, the Supreme Judicial Court used the similarity of function of an authority to a private corporation to determine regulatory applicability, "Because private businesses are subject to air pollution control regulation under s.142A-142E, it follows that the Authority should also be subject to such regulation." 308 N.E. 2d 499. Similarly, since the State Sanitary Code is applicable to private universities, there seems to be no justification in terms of public function for not applying the Code to state universities.

Legal entities falling within the scope of State Sanitary Code, Art. II are specified in the definition of "person" in Reg. 1:

> Person means every individual, partnership, corporation, firm, association, or group, including a city, town, county or other governmental unit, owning property or carrying on an activity regulated by this article.

The state universities and their building authorities qualify under this definition in two ways. "Other governmental unit" appears to encompass at least all types of municipal corporations, if not all governmental bodies, including state authorities. Considering the state university and colleges and their building authorities as "public corporation(s). . analogous to. . . municipal corporation(s)." would bring them within the definition of "other governmental unit." Alternatively, the analogy of these bodies to private corporations may be sufficient to qualify them under "corporation." Under either analysis, the state university and colleges and their building authorities satisfy the broad regulatory definition of "person", and therefore the State Sanitary Code Article II is applicable to state campus facilities.

(IV) The Legislature has delegated the enforcement of the State Sanitary Code to local boards of health.

The authority to enforce the State Sanitary Code has been specifically delegated to local boards of health G.L. c.111, s.127A:

> Local boards of health shall enforce said code in the same manner in which local health rules and regulations are enforced, but, if any local boards fail after the lapse of a reasonable length of time to enforce the same, the department may in like manner enforce said code against any violation.

This provision, which was added by St. 1971, c.261, only made express that which was already implied. Previous specific health statutes had provided for enforcement by local boards of health, and the regulations initially promulgated by DPH pursuant to c.111, s.127A specified local enforcement (see State Sanitary Code, Art. I).

Although local health boards are appointed by local government officials, G.L. c.111, s.26-27C, it is established that local boards are independent authorities with delegated powers of the state. Local governments cannot order actions by local boards of health, Breault v. Town of Auborn, 303 Mass. 424, 22 N.E. 2d 48 (1939); and local boards may, in fact, order actions, including the expenditure of funds, by local governmets. Board of Health of North Adams v. Mayor of North Adams, 334 N.E. 2d 34 (1975). In the North Adams case, the Supreme Judical Court explicitly adopted an agency theory with respect to local boards, "We can say that the General Court may, when necessary or convenient, delegate a particular job or function to a local body, the local body becoming for the purpose an 'agent' of the State," p.42. Although the case dealt specifically with the delegation of power to local boards under c.111, s.8C, and referred to similar delegation under c.111, s.160 and c.140, s.32B, the agency analysis is equally applicable to enforcement of the Sanitary Code under c.111, s.127A.

As long as the local board is enforcing only the State Sanitary Code, it would appear to be clothed with the authority of DPH. This opinion does not reach the question of the power of local boards to enforce local health regulations, promulgated pursuant to c.111, s.31, on the state campuses. The provision of c.111, s.127A which specifies Sanitary Code enforcement by local boards "in the same manner" as local regulation enforcement should not be interpreted as a substantive limitation on the local board's power to enforce the Code; rather, the term should be interpreted as merely requiring the same procedure for Sanitary Code and local regulation enforcement. In short, there is no obstacle to the enforcement of the Sanitary Code by local boards of health on state university campuses. However, if the local boards fail to enforce the Sanitary Code on state campuses, c.111, s.127A provides that DPH may undertake such enforcement.

(V) Conclusions

In my opinion:

(1) The Legislature intended for the State Sanitary Code to be applied throughout the Commonwealth, including state college and university campuses.

(2) The enabling legislation for the University of Massachusetts, the University of Massachusetts Building Authority, the Massachusetts State Colleges, and the Massachusetts State College Building Authority does not exempt these bodies from Sanitary Code enforcement.

(3) The state university and colleges and their building authorities are liable to Sanitary Code enforcement, in the same manner as municipal corporations or private universities.

(4) Local boards of health have authority, as agents of the state, to enforce the Sanitary Code on state campuses.

Copies of this advisory opinion will be forwarded to all interested parties.

FOR THE DEPARTMENT OF PUBLIC HEALTH

Gerald J. Pillow
General Counsel

Date: November 9, 1978

Health

MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH
OFFICE OF THE GENERAL COUNSEL
250 Washington Street, 2nd Floor
Boston, Massachusetts 02108-4619
Telephone No. (617) 624-5220
Facsimile No. (617) 624-5234

TO: Ms. Epi Bodhi, Director
Amherst Health Department

FR: Juan C. Bellido, Deputy General Counsel

RE: UMass and the State Sanitary Code

RECEIVED MAY 26 1998

DA: 26 May 1998

Number of pages being transmitted, including cover: 5

Facsimile number of recipient: (413) 256-4061

Dear Ms. Bodhi:

As you requested, please find copies of the last four pages of the material Mr. Wensley sent you. Please call me if these pages are still not legible. If there is anything else I can provide you with, please do not hesitate to ask. My direct number is (617) 624-5210.

Thank you for your time and attention in this matter.

Sincerely,

JCB

authority was not an executive or administrative office, board or commission, but an independent corporation, and therefore Article 66 was not even applicable. In the UMBA and MSCBA charters, use of the "placing" language followed by the exemption provision was not even necessary under Article 66.

The exemption provision of the UMBA and MSCBA charters was intended to serve two functions: insure the financial and managerial autonomy of the authorities, and avoid violation of Article 66. Immunity from State Sanitary Code enforcement cannot be justified by a broad interpretation of the exemption provisions of the UMBA and MSCBA charters.

Attention must be given to the enabling statutes of the University of Massachusetts (U. Mass.) and Massachusetts State College (MSC). The laws establishing the MSC system, G.L. c.15, s.20A and c.73 contain no exemption or autonomy provisions concerning the colleges. However, the statute governing U. Mass. does contain an autonomy provision:

> In exercising such authority, responsibility, powers and duties said board shall not in the management of the affairs of the university be subject to, or superseded in any such authority by, any other state board, bureau, department or commission, except as herein provided.
> G.L. c.75, s.1.

This autonomy provision is even less problematic than the exemption provision of the UMBA charter. First, the language of the autonomy provision is less restrictive than the language of the exemption provision: c.75, s.1 speaks of the superseding of authority in management, and does not mention regulation. Enforcing the State Sanitary Code cannot be considered superseding the authority of the university, and therefore does not come within the scope of c.75, s.1. Second, the legislative history of c.75, s.1, as shown by Report of the Special Commission on Budgetary Powers of the University of Massachusetts and Certain Related Matters, 1962 House Doc. 3350, suggests that the purpose of the autonomy provision was to insure the financial, managerial, and academic independence of the university, so that it might compete with private universities. The autonomy provision does not reflect any intent to provide blanket regulatory immunity, and therefore does not prevent enforcement of the Sanitary Code on the U. Mass. Campus.

(III) In enforcement of the State Sanitary Code, the state University and colleges and their building authorities should be treated as municipal or private corporations.

Authorities, such as UMBA and MSCBA, and state institutions of higher education, such as U. Mass. and MSC, are distinct forms of legal entities which may be best analogized to municipal corporations. In determining the applicability of the Sanitary Code to these institutions' facilities, it is necessary to first characterize the legal nature of these bodies.

UMBA and MSCBA closely resemble municipal corporations: they are chartered as bodies "politic and corporate"; their source of power is the Commonwealth; and they perform limited governmental functions. The Supreme Judicial Court has analogized Massport, an authority with a charter almost identical to UMBA and MSCBA, to a municipal corporation. Opinion of the Justices, 334 Mass. 721, 136 N.E. 2d 232 (1956). The court first noted that the authority performs a governmental function, but added that the authorities' financial and managerial independence means that it "is not merely a board or commission of the State government." Attributes of a private corporation were also cited, but because of the authority's public function

the court concluded, "We regard the Authority as a purely public corporation for public purposes - an arm of the State - analogous to a municipal corporation." Opinion of the Justices, 334 Mass. 721, 735. Although there are no precedents analogizing U.Mass. or MSC to municipal corporations, the structure and functions of these bodies supports the analogy. U. Mass. is organized in a corporate structure, with a board of trustees governing the body, G.L. c.75, s.1, and its autonomy provision gives the institution financial and managerial independence. But because the university performs a public function, it is more like a municpal than a private corporation.

Since the state university and colleges and their building authorities provide the same general educational services as the private universities with which they compete, these institutions may also be analogized to private corporations. In City of Boston v. Massachusetts Port Authority, the Supreme Judicial Court used the similarity of function of an authority to a private corporation to determine regulatory applicability, "Because private businesses are subject to air pollution control regulation under s.142A-142E, it follows that the Authority should also be subject to such regulation." 308 N.E. 2d 499. Similarly, since the State Sanitary Code is applicable to private universities, there seems to be no justification in terms of public function for not applying the Code to state universities.

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The state universities and their building authorities qualify under this definition in two ways. "Other governmental unit" appears to encompass at least all types of municipal corporations, if not all governmental bodies, including state authorities. Considering the state university and colleges and their building authorities as "public corporation(s). . .analogous to. . . municipal corporation(s)." would bring them within the definition of "other governmental unit." Alternatively, the analogy of these bodies to private corporations may be sufficient to qualify them under "corporation." Under either analysis, the state university and colleges and their building authorities satisfy the broad regulatory definition of "person", and therefore the State Sanitary Code Article II is applicable to state campus facilities.

(IV) The Legislature has delegated the enforcement of the State Sanitary Code to local boards of health.

The authority to enforce the State Sanitary Code has been specifically delegated to local boards of health G.L. c.111, s.127A:

> Local boards of health shall enforce said code in the same manner in which local health rules and regulations are enforced, but, if any local boards fail after the lapse of a reasonable length of time to enforce the same, the department may in like manner enforce said code against any violation.

This provision, which was added by St. 1971, c.261, only made express that which was already implied. Previous specific health statutes had provided for enforcement by local boards of health, and the regulations initially promulgated by DPH pursuant to c.111, s.127A specified local enforcement (see State Sanitary Code, Art. I).

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(V) Conclusions

In my opinion:

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(2) The enabling legislation for the University of Massachusetts, the University of Massachusetts Building Authority, the Massachusetts State Colleges, and the Massachusetts State College Building Authority does not exempt these bodies from Sanitary Code enforcement.

(3) The state university and colleges and their building authorities are liable to Sanitary Code enforcement, in the same manner as municipal corporations or private universities.

(4) Local boards of health have authority, as agents of the state, to enforce the Sanitary Code on state campuses.

Copies of this advisory opinion will be forwarded to all interested parties.

FOR THE DEPARTMENT OF PUBLIC HEALTH

Gerald J. Pillow
General Counsel

Date: November 9, 1978

RECEIVED MAY 1 8 1998

Carlton L. Ho
149 Cherry Lane
Amherst, MA 01002
May 7, 1998

Mr. Steve Pilegi
Massachusetts Department of Environmental Protection
Western Regional Office
436 Dwight Street
Springfield, MA 01103

Subject: Incinerator at Tilson Farm, the University of Massachusetts, Amherst

Dear Mr. Pilegi:

On behalf of the neighborhood group from East Pleasant Street, Sheerman Lane, Emily Lane, Cherry Lane and Weaver Circle of Amherst, Massachusetts, we would like to voice our concerns about the certification of an incinerator operated by the University of Massachusetts (UMass), Amherst. The incinerator in question, located at Tilson Farm, was shut down by the Massachusetts Department of Environmental Protection (DEP) for non-compliance some months ago. We understand that you have been made aware of our concerns by way of a conversation with Dr. Don Murphy.

In a conversation with Mr. Jim Foxx of the University of Massachusetts Office of Environmental Health and Safety (April 29, 1998), we learned that the University to requested certification to operate the incinerator. It is the consensus of the neighborhood that this incinerator should not be certified for the following reasons.

1. At the time of construction (17 years prior) the adjacent property was not developed. In the interim the abutting property has been developed into a residential subdivision. Currently, the incinerator is located within 45 m of a residence. Seventy-nine other residences lay within 1 km, primarily in a downwind direction.

2. The current configuration of the incinerator does not meet current standards for new construction of an incinerator, but would be certified based on "grandfathered" standards; deficiencies include but are not limited to proximity standards, a post-combustion bag house and acid removal/neutralizing equipment.

3. It is our understanding that the incinerator would have to meet the more stringent standards within a year. At that time, the University plans on asking for a variance. Our opinion is that it would not be prudent to allow a waste facility such as the incinerator to operate knowing full well that in a short period of time, it will not meet Commonwealth standards.

We the undersigned do agree to the letter of Carlton Ho of May, 7, 1998

We thank you for your consideration of this matter and entertain the opportunity to meet and discuss the issue further.

Sincerely,

Lynn KLOCK
17 Emily Lane

Robert L. Oldershaw
ROBERT L. OLDERSHAW
12 EMILY LANE

Richard A. Vanetzian
RICHARD A. VANETZIAN
43 EMILY LANE

Patricia Wadsworth
PATRICIA WADSWORTH
12 Emily LANE

Barbara Goldstein
Barbara Goldstein
49 Sheerman La.

Eleanor Vanetzian
Eleanor Vanetzian
43 Emily Lane

Bernard J. Morzuch
Bernard J. Morzuch
35 Emily Lane
Amherst, MA 01002

Ange DiBenedetto
Ange DiBenedetto
26 Emily Lane
Amherst Ma

Barbara Geoffroy
Barbara Geoffroy
109 Cherry Lane
Amherst, MA. 01002

Randall W. Phillips
12 SHEERMAN LN
AMHERST, MA 01002

Herschel Shoham
56 Sheerman Ln
Amherst, MA 01002

149. Cherry Lane
Amherst, MA 01002

Barry Farber
Barry Farber
39 Sheerman Lane
Amherst, Massachusetts
01002-1543

Sarah Hodgkins
Sarah Hodgkins
7 Emily Lane
Amherst, MA 01002

Jennifer S Bixby
Jennifer S. Bixby
55 Sheerman Lane
Amherst, MA 01002

Martin F. Norden
MARTIN F. NORDEN
39 EMILY LANE
AMHERST, MA 01002

Linda J. Ho
LINDA J. HO
149 CHERRY LANE
AMHERST, MA 01002

James B Johnson
JAMES B. JOHNSON
36 EMILY LANE
AMHERST, MA. 01002

Laura C Klock
Laura C. Klock
17 Emily Lane
Amherst, MA 01002

Laura Vogel
Laura Vogel
39 Sheerman Lane
Amherst, MA 01002

JANE MCNEILL
Jane McNeill
45 Sheerman lane
Amherst, MA 01002

Kathy Horvath
Kathy Horvath
45 Sheerman Lane
Amherst, MA 01002

Dennis M. Hanno
Dennis M. Hanno
22 Emily Lane
Amherst, MA 01002

Susan C. Hanno
Susan C. Hanno
22 Emily Ln.
Amherst, MA 01002

Karen R. Gustafson
31 Emily Lane
Amherst, MA 01002

Cheryl Smith
Cheryl Smith
35 Emily Lane
Amherst, MA 01002

Paul F. McDaniel
40 Sheerman Ln
Amherst, Ma 01002

Margaret A. McDaniel
40 Sheerman Lane
Amherst, MA 01002

We the undersigned do agree to the letter of Carlton Ho of May 7 1998

We the undersigned do agree to the letter of Carlton Ho of May, 7 1998

	David Geoffroy	109 Cherry Lane
	[redacted]	[redacted]
	Arnold Alper	117 Cherry Lane
	Reed Mangels Alper →	117 Cherry Lane
	Jennifer Parker	8 Weaver Circle
	Sonia Schloemann	8 Weaver Circle
	Kate MacGregor	12 Weaver Circle
	BRUCE BROWNE	12 WEAVER CIRCLE
M. Lalitha	Murthukumar	23 weaver circle
	RAYMOND MAHONEY	20 WEAVER CIRCLE
	Patricia Lessie	7 Weaver Circle
	Mark Heyer	125 Cherry Lane
	Nalini Easwar	134 Cherry Lane
	Carol Biagi	142 Cherry Lane
	Terrence L. Amick	128 Cherry Lane

We the undersigned do agree to the letter of Carlton Ho of May 7, 1998

JANE S SHOLTAN
56 Sheerman Ln
Amherst

Donald Hodgkins
Donald Hodgkins
7 Emily Ln. Amherst

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ARLENE CASH
24 SHEERMAN LN
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Virginia L. Kilmer
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Amherst, MA 01002

William Kilmer
23 Sheerman Lane
Amherst, MA 01002

Rev. CRYSTAL L. CALLOWAY
27 SHEERMAN LANE
Amherst, MA 01002

Copy to:

Mary Holland, Regional Director of DEP
436 Dwight Street, 5th Floor
Springfield, MA 01103

John Olver, U.S. Representative
490 Westfield Road
Holyoke, MA. 01040

Stanley Rosenberg, State Senator
1 Prince Street
Northampton, MA. 01060

Ellen Story, State Representative
Room 162, State House
Boston, MA. 02133

David Scott, Chancellor of U.M. Amherst
Whitmore Administration Building
University of Massachusetts
Amherst, MA. 01003

Donald Robinson, Director
Environmental Health and Safety
Morrill Science, U.Mass.
Amherst, MA. 01003

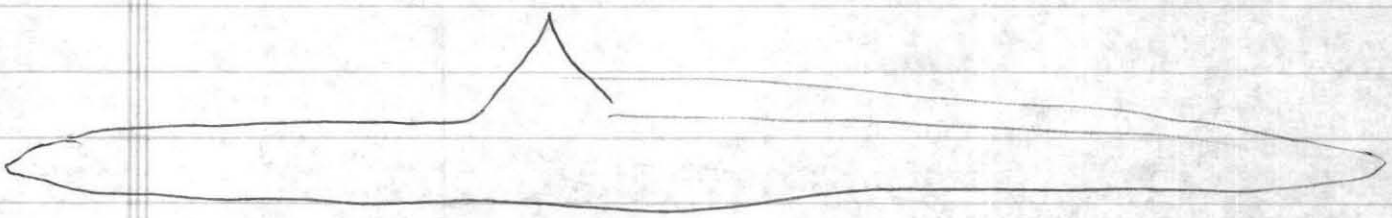
Jim Fox
Hazardous Waste Services Manager
Environmental Health and Safety
Morrill Science, U.Mass.
Amherst, MA. 01003

Town of Amherst
Board of Health
Town Hall, Boltwood Ave.
Amherst, MA. 01002

Peter Westover, Director
Amherst Conservation Department
Town Hall, Boltwood Ave.
Amherst, MA. 01002

Bernette Melby, Director
U.Mass. Health Services
University Health Center
Amherst, MA. 01003

VMASS | environmental health



TOM ROBINSON
V.C. for Student Affairs

Don Robinson (Env. Hlth + Safety)

[Valerie] [Larry Davis] [Al Sorenson] [Jim Fox] [Bob DiCarlo]

Environmental Hlth Safety

Ind Hygiene + Env. Hlth

Haz Waste

Larry Davis
Inspection
Sanitation

Valerie
Bio + Chem
Safety

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

ARGEO PAUL CELLUCCI
GOVERNOR

WILLIAM O'LEARY
SECRETARY

HOWARD K. KOH, MD, MPH
COMMISSIONER

Office of the General Counsel
Second Floor (617) 624-5220

RECEIVED MAY 1 2 1998

Via Facsimile and First Class

6 May 1998

Mr. Lawrence T. Bench
Associate General Counsel
Office of the General Counsel
University of Massachusetts
One Beacon Street, 26th Floor
Boston, MA 02108

Re: Enforcement of the State Sanitary Code at UMass facilities.

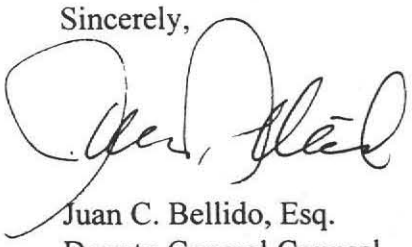
Dear Mr. Bench:

This office had been asked to prepare a response to the question of whether the City of Boston, Inspectional Services Department, acting as the local board of health, has the authority to conduct inspections and issue the required permits / licenses for the University of Massachusetts as mandated by the State Sanitary Code.

Enclosed please find a copy of the memorandum prepared by this office and forwarded to Mr. Howard Wensley at the Division of Community Sanitation, and to Mr. Thomas Coffill at the Inspectional Services Department. In preparing this response, the opinion voiced in your December 12, 1997 memorandum to Associate Vice Chancellor LaVerne Cawthorne was taken into consideration. In view of the differing opinions, I think that it would be most constructive to arrange for a discussion of the issues and concerns raised by the two memoranda.

Please contact me at your earliest convenience so that we may proceed with making the necessary arrangements. I can be reached directly at (617) 624-5210. I appreciate your time and attention in this matter and look forward to meeting with you.

Sincerely,



Juan C. Bellido, Esq.
Deputy General Counsel

cc: Howard Wensley, Director
Division of Community Sanitation, DPH

Nancy Ridley, Assistant Commissioner
Division of Health Quality Management, DPH

Donna E. Levin, Esq.
General Counsel, DPH

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

ARGEO PAUL CELLUCCI
GOVERNOR

WILLIAM O'LEARY
SECRETARY

HOWARD K. KOH, MD, MPH
COMMISSIONER

Office of the General Counsel
Second Floor (617) 624-5220

MEMORANDUM

TO: Howard S. Wensley, DCS

TR: Donna Levin, GC, OGC
Peter Harrington, DGC, OGC

FR: Juan C. Bellido, DGC, OGC

RE: Enforcement of Sanitary Code at UMass Facilities

DA: 28 April 1998

The Department has been asked to provide direction in resolving the issue of whether a local board of health has the authority to inspect swimming pool facilities located on the property of, and / or under the control of the University of Massachusetts and to require the operators of said facilities to apply for and obtain the applicable permit pursuant to the provisions of Chapter V of the Sanitary Code, 105 CMR 435.000 et seq. Because this raises the larger question of whether the entire Sanitary Code, the separate chapters of which are listed in the attached Appendix, is enforceable against facilities located on University property, this response will address that more encompassing issue.

The Department's position is that local boards of health do have jurisdiction to inspect facilities of the type regulated by the Sanitary Code which are located on the grounds of, and / or under the control of the University of Massachusetts. Furthermore, the boards of health do have the authority to require operators of such facilities to obtain the necessary permits, and to issue all necessary correction and enforcement orders pursuant to the State Sanitary Code regulations.

This issue was previously addressed in a 1994 advisory memorandum from the DPH legal office to the DPH Division of Community Sanitation. The stated position of the Department was that the statutory authority it had to enforce the regulatory scheme came from

both the language of the Sanitary Code statute (M.G.L. c. 111 § 127A) and the Department's Sanitary Code regulations (*see* Appendix). Both were intended to create a regulatory scheme applicable to both private and public entities.

A 1978 advisory opinion from the Department's General Counsel also addressed this issue (*see* Attachments). The State Sanitary Code was deemed to be uniformly applicable across all municipal boundaries, to all parties regardless of whether they operated as private or public entities. In that opinion, a parallel was drawn between the Sanitary Code regulations and the air pollution regulations in that in order for them to be effective, universal application and enforcement was crucial. The analysis considered the decision by the Supreme Judicial Court in City of Boston v. Massachusetts Port Authority, 308 NE 2d 488, (1975). The Court there found that enforcement of the air pollution regulations against the Mass Port Authority (MPA) was valid. It did not agree with the MPA's claim that it was exempt from complying with the air pollution regulations based on a provision in its enabling statute. The Court regarded the provision as merely granting the Authority managerial independence.

The Department advisory opinion goes on to discuss whether the UMass Building Authority (UMBA) or the Massachusetts State College Building Authority (MSCBA) have substantive ground from which to argue that a provision in their enabling statutes or charters exempts them from Department of Public Health regulatory schemes. An historical and legislative analysis shows that both enabling charters incorporated an exemption provision solely for the purpose of creating an entity with financial and managerial autonomy. The purpose of creating both authorities was to enable the state to have educational institutions that operated not unlike the private educational entities long established within the Commonwealth. To facilitate that, it was imperative that the operation of these institutions be separated from any political or budgetary constraints associated with the routine process of government. That is the intent behind the exemption provisions.

By contrast, the enforcement the Department seeks to have carried out in this case is aimed at achieving universal application of a regulatory scheme for the purposes of securing the public health and well-being of the public making use of facilities operated by any entity, public or private. It is not a valid argument to say that the Department's Sanitary Code or its regulations were the intended regulatory scheme at which the exemption provisions were directed. Compliance with the Sanitary Code will not hamper or interfere with the financial or managerial operation of any of these institutions. If an authority or agency were to claim that their exemption provisions alone create a blanket exemption from an otherwise universally applicable regulatory scheme, the Court argues, it would create "... a unique exemption from the regulatory power of the State, an exemption available to no other person or legal entity, public or private...", City of Boston v. Mass Port Authority, 308 NE 2d 488, 499 (1975).

This general approach of very narrowly construing regulatory exemption provisions in agency enabling legislation was later followed by the Court in a case involving the MSCBA. In Department of Community Affairs v. The Massachusetts State College Building Authority, 392 NE 2d 1006 (1979), the Department of Community Affairs (DCA) sought to secure the rights of

citizens to relocation assistance when displaced by certain development projects through the enforcement of M.G.L. c. 79A. The Court held that the statutory authority granted to a state agency to regulate other state authorities and entities did not violate the MSCBA's enabling act. The Court found that in regulating under c. 79A, the DCA was not interfering or supervising the business operation of the Authority, but only enforcing a statute against an appropriate party / entity subject to it. DCA v. MSCBA, 392 NE 2d 1006, 1013.

In asserting that local boards of health are without authority to inspect and regulate University facilities, the University seems essentially to be relying on the general doctrine of "sovereign immunity"-i.e., the general principle that state agencies are normally immune from local regulation absent legislative language to the contrary. However, unlike the scenarios which gave rise to the sovereign immunity doctrine established by a line of cases beginning with Teasdale v. Newell & Snowling, 78 NE 504, 192 Mass. 440 (1906) and continuing with County Com'rs of Bristol v. Conservation Commission of Dartmouth, 405 NE 2d 637, 380 Mass 706 (1980), the Department is not, in this instance, seeking to have a municipal or local regulatory scheme enforced against a state entity or to have local authorities administer and enforce a general state law when there is a contrary and more specific state law establishing a parallel or similar regulatory scheme on the same subject. In Teasdale, there were two state statutes which were in apparent conflict. One statute authorized local boards of health to regulate and issue licenses for the construction and maintenance of stables on any property within municipal boundaries. A second state statute gave the Metropolitan Park Commissioners specific authority to acquire lands by eminent domain for park purposes, to "take charge of [such property], to make rules and regulations for the government and use of the same, and further, in general to do all the acts needful for the proper execution of the powers and duties granted to and imposed upon them." Id. at 443. The Supreme Judicial Court (SJC) held in that case that the Park Commissioners were exempt from the licensing power of the local board of health under the first statute and could erect a temporary stable on their property without the local board's approval on the grounds that the "general law....must be held subordinate to this special statute regulating the use of the property of the state". Id. at 443. Unlike the situation in Teasdale, in this instance there is no conflict between the two relevant state statutes. The University's and the Building Authority's enabling statutes did not give them explicit authority to regulate, or to promulgate rules and regulations, governing all aspects of the use of their property. In contrast to the Park Commissioner's enabling statute in the Teasdale case, the university's and building authority's enabling statute make no specific delegation of jurisdiction or authority concerning the subject matter at issue, in this case the sanitary and health conditions of state facilities.

The Teasdale case has been referred to in a number of subsequent cases as authority for the proposition that state agencies and authorities are immune from the provisions of locally enacted regulations such as local zoning regulations. See, e.g., County Commissioners of Bristol v. Conservation Commission of Dartmouth, 405 NE 2d 637, 380 Mass 706 (1980), and cases cited therein. Unlike the situation in those cases, this case does not involve the applicability of local regulations. The regulatory scheme being enforced here is a state scheme promulgated and interpreted by a state agency, the Department of Public Health, and not a local regulation promulgated by local authorities.

Furthermore, and perhaps most significantly, in a December 20, 1983 ruling, a justice of the Superior Court spoke on this very issue of the Sanitary Code's application to University facilities. In that case, Trejo v. Penza, Hampshire County, Civil Action No. 16871, 1983, a class of persons residing in University dormitories and apartments in the town of Amherst had sued the Amherst Building Inspector over his refusal to perform Sanitary Code inspections of their dwelling units and sought equitable relief in the form of a court order requiring the inspector to perform such inspections. The complaint stated that the inspector had stated that "... his office will not perform inspections of the University of Massachusetts apartments or dormitories." Trejo v. Penza, Hampshire County, Civil Action No. 16871, at 2. The Court ruled unequivocally that the Sanitary Code did apply to university-owned dormitories and apartments and ordered the inspector to perform the requested inspections. The Court order stated: "It is hereby ordered that summary judgment be entered declaring and adjudging that ***The Board of Health of the Town of Amherst has the legal duty pursuant to 105 CMR 410.820 to inspect any dwelling or dwelling unit located within that town, upon the written, oral or telephonic request of the occupant, including any dwelling unit owned or controlled by the Trustees of the University of Massachusetts***." Id, at 1.

Despite the ruling in that case, and the other cases cited above, counsel for the University of Massachusetts states in its advisory opinion dated December 12, 1997, that the State Sanitary Code is not to be enforced against facilities it operates. That memorandum recognizes and quotes the Department's Sanitary Code authorizing statute (M.G.L. c. 111 § 127A) which "... shall deal with matters affecting the health and well-being of the public in the Commonwealth in subjects over which the department takes cognizance and responsibility...." However, UMass counsel argues that because the statute does not specifically list other state entities, they are therefore exempt from compliance. The decision of Hansen v. Commonwealth does state that "... it is a widely accepted rule of statutory construction that general words in a statute such as 'persons' will not ordinarily be construed to include the State or political subdivisions thereof." Hansen v. Commonwealth, 181 NE 2d 843, 847 (1962). But by UMass' own argument, they are operating as an autonomous educational institution, not as a political subdivision of the State. Their enabling charter has exemption provisions aimed at establishing their managerial and financial independence from the state. The language in Hansen, therefore, is not applicable.

The memorandum further argues on the basis of an SJC decision in Perez v. Boston Housing Authority, 368 Mass 333, 331 NE 2d 801, (1975). The argument is, however, based on a misinterpretation of what the decision addresses. That case decided that a petitioner (Perez, et al) cannot bring in the Secretary of State, or other state offices, as third party defendants based on the use of the word "persons" in the Sanitary Code's authorizing statute. The background to the case involved citizens from housing complexes who were trying to get the Boston Housing Authority (BHA) to correct a multitude of Sanitary Code violations in these complexes before investing existing funds into the development of further housing. The BHA could not fund these improvements, so the petitioner was seeking to bring in various state offices as defendants liable for the costs of the reparations. The Court held that the petitioner could not bring in these third party defendants nor could it extract liability from them based on the choice of words used in the Sanitary Code's authorizing statute. The decision by the Court is not that the legislature must state expressly when local board of health regulations are to be applied to state agencies. Rather,

it says that the state (or more specifically, the Secretary of State) "... cannot be held responsible under this statute unless the Secretary (1) is an 'individual, trust or corporation, partnership, association, or other person,' within the meaning of the statute, and (2) has the authority to decide whether to rehabilitate or sell or otherwise dispose of the premises." Perez v. BHA, 331 NE 2d 801, 804 (1975). The Court is addressing the issue of financial liability and responsibility of a state office for the enforcement of a statute against another authority. The enforcement of the statute is not in question, but rather the financial liability arising from its enforcement. The petitioner had no standing to bring in a third party defendant who had no active or passive role in the rehabilitation or disposition of housing developments.

The issue in Perez v. BHA is distinct from what is being presently addressed. The issue here is whether a universally applicable regulatory scheme is enforceable against the University. As the UMass memorandum argues, the management of the University is autonomous. But as stated above, ***even*** when an enabling charter or act contains language that establishes ***financial and managerial autonomy***, the Court has held that ***the entity is still subject to a regulatory scheme (sanitary, air quality, or otherwise) that is applicable to both private and public entities.***

It should be noted that the University acknowledges its responsibility to abide by the Sanitary Code, but insists that no party outside of UMass should have the authority to judge whether they have met these requirements or to direct that violations be corrected through enforceable orders. However, it is imperative to the effectiveness of Sanitary Code enforcement, and the protection of the lives, health, and safety of University students and other persons using University facilities, that an objective and impartial authority fulfill this role. Although your office is equally capable of performing these tasks, I realize that it is simply impossible, from a personnel and resources standpoint, for it to do so. For that reason, it must be our position that the local board of health be the entity charged with responsibility in this area. Should some kind of issue arise from local board of health enforcement, the Department can and should offer to act as a consultant, or take on a mediating role, to facilitate the resolution of disputes.

Accordingly, it is the opinion of this office that facilities owned and / or controlled by the University of Massachusetts are subject to the State Sanitary Code and its applicable regulations, and that they must conform to any and all requirements pursuant to the applicable licensing process. Furthermore, the Sanitary Code is enforceable at UMass facilities by the local boards of health.

APPENDIX

STATUTORY CODE

§ 127A. STATE SANITARY CODE; ADOPTION; ENFORCEMENT; JURISDICTION; SPEEDY TRIAL

SANITARY CODE REGULATIONS

105 CMR 400.000: STATE SANITARY CODE I: GENERAL ADMINISTRATIVE PROCEDURES

105 CMR 410.000: MINIMUM STANDARDS OF FITNESS FOR HUMAN HABITATION (STATE SANITARY CODE, CHAPTER II:)

105 CMR 420.000: HOUSING AND SANITATION STANDARDS FOR FARM LABOR CAMPS (STATE SANITARY CODE, CHAPTER III)

105 CMR 430.000: MINIMUM SANITATION AND SAFETY STANDARDS FOR RECREATIONAL CAMPS FOR CHILDREN (STATE SANITARY CODE, CHAPTER IV)

105 CMR 435.000: MINIMUM STANDARDS FOR SWIMMING POOLS (STATE SANITARY CODE: CHAPTER V)

105 CMR 440.000: MINIMUM STANDARDS FOR DEVELOPED FAMILY TYPE CAMP GROUNDS (STATE SANITARY CODE, CHAPTER VI)

105 CMR 445.00: MINIMUM STANDARDS FOR BATHING BEACHES (STATE SANITARY CODE, CHAPTER VII)

105 CMR 480.000: STORAGE AND DISPOSAL OF INFECTIOUS OR PHYSICALLY DANGEROUS MEDICAL OR BIOLOGICAL WASTE (STATE SANITARY CODE CHAPTER VIII)

105 CMR 590.000: MINIMUM SANITATION STANDARDS FOR FOOD ESTABLISHMENTS (STATE SANITARY CODE CHAPTER X)

105 CMR 675.000: REQUIREMENTS TO MAINTAIN AIR QUALITY IN INDOOR SKATING RINKS (STATE SANITARY CODE CHAPTER XI)

Donahue, Contant & Cross, P.C.

Attorneys at Law

1341 Main Street

Springfield, Massachusetts 01103

John F. Donahue

Philip A. Contant

Judith A. Cross

Telephone

(413) 733-4147

1-24-84

December 29, 1983

Mr. Chester Penza
Chief Inspector
Town of Amherst Inspection
Services Department
Five East Pleasant Street
Amherst, MA 01002

RE: JOSE TREJO vs. CHESTER PENZA, ET AL

Dear Mr. Penza:

Enclosed please find the Order of the Court dated December 20, 1983 regarding the above entitled matter. As I indicated to you per our telephone conversation of December 28, 1983, the town prevailed on the Motion to Certify Class and the court did not order injunctive relief against the Board of Health of the Town of Amherst and the Inspection Services Department.

However, the Court did declare that the Board of Health has a legal duty pursuant to 105 CMR 410.820 to inspect any dwelling or dwelling unit located within the town upon the written, oral or telephonic request of the occupant including any dwelling unit owned or controlled by the Trustees of the University of Massachusetts.

In my opinion, this is not a matter that should be appealed because of the black letter of the law which is clearly delineated in the above cited code section. However, I would instruct you to bring this to the attention of the Board of Health and if you or the Board are desireous of an appeal, notify my within thirty (30) days from December 20, 1983.

Yours very truly,

Daniel M. Kelly (oc)

DANIEL M. KELLY

DMK/ae

Enclosure

cc. Robert Ritchie

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss.

Superior Court Department
of the Trial Court
Civil Action No. 16871

JOSE TREJO (Plaintiff) vs. CHESTER PENZA (Defendant)	ORDER

It is hereby ordered that summary judgment be entered declaring and adjudging that The Board of Health of the Town of Amherst has the legal duty pursuant to 105 CMR 410.820 to inspect any dwelling or dwelling unit located within that town upon the written, oral or telephonic request of the occupant, including any dwelling unit owned or controlled by the Trustees of the University of Massachusetts.

All other prayers for relief are denied. The plaintiff is to have his costs of action.

John F. Moriarty
Justice of the Superior Court

Entered: December 20, 1983.

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, SS

SUPERIOR COURT
CIVIL NO.

JOSE TREJO INDIVIDUALLY AND ON THE BEHALF OF ALL PERSONS SIMILARLY SITUATED,	)
PLAINTIFF,	)
v.	) COMPLAINT
CHESTER PENZA, CHIEF INSPECTOR, AMHERST HOUSING INSPECTION SERVICES AND THE BOARD OF HEALTH OF THE TOWN OF AMHERST,	)
DEFENDANTS,	)

PRELIMINARY STATEMENT

This is an action seeking declaratory and injuctive re lief against Amherst Housing Inspector and the Board of Health f failure to perform inspections pursuant to Article II of the Sta Sanitary Code of Residential Housing units owned or operated by University of Massachusetts.

Parties

1. Jose Trejo is an adult resident of Massachusetts residing at J-12, North Village Apartments and is enrolled in a Graduate study program at the University of Massachusetts at Am herst.

2. Chester Penza is the Chief of the Town of Amherst Housing Inspection Services, the Amherst agency under the direc of the Amherst Board of Health responsible for performing in- spections of residential housing units mandated by Article II c the State Sanitary Code ("Article II") promulgated by the De-

partment of Public Health of the Commonwealth of Massachusetts (DPW).

3. The Board of Health of the Town of Amherst is a Board of Health within the meaning of Article II.

Factual Statements Regarding Plaintiff Trejo

4. Plaintiff Trejo and his wife who is pregnant have resided at his current apartment since April 1977, under a lease. Their current rent is $214.00 per month.

5. Plaintiff Trejo's residence is owned, operated or managed by the University of Massachusetts a public institution established under M.G.L. Chapter 75.

6. There are presently conditions in or at Plaintiff Trejo's residence which are in violation of Article II including but not limited to; leaks in the bathroom which drop on his head; holes in the ceilings and walls; insufficient security locks or devices; defective windows; defective structual support.

7. The conditions described in pargraph 6 materially endanger the health, safety and well being of Plaintiff Trejo and family.

8. On November 1, 1978, Plaintiff Trejo requested an Article II house inspection from the Amherst Housing Inspection Services. William Start, an inspector in the office informed him that Amherst Housing Inspection Service does not inspect the University of Massachusetts property.

9. Defendant Penza has repeatedly informed Steven Louis Baumohl, Plaintiff Trejo's Attorney, that his office will not perform inspections of the University of Massachusetts apartment

dormitories.

10. Plaintiff Trejo has not paid rent since September 1978 in protest of the conditions at his residence and to prote a rent increase. The University of Massachusetts will soon commence summary process eviction action against Plaintiff Trejo an other students who have failed to pay rent. Attached as "A" is article describing the present University of Massachusetts posit toward evicting students.

11. Plaintiff Trejo and members of the class he represents will suffer irreparable harm if the housing inspections are not performed by the Defendants as the inspection are neces for their eviction defense and affirmative claims under Massachu law.

Class Action Allegations

12. There are thousands of persons living in apartme or dormitories either owned, operated or managed by the Univers of Massachusetts at Amherst.

13. The Defendants have repeately stated their polic and practice to be to refuse to perform Article II inspections for residential housing units owned, operated or managed by the University of Massachusetts at Amherst.

14. Plaintiff Trejo brings this action on behalf of persons living in residential apartments or dormitories owned, erated or managed by the University of Massachusetts at Amherst

15. The member of the class Plaintiff Trejo seeks to represent is so numerous that the joinder is impracticable.

16. Plaintiff Trejo will fairly and adequately prote the interests of the class.

17. Defendants refusual to perform Article II inspe

is a policy and practice which applies to and effects all member: of the class making appropriate preliminary and final injuctive and declaratory relief with respect to the class as a whole.

18. The claims of Plaintiff Trejo and the question of law and fact in his action are typical of the claims and facts a question of law applicable to the class.

19. Plaintiff Trejo and the class he represents have adequate remedy at law and will suffer irreparable harm unless junctive relief is issued as the inspection are necessary for t eviction defense and affirmative claims under Massachusetts law.

WHEREFORE Plaintiff Trejo individually and on behalf of the class he represents requests:

1. The Court order a short order of Notice for a h ing on Plaintiffs Request for a Preliminary Injunction..

2. Declare the Defendants are under a legal obliga to perform inspection of the University of Massachusetts apar and dormitories pursuant of Article II of the State Sanitary

3. Issue preliminary and permanent injunctions en joing defendants, their agents, employees, and servants from ing to perform inspections under Article II of the State San Code for the University of Massachusetts apartments and dorm

4. Declare that the Defendants, acting under col State law have denied Plaintiff Trejo and the class he repre their equal protection of the law all in violation of the Ma sachusetts and United States Constitution and 42 U.S.C. Sect 1983.

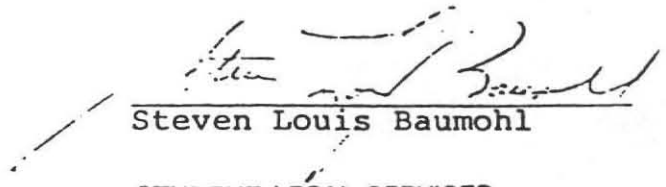
5. Grant Plaintiffs reasonable attorney fees an

costs.

6. Grant Plaintiffs and the class he represents any relief which is proper and just.

Dated 11/1/78

Plaintiff
By his Attorney



Steven Louis Baumohl

STUDENT LEGAL SERVICES
922 Campus Center, UMass
Amherst, MA. 01003
(413) 545-1995

Verification

I Jose Trejo am the Plaintiff in the above described complaint and state that I have read it and believe it to be tru to the best of my knowledge. Signed under the pains and penalti of perjury this day of November, 1978.

Jose Trejo

ADVISORY RULING

Applicability of the STATE SANITARY CODE to the University of Massachusetts The Massachusetts State Colleges, and Their Respective Building Authorities

This is an advisory ruling issued pursuant to c.30A, s.8. The Department has been asked whether the State Sanitary Code, as promulgated by the Department of Public Health and enforced by local boards of health, is applicable to the facilities of the University of Massachusetts, the University of Massachusetts Building Authority, the Massachusetts State Colleges, and the Massachusetts State College Building Authority. In clarifying this issue, I consider at length the legislature intent concerning the scope of the State Sanitary Code, the specific exemption and autonomy provisions of the charters of the state university, colleges and their building authorities, the legal nature of these bodies, and the authority of local boards of health to enforce the Sanitary Code.

(I) The Legislature intended for the State Sanitary Code to be universally enforced throughout the Commonwealth.

The Department of Public Health was delegated the power to promulgate a State Sanitary Code in St. 1957, c.678, which is incorporated in G.L. c.111, s.127A:

> Said department shall adopt, and may from time to time amend, public health regulations to be known as the state sanitary code, which may provide penalties for violations thereof . . . Said code shall become effective and have the force of laws . . .

This enabling statute contains no limitations on the applicability of the State Sanitary Code, other than "Nothing contained in the code shall be in conflict with any general or special law." G.L. c.111, s.127A.

Legislative History

The legislature history of the enabling statute reveals that this delegation of power to the Department was motivated by an intent to rectify a long-standing problem of multiple and inconsistent sanitary regulations promulgated by various local boards of health. Report of the Special Commission to Study and Investigate Public Health Laws and Policies, 1937 House Do. No. 1200. Report Submitted by the Legislative Research Council Relative to the Establishment of a Uniform Sanitary Code for the Commonwealth, 1957 House Doc. No. 2833. In the latter report, the intended universality of the Sanitary Code was expressly stated, "These rules are uniformly applicable to the entire state." 1957 House Doc. No. 2833, p.8. By uniform applicability the report apparently meant geographical universality in the sense of applicability across all municipal boundaries. While the legislative records do not speak specifically to the issue of applicability to state institutions of higher education and their building authorities, the exemption of state college campuses from Sanitary Code enforcement would seem contrary to the express legislative intent of uniform applicability. Functionally, a college campus is analogous to a city or town, with a geographical boundary, a community, and residential and dining facilities. Not enforcing the Sanitary Code on state college campuses would, therefore, pose as great a threat to the public health as excluding a city or town from Sanitary Code Enforcement, and thus defeat the purpose of the legislation.

Logic and Purpose of Establishing a Universally Applicable Sanitary Code

The protection afforded the citizens of the Commonwealth by the universality of the Sanitary Code would be seriously impaired by its non-enforcement on the several college campuses. Disease may be spread to the public at large from any single unsanitary location.

Since public health problems are difficult to isolate or control with limited power, interpreting legislative mandates of public health regulatory authority as grants of plenary power seems necessary to insure effective health protection.

The Supreme Judicial Court relied on such reasoning in sustaining the universal application of department air pollution regulations. "Thus, in the present case, the Legislature by c.11, ss.142A-142E, has authorized and directed the creation of a comprehensive regulatory scheme for attacking the state-wide problem of air pollution. This legislation on its face demonstrates a legislative awareness that any scheme to control and prevent air pollution must apply to all sources of such pollution, whether privately or publicly controlled." City of Boston v. Massachusetts Port Authority, 308 N.E. 2d 488, 499 (1975).

The Attorney General, in dealing with the applicability of State Sanitary Code Article X to facilities of local school committees, adopted such an interpretation of the enabling legislation, "Had the Legislature intended to exempt school committees or any other groups or individuals from the provisions of the Code, it would presumably have included specific provisions to such effect." Opinion of the Attorney General, June 3, 1966.

Administrative Interpretation of the Statute

Contemporaneous and long-standing administrative interpretation of c.111, s.127A by the Department has been that the statute authorizes the Department to adopt regulations of universal applicability. State Sanitary Code, Article I, Reg. 1.1 (1960) states that, "This Sanitary Code shall apply throughout the Commonwealth unless and to the extent that the provisions of any article are expressly limited." The express limitations of applicability are few: for example, Article VIII, "Minimum Standards for Bathing Beaches" (1969) does not apply to private beaches. More common are statements of the Code's breadth: Article II, Reg. 1 defines "dwelling" as "every building or shelter . . . intended for human habitation."; legal entities falling within its scope including a "city, town, county or other governmental unit" Reg. 1; Article X, Reg. 1.1 defines "food service establishment" as including "private, public or non-profit organization or institution routinely serving the public"; and ARticle XI, Reg. 1.1, 2.1 specifically includes "publicly-owned buildings." That the Legislature intended the Sanitary Code to be applicable throughout the Commonwealth, including state college facilities, is suggested by the language of the regulations promulgated by the Department pursuant to c.111, s.127A.

On its face, G.L. c.111, s.127A appears to authorize the Department to promulgate a sanitary code which is to be universally enforced throughout the Commonwealth. The legislative history of the enabling statute, proper statutory interpretation of public health legislation, and contemporaneous administrative interpretation support applicability of the Sanitary Code throughout the state, including buildings located on state college and university campuses.

(II) Neither the exemption provisions of the University of Massachusetts Building Authority and the Massachusetts State College Building Authority charters, nor the autonomy provision of the University of Massachusetts enabling statute grant exemption from enforcement of the State Sanitary Code.

Since the scope of the Sanitary Code can be limited by other specific provisions of law, G.L. c.111, s.127A, it is necessary to examine the legislative sources of the state university and colleges and their building authorities to determine whether such limitations exist.

The charters of the University of Massachusetts Building Authority (UMBA) and the Massachusetts State College Building Authority (MSCBA) contain virtually identical provisions exempting the bodies from supervision or regulation by other state bodies. The provision of the UMBA charter, at 1960, c.773, s.2 or M.G.L. c.75 App., s.1-2 is:

> There is hereby created and placed in the department of education a body politic and corporate to be known as the University of Massachusetts Building Authority, which shall not be subject to the supervision or regulation of the department of education or of any department, commisison, board, bureau or agency of the commonwealth except to the extent and in the manner provided in this act.

The analogous provision for MSCBA is St. 1963, c.703, s.2 or M.G.L. c.73, App., s.1-2. The exemption provision, indeed the entire charter, is a bit of legislative boilerplate used in chartering state authorities. The form was initially used in the charter of the Massachusetts Turnpike Authority, St. 1952, c.354, s.3, and later adopted for the charters of other authorities including the Massachusetts Port Authority, St. 1956, c.456, s.2.

An interpretation of the exemption provision as providing exemption from Sanitary Code enforcement is simply without basis. In City of Boston v. Massachusetts Port Authority, 308 N.E. 2d 488 (1975) the Supreme Judicial Court held that the exemption provision in the Massport charter did not exempt the authority from Department of Public Health (DPH) air pollution regulations. While the court relied on the broad authority given DPH by the air pollution regulation enabling statute, G.L. c.111, s.142E, it also focused on the interpretation of the exemption provision:

> The consequences of the defendant's interpretation of s.2 of the Authority's enabling act would be that a small group of State authorities would have a unique exemption from the regulatory power of the State, an exemption available to no other person or legal entity, public or private . . .
> City of Boston v. Massachusetts Port Authority, 308 N.E. 488, 499 (1975).

In rejecting such a broad interpretation of the exemption provision, the court stressed that the purpose of the provision was not to grant regulatory immunity, but merely to provide for the Authority's financial and managerial independence, so that it might function like a private business.

Such a narrow reading of the exemption provision is readily applicable to the enabling statutes of UMBA and MSCBA: the exemption provision language is identical, the purpose of providing financial and managerial autonomy appears the same, and the Supreme Judical Court even referred in its decision to other authorities' charters. The legislative history of UMBA and MSCBA supports the analogy to Massport. The predecessor of both UMBA and MSCBA, the Massachusetts State College Building Association, was chartered (without an exemption provision) by St. 1939, c.388, for the purpose of holding land, and constructing and maintaining dormitories for the state college system. In 1960, the Legislature voted to extend the association's powers to include U. Mass. facilities, but the Governor vetoed the bill, 1960 House Doc. No. 3347. The reason for the veto was that the association's charter resembled the State Office Building Association's (SOBA) charter, which had recently been held unconstitutional because SOBA was not sufficiently financially independent from the Commonwealth. Ayer v. Commissioner of Administration, 340 Mass. 586 (1960). Therefore, instead of extending the power of the Massachusetts State College Building Association, which was of questionable constitutionality, the Legislature chartered UMBA, with provisions, including the exemption clause, insuring UMBA's financial autonomy. And three years later, the Legislature abolished the Massachusetts State College Building Association and chartered the Massachusetts State College Building Authority, with the same provisions assuring financial independence. Thus the primary reason for the inclusion of the exemption provisions in the UMBA and MSCBA charters was simply to provide for the authorities' financial and managerial independence, and not to grant blanket exemption from state regulation.

A secondary purpose of the exemption provision was to insure the constitutionality of the UMBA and MSCBA charters under Massachusetts Constitution Amend. Art. 66 (which was annulled in 1966 by Amend. Art. 87, s.3). Article 66 required that each administrative office, board or commission had to be placed under the jurisdiction of one of the executive departments. For this reason, both UMBA and MSCBA were "placed" in the department of education, M.G.L. c.73, App., s.1-2 and c.75 App., s.1-2. However, since the Legislature wished for UMBA and MSCBA to be autonomous bodies, the language "shall not be subject to the supervision or regulation of the department of education or of any department. . .of the commonwealth" was added. The exemption provision should, therefore, be interpreted as standing in opposition to the placing of the authorities within the department of education. The Legislature was sufficiently concerned with this function of the exemption provision to request the Supreme Judicial Court's opinion concerning its constitutionality. In Opinion of the Justices, 334 Mass. 721, 136 N.E. 2d 223 (1956), the court held that the exemption provision in the Massport charter did not violate Article 66, because the

authority was not an executive or administrative office, board or commission, but an independent corporation, and therefore Article 66 was not even applicable. In the UMBA and MSCBA charters, use of the "placing" language followed by the exemption provision was not even necessary under Article 66.

The exemption provision of the UMBA and MSCBA charters was intended to serve two functions: insure the financial and managerial autonomy of the authorities, and avoid violation of Article 66. Immunity from State Sanitary Code enforcement cannot be justified by a broad interpretation of the exemption provisions of the UMBA and MSCBA charters.

Attention must be given to the enabling statutes of the University of Massachusetts (U. Mass.) and Massachusetts State College (MSC). The laws establishing the MSC system, G.L. c.15, s.20A and c.73 contain no exemption or autonomy provisions concerning the colleges. However, the statute governing U. Mass. does contain an autonomy provision:

> In exercising such authority, responsibility, powers and duties said board shall not in the management of the affairs of the university be subject to, or superseded in any such authority by, any other state board, bureau, department or commission, except as herein provided.
> G.L. c.75, s.1.

This autonomy provision is even less problematic than the exemption provision of the UMBA charter. First, the language of the autonomy provision is less restrictive than the language of the exemption provision: c.75, s.1 speaks of the superseding of authority in management, and does not mention regulation. Enforcing the State Sanitary Code cannot be considered superseding the authority of the university, and therefore does not come within the scope of c.75, s.1. Second, the legislative history of c.75, s.1, as shown by Report of the Special Commission on Budgetary Powers of the University of Massachusetts and Certain Related Matters, 1962 House Doc. 3350, suggests that the purpose of the autonomy provision was to insure the financial, managerial, and academic independence of the university, so that it might compete with private universities. The autonomy provision does not reflect any intent to provide blanket regulatory immunity, and therefore does not prevent enforcement of the Sanitary Code on the U. Mass. Campus.

(III) In enforcement of the State Sanitary Code, the state University and colleges and their building authorities should be treated as municipal or private corporations.

Authorities, such as UMBA and MSCBA, and state institutions of higher education such as U. Mass. and MSC, are distinct forms of legal entities which may be best analogized to municipal corporations. In determining the applicability of the Sanitary Code to these institutions' facilities, it is necessary to first characterize the legal nature of these bodies.

UMBA and MSCBA closely resemble municipal corporations: they are chartered as bodies "politic and corporate"; their source of power is the Commonwealth; and they perform limited governmental functions. The Supreme Judicial Court has analogized Massport, an authority with a charter almost identical to UMBA and MSCBA, to a municipal corporation. Opinion of the Justices, 334 Mass. 721, 136 N.E. 2d 232 (1956). The court first noted that the authority performs a governmental function, but added that the authorities' financial and managerial independence means that it "is not merely a board or commission of the State government." Attributes of a private corporation were also cited, but because of the authority's public function

the court concluded, "We regard the Authority as a purely public corporation for public purposes -- an arm of the State - analogous to a municipal corporation," Opinion of the Justices, 334 Mass. 721, 735. Although there are no precedents analogizing U.Mass. or MSC to municipal corporations, the structure and functions of these bodies supports the analogy. U. Mass. is organized in a corporate structure, with a board of trustees governing the body, G.L. c.75, s.1, and its autonomy provision gives the institution financial and managerial independence. But because the university performs a public function, it is more like a municpal than a private corporation.

Since the state university and colleges and their building authorities provide the same general educational services as the private universities with which they compete, these institutions may also be analogized to private corporations. In City of Boston v. Massachusetts Port Authority, the Supreme Judicial Court used the similarity of function of an authority to a private corporation to determine regulatory applicability, "Because private businesses are subject to air pollution control regulation under s.142A-142E, it follows that the Authority should also be subject to such regulation." 308 N.E. 2d 499. Similarly, since the State Sanitary Code is applicable to private universities, there seems to be no justification in terms of public function for not applying the Code to state universities.

Legal entities falling within the scope of State Sanitary Code, Art. II are specified in the definition of "person" in Reg. 1:

> Person means every individual, partnership, corporation, firm, association, or group, including a city, town, county or other governmental unit, owning property or carrying on an activity regulated by this article.

The state universities and their building authorities qualify under this definition in two ways. "Other governmental unit" appears to encompass at least all types of municipal corporations, if not all governmental bodies, including state authorities. Considering the state university and colleges and their building authorities as "public corporation(s). . .analogous to. . . municipal corporation(s)." would bring them within the definition of "other governmental unit." Alternatively, the analogy of these bodies to private corporations may be sufficient to qualify them under "corporation." Under either analysis, the state university and colleges and their building authorities satisfy the broad regulatory definition of "person", and therefore the State Sanitary Code Article II is applicable to state campus facilities.

(IV) The Legislature has delegated the enforcement of the State Sanitary Code to local boards of health.

The authority to enforce the State Sanitary Code has been specifically delegated to local boards of health G.L. c.111, s.127A:

> Local boards of health shall enforce said code in the same manner in which local health rules and regulations are enforced, but, if any local boards fail after the lapse of a reasonable length of time to enforce the same, the department may in like manner enforce said code against any violation.

This provision, which was added by St. 1971, c.261, only made express that which was already implied. Previous specific health statutes had provided for enforcement by local boards of health, and the regulations initially promulgated by DPH pursuant to c.111, s.127A specified local enforcement (see State Sanitary Code, Art. I).

Although local health boards are appointed by local government officials, G.L. c.111, s.26-27C, it is established that local boards are independent authorities with delegated powers of the state. Local governments cannot order actions by local boards of health, Breault v. Town of Auborn, 303 Mass. 424, 22 N.E. 2d 48 (1939); and local boards may, in fact, order actions, including the expenditure of funds, by lcoal governmets. Board of Health of North Adams v. Mayor of North Adams, 334 N.E. 2d 34 (1975). In the North Adams case, the Supreme Judical Court explicitly adopted an agency theory with respect to local boards, "We can say that the General Court may, when necessary or convenient, delegate a particular job or function to a local body, the local body becoming for the purpose an 'agent' of the State," p.42. Although the case dealt specifically with the delegation of power to local boards under c.111, s.8C, and referred to similar delegation under c.111, s.160 and c.140, s.32B, the agency analysis is equally applicable to enforcement of the Sanitary Code under c.111, s.127A.

As long as the local board is enforcing only the State Sanitary Code, it would appear to be clothed with the authority of DPH. This opinion does not reach the question of the power of local boards to enforce local health regulations, promulgated pursuant to c.111, s.31, on the state campuses. The provision of c.111, s.127 which specifies Sanitary Code enforcement by local boards "in the same manner" as local regulation enforcement should not be interpreted as a substantive limitation of the local board's power to enforce the Code; rather, the term should be interpreted as merely requiring the same procedure for Sanitary Code and local regulation enforcement. In short, there is no obstacle to the enforcement of the Sanitary Code by local boards of health on state university campuses. However, if the local boards fail to enforce the Sanitary Code on state campuses, c.111, s.127A provides that DPH may undertake such enforcement.

(V) Conclusions

In my opinion:

(1) The Legislature intended for the State Sanitary Code to be applied throughout the Commonwealth, including state college and university campuses.

(2) The enabling legislation for the University of Massachusetts, the University of Massachusetts Building Authority, the Massachusetts State Colleges, and the Massachusetts State College Building Authority does not exempt these bodies from Sanitary Code enforcement.

(3) The state university and colleges and their building authorities are liable to Sanitary Code enforcement, in the same manner as municipal corporations or private universities.

(4) Local boards of health have authority, as agents of the state, to enforce the Sanitary Code on state campuses.

Copies of this advisory opinion will be forwarded to all interested parties.

FOR THE DEPARTMENT OF PUBLIC HEALTH

Gerald J. Pillow
General Counsel

Date: November 9, 1978