

*The Commonwealth of Massachusetts  
Executive Office of Public Safety  
Department of Fire Services*

*P.O. Box 1025 ~ State Road*

*Stow, Massachusetts 01775*

*(978) 567-3100 Fax: (978) 567-3121*



STEPHEN D. COAN  
STATE FIRE MARSHAL

THOMAS P. LEONARD  
DEPUTY STATE FIRE MARSHAL

ARGEO PAUL CELLUCCI  
GOVERNOR

JANE SWIFT  
LIEUTENANT GOVERNOR

JANE PERLOV  
SECRETARY

MEMORANDUM

To: Steven Rourke, General Counsel

From: Peter Senopoulos, Chief Deputy General Counsel

Date: October 6, 1999

); 65-year-old mandatory retirement for call firefighters

Under the provisions of MGL c. 32 s. 3, "members of...fire departments not classified in Group 1 are considered members of group 4. According to c. 32, s.1 the maximum age for members of group 4, which includes members of fire departments, is age 65.

Under section 2 of c. 415 of the acts of 1987, no member... of uniformed member of a paid fire department... shall continue in service beyond the last day of the month in which he attains the age of 65 unless the personnel administrator after consultation with the Secretary of the Executive office of Public Safety shall have determined that age is not a reasonably necessary bona fide occupational qualification for service in said occupation or position classification. It is my understanding that such a determination has not been made as of this date, therefor the maximum age remains 65.

With respect to call firefighters, the Massachusetts Public Employee Retirement Administration has rules that Call firefighters are considered uniformed paid members of a paid fire department for c. 32 s. 94 heart law purposes. Using this analogy, this same Board, as of this date is of the opinion that Call firefighters are considered uniform paid members of a fire department for the mandatory age of sixty-five retirement purposes.

file

# PERAC

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

DOMENIC J. F. RUSSO, *Chairman* | A. JOSEPH DeNUCCI, *Vice Chairman*  
MARY ANN BRADLEY | PAUL V. DOANE | JAMES M. MACHADO | DONALD R. MARQUIS | ROBERT B. McCARTHY

JOSEPH E. CONNARTON, *Executive Director*

April 10, 2009

Larry Murphy  
Counsel  
Town of West Newbury  
381 Main Street  
West Newbury, MA 01985

RECEIVED  
TOWN CLERK  
WEST NEWBURY, MA  
2009 APR 13 PM 1:04

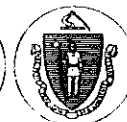
Dear Mr. Murphy:

This is in response to our phone conversation on April 7, 2009 in which you ask whether a fire engineer as defined in Chapter 48, §§ 45-54 is subject to the "Maximum Age" provision in G.L. c. 32, § 1.

In 1987, maximum age and mandatory retirement was eliminated for most public employees by Chapter 415 of the Acts of 1987. This law required the Personnel Administrator to conduct a study to determine if age was to remain a bona fide occupational qualification for certain occupations identified in the law. The Personnel Administrator conducted the study and found that age was to continue to be a bona fide occupational qualification for those occupations listed in the statute. The list of occupations is reflected in the definition of "maximum age" contained in G.L. c. 32, § 1.

"Maximum age", the age on the last day of the month in which any member classified in Group 3, as provided for in paragraph (g) of subdivision (2) of section 3, attains age 55, or if classified in any of the following occupations or position classifications, for which the personnel administrator has determined, pursuant to section 2 of chapter 415 of the acts of 1987, that age is a bona fide occupational qualification, the last day of the month that a member in any such occupation or position classifications attains age 65: a uniformed member of a paid fire department or uniformed member of a police department, or of the police force of the Massachusetts Bay Transportation Authority, or a member of the uniformed branch of the department of fisheries and wildlife as determined by the personnel administrator, or a correctional officer or a permanent crash crewman, crash boatman, fire control man, or assistant fire control man employed at the General Edward Lawrence Logan International Airport.

Any member in service who has attained maximum age as defined in G.L. c. 32, § 1 shall be retired for superannuation upon attaining such age pursuant to G.L. c. 32, § 5(1). As a result of this definition, firefighters are required to retire at age 65.



Larry Murphy  
Counsel  
Town of West Newbury  
April 10, 2009  
Page Two

The Commission has previously opined that regardless of whether a member unit accepts the provisions of G.L. c. 32, § 4(2)(b ½) a "uniformed member of a paid fire department" must retire as of the last day of the month in which he or she reaches age 65. This requirement is set out in Chapter 415 of the Acts of 1987 and does apply to call firefighters. The Contributory Retirement Appeal Board has held that the Heart Law presumption contained in G.L. c. 32, § 94 applies to firefighters and call firefighters. That section of the law by its terms applies to "a uniformed member of a paid fire department." Since that phrase has been held to be applicable to firefighters and call firefighters in the Heart Law presumption context, consistency requires that it also be applicable in the context of the mandatory retirement law.

Your specific inquiry requires that a determination be made regarding whether a fire engineer would be considered "a uniformed member of a paid fire department" pursuant to G.L. c. 32, § 1. Chapter 48, §§ 45-54 does not definitely state that fire engineers are uniformed members of a paid fire department. Fire engineers seem to have decision making powers over the fire departments as explained in Chapter 48, § 47. However, this section of law in and of itself does not define whether a fire engineer is an unformed member of a paid fire department.

Group classification as explained in Chapter 32, § 3 states in pertinent part as follows:

*Group 4.* -- Division of law enforcement of the department of fisheries, wildlife and recreational vehicles; conservation officer of the city of Haverhill having duties similar to a law enforcement officer of the department of fisheries, wildlife and recreational vehicles; employees of the Massachusetts Port Authority at the General Edward Lawrence Logan International Airport, comprising permanent crash crewmen, fire control men, assistant fire control men; members of police and fire departments not classified in Group 1; any police officer of the Massachusetts Bay Transportation Authority; employees whose regular compensation is paid by the United States from funds allocated to the Massachusetts National Guard and who are regularly and permanently employed under the control of the military department of the commonwealth and whose duties in such employment require substantially all normal working hours and whose continued employment is based upon federal recognition in the Massachusetts National Guard; members of the Massachusetts military reservation fire department; employees of a municipal gas or electric generating or distribution plant who are employed as linemen, electric switchboard operators, electric maintenance men, steam engineers, boiler operators, firemen, oilers, mechanical maintenance men, and supervisors of said employees who shall include managers and assistant managers; employees of the Massachusetts Port Authority who are employed as licensed electricians, utility technicians, steam engineers, watch engineers, boiler operators, or steam firemen, and supervisors of said employees, at an electrical generating or distribution plant; employees of the department of correction who are employed at any correctional institution or prison

Larry Murphy  
Counsel  
Town of West Newbury  
April 10, 2009  
Page Three

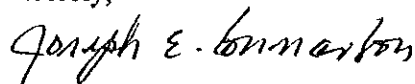
camp under the control of said department and who hold the position of correction officer, female correction officer, industrial instructor, recreation officer, assistant industrial shop manager, industrial shop manager, assistant to the supervisor of industries, supervisor of industries, senior correction officer, senior female correction officer, supervising correction officer, supervising female correction officer, prison camp officer, senior prison camp officer, supervising prison camp officer, assistant deputy superintendent; employees of the parole board who hold the position of parole officer or parole supervisor; chief of security for the University of Massachusetts medical school or supervising identification agent; employees who hold the position of state hospital steward in the department of correction; the sheriff, superintendent, assistant superintendent, assistant deputy superintendent and correction officers of county correctional facilities; district attorneys, assistant district attorneys who have been employed in such capacity for ten years or more; the chief fire warden and the district fire wardens in the executive office of environmental affairs and the fire marshal of the department of fire services in the executive office of public safety; but the fire marshal shall have been a member of group 4 for ten years or have had ten years or more employment at the department of fire services or its predecessor agencies, the division of fire prevention and the Massachusetts firefighting academy, before being eligible for benefits under this section.

If fire engineers are classified in Group 4 by virtue of being members of the fire department, such fire engineers would be considered unformed members of a paid fire department, and hence, subject to the maximum age provision of Chapter 32, § 1.

The Commission suggests that you inquire of the Newbury Retirement Board and as to whether the Newbury Fire Department classifies fire engineers in Group 1 or Group 4 per Chapter 32, § 3. If fire engineers are classified in Group 1 then they are not subject to maximum age, but if fire engineers are classified in Group 4, then they are subject to maximum age.

I trust this is of assistance. If you have any questions or need additional information, please contact this office.

Sincerely,



Joseph E. Connarton  
Executive Director

JEC/dmm

cc: Laurie Burton, Newburyport Retirement Board  
p:\legal\opinions\09067westnewbury.doc