

Fwd: constable question

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From: **David Shapiro**

Date: Wed, Feb 9, 2022 at 9:21 AM

Subject: constable question

To: Matthew McLaughlin

President McLaughlin,

You have asked whether the City may refuse to appoint or re-appoint a constable based solely on their duly authorized role in serving summary process documents. In my opinion, since a constable is expressly enabled by state law to serve summary process documents, a decision to not appoint or re-appoint a constable based solely on that basis is highly vulnerable to successful legal challenge on the grounds that the decision effectively seeks to deny an application based purely on the statutory role conferred on constables to levy on evictions.

Massachusetts courts have long recognized that when "acting in furtherance of a statutory duty, the town meeting may not command or control the board [of selectmen] in the exercise of that duty." See Anderson v. Board of Selectmen, 406 Mass. 508, 512 (1990) (Selectmen not bound by Town Meeting vote purporting to establish the Town's rate of contribution for group insurance benefits); and Breault v. Auburn, 303 Mass. 424 (1939) (Town meeting vote directing board of health to hire an employee was ineffective because hiring power was solely conferred on the board).

Although the City Council has the power to appoint constables, since the powers and duties of the constables are statutory, in my opinion, it would be highly vulnerable to successful legal challenge to make a licensing determination based solely on the statutory powers conferred on constables.

Please let me know if you have any additional questions or concerns.

David Shapiro

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