

From: [Francis Wright](#)
To: [Francis Wright](#)
Cc: [Susan Tkaczuk](#); [John Long](#)
Subject: Welcoming Ordinance - Item #207923 - limits on police authority opinion
Date: Tuesday, June 11, 2019 8:42:38 PM

Dear Honorable Members of the Legislative Matters Committee:

You have asked whether the City Council may enact an ordinance which limits the police department from exercising discretion to arrest a person if a driver operates without a license. In my opinion, the City may not lawfully limit the authority of police officers to exercise their discretion to arrest a person operating a motor vehicle without a license.

Pursuant to G. L. c. 90, s. 21, a police officer is authorized to arrest without a warrant a person who drives without a license in violation of G. L. c. 90, s. 10.

In Commonwealth v. Feyenord, 445 Mass. 72, 833 N.E.2d 590 (2005), an operator who was pulled over for driving with a headlight out could not produce a driver's license. The operator gave evasive and implausible answers to the officer's questions and was ordered to exit the vehicle. The officer arrested the operator. The court held that the officer's actions were lawful, because the operator was unable to show a license. *Id.* at 76-77.

in my opinion, by acting to limit the police officer on the street from exercising discretion to decide whether to arrest a person who operates a vehicle without a license, would unlawfully limit the ability of the police officer to exercise his/her statutory authority to arrest individuals who operate a vehicle without a license.

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).

Please let me know if you have any additional questions.

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