

MANS&C Quarterly

Massachusetts Association of Nonprofit Schools and Colleges

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Summer '03

Travaglini addresses budget crisis, future of education

"I recommend your organizations keep in contact with people in power." This was the key message delivered by Massachusetts Senate President Robert Travaglini at MANS&C's government relations luncheon March 24 at Suffolk University's School of Law in Boston. "We in the legislature understand your mission and recognize your efforts. It's why Massachusetts stands out as a world leader in education," he said.

He urged the more than 100 MANS&C representatives in attendance to call him and other members of the legislature. "Preparing children for the economy of the 21st century is a prime focus of the legislature," he said. "If you don't call, you'll have to live with what we do."

Travaglini gave a candid presentation about the Commonwealth's severe budget deficit and what the future might bring. He described the seriousness of the more than \$2 billion in budget cuts that face the legislature for resolution by June 30, adding that all options are on the table. Travaglini is benefiting from a greatly improved relationship with the House of Representatives leadership and is looking for specifics in the governor's budget bill that could help achieve the needed balance. He does not believe there is a lot of waste in state government, and he noted the Commonwealth has an obligation to care for the homeless, elderly and poor.

Travaglini indicated these difficult financial times will involve major changes in the way business is conducted in government. MANS&C needs to promote itself now to key legislators, because decisions may be made over the next several months that could seriously affect Massachusetts educational institutions. The arena is now a new one where power politics and territories are not serious priorities.

While Travaglini does not support the idea of taxing nonprofits, he acknowledges that some of the tax exemptions and privileges



(l. to r.) Barry Monahan, Wellesley College; Debbie Martin, Phillips Academy; Rosemarie Sansone, Suffolk University; and Ed King, Boston University present Senate President Robert Travaglini (center) with a plaque of appreciation.

private schools have enjoyed through the Dover Amendment will be under review. Local communities may have more flexibility in approaching nonprofits for contributions to cities and towns in the future. He said it is unfair to continue to have the Commonwealth mandate school requirements without providing appropriate funding, and he would like to see cooperation between private and public schools, perhaps by sharing resources. Private schools and colleges make extremely important and significant contributions to the state, he acknowledged.

MANS&C members must take Travaglini's advice and open up avenues of communication at all governmental levels to explain how independent schools and colleges provide valuable services to the citizens of Massachusetts.

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Pending bills threaten private tax-exempt status

As this newsletter went to press, Governor Mitt Romney had just vetoed \$201 million in spending approved by the Massachusetts Legislature. The House and Senate will now consider which vetoes they will attempt to override. The completion of the budget will not relieve MANS&C of its need to be vigilant in protecting our members from further regulation and taxation.

Of concern to MANS&C is a House provision that would require the institutions regulated by the Division of Insurance (DOI) to fund the entire DOI budget of \$9.7 million. As self-insured institutions, many of our members are regulated by the DOI and would bear the cost of this assessment, which is to be determined by the division's commissioner with the approval of the secretary of administration and finance. The Senate version of the budget does not contain this extraordinary assessment. The budget, as sent to the Governor, contained the House version and it was not vetoed by the Governor. The Governor did, however, reduce the line item from \$9.7M to \$8.4M. As a matter of principle, MANS&C believes that the regulated should not bear the cost of their own regulation.

A bill Senator Guy Glodis has threatened to file that would tax the real estate of educational institutions is being closely watched by MANS&C. Senator Glodis attempted to attach this legislation to the Senate state budget, but the amendment was not accepted by the Senate Ways and Means Committee. MANS&C alerted its members, urging them to write to their senators to reject such a proposal. This effort was successful, and, although 590 amendments were filed by various senators for consideration after the committee released its budget proposal, Senator Glodis did not file any amendments concerning this taxing provision.

Nevertheless, MANS&C is extremely concerned about this direct affront to its members' tax-exempt status. Senator Glodis' argument in support of this measure was that educational institutions obtain municipal services without bearing the cost of the same. Mayor Thomas Menino has threatened to curtail the educational tax exemption of private schools and colleges because of the budget deficits the city of Boston is experiencing,

and he has stated that payment in lieu of taxes by educational institutions should be mandatory not just in Boston, but throughout the commonwealth, to compensate for municipal

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services rendered.

MANS&C is working vigorously to review any proposals from the House or Senate that might utilize the Glodis or Menino concepts to dilute our educational tax exemption on real estate. We view these legislative threats as serious, and we encourage all member institutions to contact their state legislators to explain the economic contributions their institutions render to the communities in which they are involved.

The Dover Amendment, found in M.G.L. c.40A, Section 3, which grants educational institutions certain zoning protections from local planning boards, is also under attack again with two pieces of legislation. The first is Senate 1250 (www.state.ma.us/legis/bills/st01250.htm), filed by Senator Marc Pacheco, which would completely eliminate the Dover Amendment. This bill will be heard on July 24, 2003, before the Committee on Natural Resources, and MANS&C will give written and oral testimony in vigorous opposition to this legislation.

The other legislation, Senate 1174 (www.state.ma.us/legis/bills/st01174.htm), filed by Senators Pamela Resor and Susan Fargo and Representatives Douglas Peterson and Karen Spilka, will come before the Committee on Local Affairs. Page 3 of the bill, under §3, also knocks out the Dover Amendment in its entirety. On page 4, under §4, the Dover Amendment is reinserted.

However, the following new language has been added:

"The land or structures used for such purposes may, however, be subject to reasonable regulations regarding the bulk and height of structures, yard sizes, frontage, lot area, building coverage requirements, setbacks, floor area ratio, parking, access and egress, lighting, drainage, landscaping, buffering and open space and similar matters."

The words shown in bold type above are not contained in the current statute and substantially expand the control of local boards of appeal over the implementation of the Dover Amendment.

Finally, in the sentence beginning with the word "Compliance" and running through the end of the first paragraph on page 5, the final words "for such purposes without the waiver" are brand new. The inclusion of this clause ties in with §7A, which does not exist in the current law. This section, on pages 8-10, constitutes a complete and onerous revision of site plan review provisions and could eviscerate the effectiveness of the Dover Amendment. The site plan review process currently in place is not reviewable in the courts, per se. The proposed new legislation under §7A(g), allows an appeal under M.G.L. c.40A, §17. The Committee on Local Affairs has not scheduled any hearing date for this legislation. When it does, MANS&C will present written and oral testimony emphatically opposing this legislation.

MANS&C is also concerned with Senate 1838 (www.state.ma.us/legis/bills/st01838.htm), which provides for a study to be done by the Department of Revenue (DOR) to determine the total assessed values of all educational institutions and to recount any payments by these institutions in lieu of taxation. This bill has the potential to alter dramatically the way nonprofit educational institutions are regarded. If passed, this legislation might lead communities to view an educational institution as a drain on resources rather than a source of community enrichment. MANS&C has opposed this study as being beyond the scope of the DOR and considers it an attempt to build a case against tax-exempt status of educational institutions. MANS&C assert

From the President



The Massachusetts Association of Nonprofit Schools and Colleges annual meeting was conducted on May 22, 2003, at Wellesley College. Various committees presented their annual reports, and the 2004 budget was accepted with no proposed increase in dues to our members. The officers of MANS&C were also elected. I am pleased to be able to serve as president for the upcoming year, and I am happy to report that Rosemarie Sansone of Suffolk University was elected vice president. Julaine McInnis of the Walnut Hill School was elected treasurer, and Barry Monahan of Wellesley College was elected secretary.

When MANS&C was founded over 30 years ago, the idea was that private schools, colleges and universities working together could create a unique and well-respected organization to represent the needs of our institutions in a united way. To advance our joint interests, we engaged in the following important activities last year:

- ◆ Senate President Robert Travaglini addressed the March 24 MANS&C government relations luncheon at Suffolk University Law School.
- ◆ State Senator Robert O'Leary, who has been a friend to education during his tenure in the legislature, met with the MANS&C board of directors in January.
- ◆ State Representative Peter J. Larkin met with the MANS&C board of directors in April.

- ◆ Results of the 2001-02 Economic Impact Survey were published. Attorney John Spillane continues his outstanding work representing MANS&C and providing the board of directors with information regarding potential legislation of particular interest to our members. At our annual meeting, John reported that the current budget situation puts under particular attack the privileges that schools and colleges are provided by the Commonwealth of Massachusetts, such as our tax exemption and zoning privileges (the Dover Amendment). One of our missions is to inform our members of legislative threats that could affect our abilities to continue to provide the level of services we are all proud of. We need to alert the legislative leadership, our representatives and senators and our community leaders of the importance of our work and our presence to the state and our communities.

John Spillane's legislative report, which begins on page 2 of this newsletter, lists many of the bills we will be watching this summer. John has appeared at a number of hearings on behalf of MANS&C since the legislative year began. It promises to be a challenging summer as the legislature continues to look to nonprofit institutions for sources of revenue. I encourage you to be aware of the legislature's activities and keep in touch with your senator, representatives and local officials!

Enjoy the summer!

—Debbie Martin

hat their members' tax-exempt status enjoys constitutional protection.

MANS&C also strongly opposes Senate Bill 4 (www.state.ma.us/legis/bills/st00084), a bill filed by for-profit fitness clubs in Massachusetts. This legislation would prohibit colleges and hospitals from selling tax-exempt adult fitness facility services to the general public if a tax-paying fitness center offers similar services within 10 miles, unless the tax-exempt entities pay appropriate taxes. This is an unusual bill because it appears to benefit only for-profit fitness centers. It sets up a mandatory 14-step arbitration process for receiving and arbitrating complaints about colleges and hospitals, which would doubtless have to expend significant resources respond-

ing to this type of claim. MANS&C was successful in the last two sessions in defeating this legislation and expects to wage a vigorous battle before the Committee on Commerce and Labor to defeat it again.

Other legislation troubling to MANS&C includes House Bill 79 (www.state.ma.us/legis/bills/house/ht00079.htm) and House Bill 411 (www.state.ma.us/legis/bills/house/ht.00411.htm), both of which attempt to modify M.G.L. c.90, Section 7D, which MANS&C successfully sponsored in 1996. The existing legislation exempts 14-passenger vehicles used for activities related to a private school, day-care center, camp, school-age children care program or a special needs program from the state

operating and registration requirements (other than seat belt requirements) established for larger school buses. The legislation provided that students would be picked up or discharged on a fixed route; that operators' primary relationship to the passengers must be that of teacher, coach, director or care giver; and that such vehicles are to be registered as private passenger motor vehicles. Under former Massachusetts Registrar of Motor Vehicles Daniel Grabauskas, the implementation of this legislation worked well. When he left, the new law was being interpreted differently by various members of the Registry bureaucracy. Therefore,

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MANS&C contacted his successor, Registrar Kimberly Hinden, for clarification, and on April 19, 2002, she issued an advisory to Attorney John W. Spillane, counsel for MANS&C, reaffirming that the registry would permit 14-passenger activity vehicles to be registered and operated in accordance with the provisions of M.G.L. c.90, Section 7D.

Unfortunately, the Registry of Motor Vehicles has subsequently filed House Bill 79, which would in essence repudiate this advisory. Although the Committee on Public Safety reported favorably on House Bill 79 in March over MANS&C's opposition, MANS&C has requested that the committee reconsider it, suggesting that the committee may have been misguided in its interpretation of the National Traffic and Motor Safety Act and Regulations promulgated by the National Highway Traffic Safety Administration. MANS&C has pointed out that these regulations apply only to manufacturers and dealers of school buses. The exemption provided under Section 7D from state law requirements concerning the operation and registration of motor vehicles does not in any way affect the implementation of the federal statute. To the contrary, a manufacturer in the sale or lease of vehicles in Massachusetts is fully subject to federal requirements, and nothing in Section 7D purports to change this application. We have further pointed out that, if the Section 7D exemption were read as providing different safety standards, either higher or lower, from those provided by the federal law, then it would be pre-empted. MANS&C is also following House Bill 411 which would also alter Section 7D.

MANS&C continues to monitor numerous other pieces of legislation and will report bills of particular concern to the membership as appropriate.

Legislative Alert Process

MANS&C members periodically receive "MANS&C Alert" e-mails. These are sent when legislative or regulatory issues require rapid action by our members. One such alert was the recent communication regarding the potential addition to the outside section of the state legislative budget of the Glodis Bill, which would have allowed cities and towns to tax certain properties of our members. Bills attached to the budget in this manner can become law without the legislative hearing process having been followed. Many schools responded to this alert. Fortunately, the Glodis Bill was not ultimately attached to the outside section of the budget.

Many times we attach to the alert a suggested letter. Ideally, members would have time to write a personal letter to their elected officials. However, we all know that this can be a time-consuming process. By personalizing the letter attached to the alert, you can save time while conveying your own message to your legislator.

We hope that these alerts will be few and far between, but, given this year's pressures at the statehouse, this may be wishful thinking.