January 15, 1998

BY FACSIMILE - (781)293-4650

Hon. William Cullity, Jr. and
Members of the Board of Selectmen
Pembroke Town Hall
100 Center Street
Pembroke, MA 02359

Re: Change from Executive Secretary to Town Administration

Dear Members of the Board of Selectmen:

You have requested an opinion regarding whether the Town can change the title of Executive Secretary to that of Town Administrator and transfer hiring/removal authority to the newly designated Town Administrator. You further ask if you can appoint an interim Executive Secretary on the departure of the incumbent. You also ask if once you advertise and appoint a permanent Executive Secretary if you can change that person to a Town Administrator without reopening and re-advertising the position.

This is to confirm my earlier telephone conversation with the Chairman regarding this matter.

In my opinion, the title of Executive Secretary and Town Administrator are interchangeable (see G.L. c.41, §23A and §108N). Under normal conditions, the Board of Selectmen could vote to make the change. Since the Town By-Laws do specify the name and duties of the Executive Secretary, however, I would recommend that the change in title and duties be made by a change to the By-Law at the next Special or Annual Town Meeting. The transfer of authority from the Board of Selectmen to the Town Administrator to appoint and remove employees, however, is more problematic. The change in appointing authority would require a charter change or special legislation.
The Board has the authority under G.L. c.41, §23A and the Town By-Laws to appoint an Executive Secretary. In my opinion, this would include the authority to appoint an interim Executive Secretary which needs no additional specific authorization.

In response to your third inquiry, you can change the title of the person performing the functions of Chief Administrative Officer without changing the person. If you hire a permanent Executive Secretary to replace the incumbent, and, during his/her term, change the titles and some of the duties and the job description of the position, in my opinion, there is no need to reopen the position unless you choose to do so. If you should so choose, it would be necessary to advise in advance whomever you hire, that you intend to change the title and duties at some future date and that you intend to reopen the position when that is accomplished. The term of office and contract of the new Executive Secretary would then end on the date of the change or assumption of office of the Town Administrator. The incumbent Executive Secretary would not be excluded as a candidate for the changed position.

General Law c.41, §23A provides for the appointment by the Board of Selectmen of either an Executive Secretary or a Town Administrator. He or she shall act by and for the Selectmen in any manner which they may assign to him/her relative to the administration of the affairs of the Town or of any Town office or department under their supervision or control. The Town meeting may by a simple vote or by a By-Law authorize and empower the Selectmen to make such an appointment. Pembroke has chosen to pass a By-Law which uses the title "Executive Secretary". At the time the By-Law passed section 23A referred only to "Executive Secretary". That statute was changed in 1996 making the authority apply to either an "Executive Secretary" or a "Town Administrator". For that reason, in my opinion, it would now be appropriate for the By-Law to be changed either to allow the optional titles or to change the title to Town Administrator if that is what the Selectmen want. If it were not for the specific title in the By-Law, in my opinion, the change could be made by a vote of the Selectmen.

Although section 23A authorized the Selectmen to assign any duties to the Executive Secretary/Town Administrator relative to the administration of the affairs of the Town, it does not give the Executive Secretary/Town Administrator appointing authority. Appointing authority is granted by statute to the Board of Selectmen in most cases, e.g., police (G.L. c.41, §97A), fire (G.L. c.48, §42), etc. Appointing authority may only be changed by a charter change which would then prevail over the statute under the Home Rule Amendment (see G.L. c.43B, §20) or by special legislation. Special legislation does not necessarily require approval by a special town election. It does require approval in advance by Town meeting but can be made effective on passage.

General Law c.41, §108N authorizes the Board of Selectmen to establish an employment
contract for its Town Manager, Town Administrator, Executive Secretary, Administrative Assistant or the person performing such duties. Once again, the titles are interchangeable. The Selectmen, by contract, can establish a job description and duties. The contract, if one is written, prevails over any By-Law. If it is your intent to hire a permanent Executive Secretary and then later change the title and duties to include granting appointing authority under a charter change or special legislation, I would recommend the terms of employment of the Executive Secretary be spelled out in a contract. Such contract could specify that it expires on the assumption of office of a newly authorized Town Administrator. If you choose otherwise, in my opinion, you can appoint a permanent Executive Secretary who would automatically, by contract, became the Town Administrator on the change of the title and duties.

Please feel free to call me with any questions in this regard. Please share this opinion with the Town Government Study Committee.

Very truly yours,

Everett J. Marder

EJM/js

I don’t know if the questioned was asked as the whether we can participate in this process, but no where in the letter indicates we can not. I feel we should proceed as we have.
To: Pembroke Board of Selectmen  
From: Government Study Committee  
Date: 11/26/97

Enclosed are DRAFTS of a letter to the Selectmen and a job description for the Inspector of Buildings which we plan to present to you formally next Monday during your scheduled meeting. We thought you would benefit by having a copy ahead of the meeting which would allow you to prepare for any discussion you may care to have during the meeting. We plan to meet at 6:30 just prior to your meeting for any last minute revisions but do not expect much to change. As you read both the letter and job description you will see some things that we are going to recommend which differs from status quo and expect to discuss with you.
To: Pembroke Board of Selectmen
From: Government Study Committee
Date: 12/1/97

At your November 16th meeting you officially announced the retirement of the Inspector of Buildings, Mr. Al Cain effective January 1st, 1998. In conjunction with that announcement you also requested the assistance of the GSC to help develop a new job description for the Inspector of Buildings prior to initiating any hiring process for Mr. Cain’s replacement. Since Mr. Cullity had previously brought this matter to our attention it did not take us by surprise and we had already planned to discuss the issue at our next meeting which was scheduled for the following evening on the 17th. For that meeting, we invited representatives from the Building Department to join us to talk about the role of Inspector of Buildings and the Zoning Code Enforcement Officer which is currently a combined position. Assistant Building Inspector George Verry did attend our meeting and was very informative, helpful and contributed greatly to our discussion.

Our discussions included a rather wide range of options that we felt could be taken to meet our increased needs for both building inspection and zoning enforcement and the options were as diverse as requiring a single full-time employee with some part time support staff; to two separate positions each with it’s own support staff. The final consensus was that although there has been a significant increase in both building permits and zoning enforcement activity, the two roles should continue to be a combined effort, and an appropriate job description and compensation be established to assure that Pembroke attracts and hires a highly qualified individual to fulfill both roles.

When we reviewed other town’s job descriptions and job responsibilities, one thing surfaced that seem quite sensible but not currently in place under the control of the Building Department; Sealer of Weights & Measurers. We feel that by incorporating this position we combine very similar responsibilities, provide for more flexible and in-depth coverage, combine two fee collection agencies under one department, and strengthen the position of Inspector of Buildings/Zoning Code Enforcement Officer which should demand higher compensation and hopefully more highly qualified candidates.

Also during our review, we learned that M.G.L. requires that the Zoning Code Enforcement Officer* must be either the inspector of buildings, a building commissioner or a local inspector and must be designated by the chief administrative officer or board of each city or town; in our case the Selectmen. With this being a requirement, we felt that even if an assistant to the Inspector of Buildings (i.e. a local inspector) was designated as the Zoning Code Enforcement Officer, not having zoning enforcement incorporated within the Inspector of Building’s job description would be somewhat impractical. With that in mind and the comments above, we have drafted a new job description for an Inspector of Buildings/Zoning Code Enforcement Officer for your review.
Board of Selectmen

Appoints Executive Secretary
Hires Clerical Staff
Appoints All Non-Elected positions

Board of Assessors
- Appoint Chief Assessor
- Hire Clerical Staff

Board of Health
- Appoint Health Agent
- Hire Clerical Staff

Department of Public Works
- Appoint Director DPW
- Appoint Asst. Director
- Hire Clerical Staff

Treasurer/Collector
- Hires Clerical Staff

Planning Board
- Hires Clerical Staff

Building Inspector
- Appointed by Selectmen

Asst. Building Inspector
- Appointed by Selectmen

Zoning Enforcement Officer
- Appointed by Selectmen

Gas Inspector
- Appointed by Selectmen

Plumbing Inspector
- Appointed by Selectmen

Wiring Inspector
- Appointed by Selectmen

Town Accountant
- Appointed by Selectmen

Town Clerk
Assistant Town Clerk
- Appointed by Selectmen

Police Department
- Civil Service - Appt. by Selectmen

Police Chief
- Civil Service - Appt. by Selectmen

Lieutenant
- Civil Service - Appt. by Selectmen

Fire Department
- Civil Service - Appt. by Selectmen

Fire Chief
- Appointed by Selectmen

Lieutenant
- Appointed by Selectmen

Constable

Financial
Financial
Safety
Infrastructure
Infrastructure
Infrastructure
Infrastructure
Infrastructure
Infrastructure
Infrastructure
Infrastructure
Financial
Administrative
Administrative
Safety
Safety
Safety
Safety
Administrative
| Advisory                          | Joint Appointment by Selectmen & Moderator | Financial  |
| Animal Inspector                 | Appointed by Selectmen                   | Safety     |
| Board of Registrars              |                                          | Administrative |
| Cemetery Restoration Commis      | Appointed by Selectmen                   | Administrative |
| Conservation Commission          | Appointed by Selectmen                   | Administrative |
| Council on Aging                 | Appointed by Selectmen                   | Administrative |
|                                | Appoint Director COA                     |             |
| Dog Officer                      | Appointed by Selectmen                   | Safety     |
| Drainage                         | Appointed by Selectmen                   | Infrastructure |
| Emergency Management             | Appointed by Selectmen                   | Safety     |
| Herrig Run Superintendents       | Appointed by Selectmen                   | Infrastructure |
| Historic District Commission     | Appointed by Selectmen                   | Administrative |
| Historical Commission           | Appointed by Selectmen                   | Administrative |
| Recreation Commission            | Appointed by Selectmen                   | Administrative |
| Recycling Committee              |                                          | Safety     |
| Sealer of Weights & Measures     | Appointed by Selectmen                   | Administrative |
| Town Counsel                     | Appointed by Selectmen                   | Administrative |
| Town Forest Committee            | Appointed by Selectmen                   | Administrative |
| Town Landing Committee           | Appointed by Selectmen                   | Administrative |
| Town Memorial Committee          | Appointed by Selectmen                   | Administrative |
| Veterans Agent & Vet. Burial Agent |                                         | Administrative |
| Veterans Neglected Graves Officer|                                          | Administrative |
| Wage & Personnel                 | Appointed by Selectmen                   | Financial  |
| Waterways Superintendent         | Appointed by Selectmen                   | Safety     |
| Zoning Board of Appeals          | Appointed by Selectmen                   | Administrative |
| Town Clock                       | Appointed by Selectmen                   | Infrastructure |
| Cultural Council                 | Appointed by Selectmen                   | Administrative |
| Cable Advisory                   | Appointed by Selectmen                   | Administrative |
| Computer Study Committee         | Appointed by Selectmen                   | Administrative |
| Fiscal Planning & Management     | Appointed by Selectmen                   | Financial  |
| Silver Lake Withdrawal Commis    | Appointed by Selectmen                   | Administrative |
| OCPC Joint Transportation Co     | Appointed by Selectmen                   | Administrative |
| Ply. County Aid to Agriculture   | Appointed by Selectmen                   | Administrative |
| Ply. County Advisory             |                                          | Administrative |
| North River Commission           |                                          | Administrative |
| YMCA Study Committee             |                                          | Administrative |
| 911 Ad Hoc Committee             |                                          | Administrative |