

**The Commonwealth of Massachusetts
Office of the Attorney General
Western Massachusetts Division
1350 Main Street
Springfield, Massachusetts 01103-1629**

July 20, 2009

Mary Ann Silva, Town Clerk
54 Marion Road
Wareham, MA 02571

**Re: Wareham Annual Town Meeting of April 27, 2009 – Case # 5211
Warrant Articles # 42, 43 and 54 (General)**

Dear Ms. Silva:

Article 42 and 43 - We return with the approval of this Office the amendments to the town by-laws adopted under these Articles on the warrant for the Wareham Annual Town Meeting that convened on April 27, 2009.

Article 54 – We return with the approval of this Office the amendments adopted under Article 54, except as provided below.

The amendments adopted under Article 54 amend Division I, Article II, “Board Meeting and hearings,” Section 1, by deleting the first sentence and inserting the following new sentence (with emphasis added).

The Selectmen, Assessors, Board of Public Welfare, and any other regularly elected boards or committees shall cause to be posted at the Town Office building at a single designated location, electronically via the News & Announcements system (<http://www.wareham.ma.us/subscriber.shtml>), and on the Town’s Website, a notice of the hour and place of their regular meeting **at least 24 hours prior to that meeting**.

The proposed by-law amendments provide that notices of meetings be posted at least 24 ours prior to the meetings. We disapprove and delete the text in **bold and underlined** above from the proposed by-law amendment because it is inconsistent with the G.L. c, 39 § 23B, the Open Meeting Law **[Disapproval #1 of 1]**. G.L. c. 39, §23B provides in pertinent part as follows:

Except in an emergency, a notice of every meeting of any governmental body shall be filed with the clerk of the city or town in which the body acts, and the notice or a copy Thereof shall, at least forty-eight hours, including Saturdays but not Sundays and legal Holidays, prior to such meeting, be publicly posted in the office of such clerk or on the principal official bulletin board of such city or town...The notice shall be printed in easily readable type and shall contain the date, time and place of such meeting. Such Filing and posting shall be the responsibility of the officer calling such meeting.

G.L. c. 39, § 23B requires notice at least 48 hours before every meeting of every governmental body. Therefore, the proposed by-law's 24 hour notice period is inconsistent with the 48 hour requirement of G.L.c. 39, § 23B.

We acknowledge that the proposed by-law amendments are silent on the time frame for posting meeting notices. Therefore, we caution the Town that the proposed by-law amendments must be applied in a manner consistent with G.L. c. 39, § 23B, and our approval is so limited.

Note: Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect until the town has first satisfied the posting/publishing requirements of this section. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

If the Attorney General has disapproved and deleted one or more portions of any by-law or by-law amendment submitted for approval, only those portions approved are to be posted and published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Nothing in the Attorney General's approval authorized an exemption from any applicable state law or regulation governing the subject of the by-law submitted for approval

Very truly yours,

**MARTHA COAKLEY
ATTORNEY GENERAL**

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enc.

cc: Town Counsel