

# **Bond Case Briefs**

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## **POLITICAL SUBDIVISIONS - MASSACHUSETTS**

### **Attorney General v. Town of Milton**

**Supreme Judicial Court of Massachusetts, Suffolk - January 8, 2025 - N.E.3d - 2025 WL 44969**

Attorney General brought action against town and its building commissioner seeking declaratory and injunctive relief to enforce compliance with Massachusetts Bay Transportation Authority (MBTA) Communities Act.

Town filed counterclaim against Attorney General and Executive Office of Housing and Livable Communities (HLC) seeking declaratory relief, challenging constitutionality of MBTA Communities Act and HLC's promulgation of guidelines under the Act. Single justice of the court reserved and reported the case to the full court.

The Supreme Judicial Court held that:

- Act did not violate separation of powers doctrine;
- Attorney General had authority to enforce Act;
- HLC guidelines issued under Act interpreted and implemented the Act, and thus were subject to Administrative Procedure Act (APA) requirements; and
- HLC's promulgation of guidelines implementing Act was not done in compliance with APA, and thus guidelines were legally ineffective.

Legislature did not vest Executive Office of Housing and Livable Communities (HLC) with power to make fundamental policy decisions in Massachusetts Bay Transportation Authority (MBTA) Communities Act, and thus Act did not violate separation of powers doctrine, despite fact that it tasked HLC with determining whether a city or town complied with Act's requirement that MBTA communities have at least one zoning district of reasonable size in which multifamily housing was permitted as of right; language of Act made policy goal plain, Act defined a "district of reasonable size," sufficiently demarcating boundaries of regulatory discretion, Act permitted subject-matter experts to tailor guidelines to fit actual conditions of each MBTA community, and Act provided intelligible principles to guide HLC in exercising its authority and required consultation with three other agencies.

Attorney General had authority to enforce Massachusetts Bay Transportation Authority (MBTA) Communities Act, which required that MBTA communities have at least one zoning district of reasonable size in which multifamily housing was permitted as of right; although Act did not refer to any such power, Attorney General had broad authority to act in the public interest and public had interest in enforcement of Act.

Fact that Massachusetts Bay Transportation Authority (MBTA) Communities Act included consequences for noncompliance with requirement that MBTA communities have at least one zoning district of reasonable size in which multifamily housing was permitted as of right did not preclude Attorney General from bringing enforcement action against town that failed to pass ordinance creating multifamily housing zoning district; only consequence to a town of failing to comply with

Act would be loss of certain funding opportunities if Attorney General could not bring enforcement actions, leaving towns free to ignore Act's purpose of creating more opportunities for multifamily housing in areas benefiting from MBTA services, and turning legislative mandate into a matter of fiscal choice.

Executive Office of Housing and Livable Communities' (HLC) guidelines issued under Massachusetts Bay Transportation Authority (MBTA) Communities Act interpreted and implemented the Act, which required that MBTA communities have at least one zoning district of reasonable size in which multifamily housing was permitted as of right, and thus were subject to Administrative Procedure Act (APA) requirements, despite fact that Act referred to "guidelines" rather than "regulations;" guidelines categorized communities and detailed what each category had to do to be in compliance with Act, guidelines explained what it meant to allow multifamily housing "as of right," and established deadlines by which communities had to submit compliance applications to HLC.

Executive Office of Housing and Livable Communities' (HLC) promulgation of guidelines implementing Massachusetts Bay Transportation Authority (MBTA) Communities Act was not done in compliance with Administrative Procedure Act (APA), and thus guidelines were legally ineffective, despite HLC's claim it substantially complied with APA; HLC admitted that it failed to file a notice of proposed regulation with the Secretary of the Commonwealth and that it failed to prepare a small business impact statement, as required by APA, and strict compliance with APA was required.