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| The Gardner News  May 19, 2004  Decision to ban outside trash is legal |
| State attorney general approves towns actions |
| By Sean DuBois - Staff Writer |
| TEMPLETON  The state attorney general has approved the towns decision to ban out-of-town garbage  a decision that could lead to a multi-million dollar lawsuit.  Attorney General Thomas Reilly and assistant AG Kelli Gunagan on Tuesday issued the decision to restore the original wording to a bylaw voters approved at a Feb. 19 Special Town Meeting. The restored bylaw language stipulates that only garbage collected within town limits can be brought to the landfill on Route 202.   Residents amended the bylaw during a Special Town Meeting June 18, 2002, to allow trash generated within and outside the community to be brought to the landfill.   The amendment was necessary to comply with a contract later signed in June 2003 between former Board of Health members and New England Waste Services for the construction of a new landfill adjacent to the Route 202 landfill.   If built, that landfill would have accepted outside trash.   According to Reillys statement, the bylaw change was approved based on Article 89 of the Articles of Amendment of the Massachusetts Constitution  commonly known as the Home Rule Amendment.  We are extremely pleased that the bylaw change was recognized as a legal article, said newly elected Board of Health Chairman Richard Trifilo. This means that the Board of Health can now take active steps in resolving the landfill situation.  Former Board of Health Chairman Randy Lawrence said during the Feb. 19 Special Town Meeting that the contract is a legally binding document and now that the bylaw wording is changed, the town may be held responsible for breach of contract.  Former Board of Health attorney James Masteralexis sent a letter to Gunagan on April 9 that said prohibiting out-of-town waste could result in New England Waste Services suing the town in excess of $40 million, according to a statement from the AGs office.  I think that (New England Waste Services) will either try to take legal action quickly or draw things out for a long time. I dont think there will be any in-between, said Trifilo. It would be nice if (New England Waste Services) just backed off.  Three new members were elected to the Board of Health on May 3 as part of a recall election. A group called Templeton Citizens Against the Dump was influential in removing the former board members that negotiated the contract with New England Waste Services.  According to Trifilo, the contract that the former board signed with New England Waste Services was illegal because a contract agreement of this nature has to come before voters during a Town Meeting, not just a single board.  Whether the proposed bylaw amendment affects the contractual relationship between the town and (New England Waste Services) is a factual determination that this office is not equipped or authorized to make, according to the AGs statement. Whether the proposed bylaw amendment results in a breach of contract by the town is a determination that falls to the jurisdiction of the courts.  With the possibility of legal action from New England Waste Services, Board of Health members have requested to hire a new attorney. Attorney Masteralexis, of Brackett & Lucas, was hired by former board members to negotiate the landfill contract.  Selectmen approved the Board of Healths request on Tuesday to hire John Giorgio, of Kopelman and Paige, as their new attorney. Board of Health members said they will seek Finance Advisory Board approval for $3,000 from the towns emergency account to pay for the new legal representation.  New landfill construction is currently on hold because voters at the Feb. 19 Special Town Meeting abolished the former Board of Healths sanitary enterprise fund containing money to begin the project.   Representatives from New England Waste Services, a wholly owned subsidiary of Casella Waste  Services could not be reached for comment on the AG decision. sdubois@thegardnernews.com |