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**Massachusetts Department of Revenue  
Division of Local Services**

**LOCAL FINANCES  
Accounting, Special Fund and Finance Issues**



2009

**Workshop B**

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# **LOCAL FINANCES**

## **Accounting, Special Fund and Finance Issues**

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# **LOCAL FINANCES**

## **Accounting, Special Fund and Finance Issues**

### **Discussion Topics**

#### **DEPARTMENTAL SPENDING CASE STUDY 1**

Based on revised revenue estimates, Bustertown's finance committee recommended FY10 operating budgets for most departments below the amounts requested by their department heads, and in some cases, below last year's amounts. In May, annual town meeting voted budgets reflecting the recommended reductions. Depending on the department, reductions were made to personal services, as well as expense and contractual services line items. The school department's overall budget request was also reduced, but is still above the amount the town is legally obligated to spend under Education Reform.

As FY09 is coming to a close, several department heads with unspent monies in their budgets want to use extra funds to pay for certain goods and services. They ask the accountant to encumber or charge FY09 appropriations for the following:

- Office supplies.
- Orders of library and school text books.
- Electric bills.
- Association dues.
- Tax billing services.
- Special education tuition payments.
- Teacher salary increases that are still under negotiation.

#### Questions:

1. Can the accountant encumber or charge FY09 appropriations to pay the bills for these goods and services?
2. When may goods to be used or services to be received in a fiscal year be paid from appropriations of a prior or subsequent year?

After June 30, 2009, Bustertown's accountant discovered that the DPW's expense item is insufficient to pay a bill that had not previously been identified as outstanding. In addition, the accountant had encumbered at the cemetery department's request \$18,000 for supplies the department purchased in April. The bill presented for payment was only \$12,000, because the vendor applied a discount. On September 21, the school department forwarded to the accountant for payment a just discovered bill for copying services received in March.

Questions:

1. Can the accountant pay the DPW bill? Can extra funds remaining in other budgets be used to pay the bill? What if the only department with funds left over was the school department? What if the only accounts with left over funds were the sewer enterprise expense account and the unclassified retirement account? What options are there to cover deficits in budget items at the end of the year?
2. Can the cemetery department spend the extra \$6,000 available in its budget after payment of the bill? Are those monies available to cover the DPW bill or for use for any other purpose?
3. What procedures apply to the copying bill? Can the school department be required to pay it out of its FY10 budget? If so, how?

In late 2009, Bustertown is facing some unexpected expenses and the selectmen are looking for some extra funds to pay for them. They ask the assessors to review the overlay accounts because they believe the amounts reserved are more than needed due to a recent win for municipalities in a big telephone case. They want these extra amounts to be declared surplus by the assessors so they can be used for the unfunded expenses.

Questions:

1. Can the selectmen order the assessors to release amounts in the overlay account as surplus?
2. When are overlay accounts in surplus?
3. What purposes may overlay surplus funds be used for and what procedures apply to their use?

In February 2010, the school committee agrees to the new collective bargaining agreement with the teachers' union covering FY09-11, which includes raises of 2% for each of those years. The next payroll appears to include the raises for FY09 and FY10, although the accountant has not been provided the new contract or other documentation detailing the amounts owed under it. The accountant wants to refuse payment of any raises. She does not believe that there is enough money in the school budget to pay the raises and still meet obligations the department has for the rest of the year?

Questions:

1. Can the accountant refuse to approve payment of these raises?
2. What are the obligations of the school department (and other departments) in regard to spending during the year and the options that are available to ensure that overspending does not occur?

## **GIFT AND TRUST FUNDS CASE STUDY 2**

Recently, a donation was made to the Pleasantville's Fire Department for public protection purposes. The Fire Chief accepted that donation and intends to spend the money to buy new automated external defibrillators. Concerned Citizen Josie Nosey read about this in the Pleasantville Times and doesn't think that Pleasantville's Fire Department needs new defibrillators. She would like the money spent on animal control since her neighbor's dog keeps wandering onto her property. She wants to know if the proper procedures for accepting gifts and donations were followed. She remembers that before her neighbor, Mrs. Rich, moved down to Florida few years ago, she made a sizeable donation to the town of Pleasantville. There was a vote at town meeting to accept that donation and later to spend it on new benches and a gazebo for the town green.

### Questions:

1. Is Josie Nosey correct to insist that town meeting vote to accept a cash gift to the Fire Department?
2. Is she correct that the Fire Chief needs to seek town meeting approval to expend the donated funds on new defibrillators?

The owner of a local equipment franchise saw a recent news report about the lack of maintenance of the town cemetery, where his family has a plot. Due to budget cuts, the cemetery department has been unable to replace essential equipment. The owner wants to donate a deluxe riding lawnmower to the department to be used to maintain the cemetery.

### Question:

1. Who may accept a gift of personal property such as the lawnmower on behalf of the town?

The Executor of the estate of Mr. Lavish, another former, wealthy resident of the town of Pleasantville, was given authority in the will to donate the balance of the estate to any organization of his choosing. The Executor chose to donate the remaining \$188,000 to Pleasantville's schools in memory of the late Mrs. Lavish who had volunteered in the school library for many years. A check was presented with a letter stating that the funds should be contributed to an endowment account to benefit Pleasantville's school children for years to come and be used for programs, activities and equipment not otherwise funded in the school operating budget. The check (made payable to the Town of Pleasantville) was accepted at a publicly held meeting of the School Committee.

Pleasantville's Finance Director has told the School Business Administrator that the funds must be accounted for in a special fund with the interest going to the general

fund. Believing that the intent of the gift was to have the interest retained by the fund, the School Committee says a trust fund that retains interest should be established instead.

Questions:

1. Can this bequest be treated as a trust rather than a gift?
2. If so, should it be characterized as expendable or non-expendable?
3. May the school committee spend from the trust or must town meeting appropriate the funds?

At Pleasantville's annual town meeting, an article passed appropriating monies for the construction of an addition to the town library. The article provides, however, that a certain amount must be raised from donations first to cover the anticipated cost. The library trustees have advertised that donations will be accepted from individuals or businesses. If the town receives enough donations, it will go ahead with the construction. In September, the first donations began rolling in. Most are for small amounts. They are being held by the Town Treasurer who has several questions.

Questions:

1. What is the best way to manage and account for these multiple donations for the same purpose?
2. Do the donations have to be deposited in a separate bank account?
3. Does interest earned stay with the donations?
4. If the town does not construct the addition, do the donations have to be returned?

The town of Pleasantville is considering buying the Flush mansion, a grand, old historic residence that lately has fallen into a state of disrepair. Co-chairs of Pleasantville's Historical Commission, Ainsley Stately and Neil Genteel, have been hard at work raising money to be put towards refurbishing the mansion. That got them thinking about establishing within Pleasantville's financial framework an ongoing fund for preservation of the mansion and other historic assets. They have proposed that the Historical Commission and Town Treasurer execute an agreement for the purposes of establishing a formal trust fund and creating certain rights and obligations regarding the administration, management and use of monies directed to the trust fund.

Question:

1. Can a town committee and the treasurer create a trust and agree that certain revenues received by the committee will be held by the treasurer as part of that trust?

In 1995, a declaration of trust was written to have Pleasantville's treasurer hold monies donated to the trustees in a separate, interest bearing account to be called the "Parade and Fireworks Fund." The donations and other monies received by the trustees were to be used to pay for parades, fireworks displays and other similar public celebrations. Recently, the trustees decided to raise monies to replace worn out equipment in the town's parks and playgrounds as well. Until that time, they used monies in the fund to refurbish a tot lot that had to be closed because of the condition of the equipment. As a result, there are insufficient funds to pay for some of the annual parades and fireworks the trust supports and the trustees have asked the town to transfer monies to cover that deficit.

Questions:

1. Can the trustees use monies from the parade and fireworks fund for the tot lot equipment?
2. Can the town transfer funds to cover the deficit in the trust fund?
3. What is the process for changing the purposes for which gift and trust funds may be used?

**LITIGATION, RESTITUTION AND INSURANCE PAYMENTS  
CASE STUDY 3**

During the fiscal year, Sueborough receives recoveries under its insurance policies for two events. First, it received \$18,000 on a claim for property damage to a number of PC's in the library caused by an electrical fire. Second, it received \$100,000 on a claim related to a flood caused by a burst water pipe at one of the Sueborough's schools. The pipe manufacturer's insurance company paid monetary damages to the town under the terms of a settlement. The library commissioners and school committee claim they can retain the monies received for damage to property under their control.

Questions:

1. Can the library and school departments retain these proceeds?
2. If so, how may they be used?
3. If not, by what process may they be spent and for what purposes?

A check was sent to Sueborough's town counsel, Les Billem, following the settlement of a breach of contract case in Superior Court. After execution of all settlement documents and payment of all outstanding costs, the amount of \$23,000.00 was deposited in the client account of Les Billem's law firm. The terms of the settlement

did not specify where the funds were to be placed or how they were to be used. The funds have been kept in the client account at Sueborough's request since September 2008. Sueborough has several other litigation cases pending on which its town counsel is working.

Question:

1. Can Sueborough leave these settlement proceeds with the firm and have town counsel draw on them to pay current legal costs?

In April of 2008, Sueborough teachers staged a 3-day strike that was later ruled illegal. In January of 2009, the Sueborough teachers' union was ordered by a judge to pay a \$75,000 fine. That amount represented an estimate of what the strike cost the school department in legal fees, spoiled food, make-up days, pay for police officers assigned to watch over picket lines, etc. The judge's order stated that the fine was to be paid to the Sueborough School Committee. The School Committee plans to use the \$75,000 to make up for recent mid-year budget cuts affecting custodial positions, transportation and gasoline costs, and supplies.

Question:

1. Who has the authority to spend the funds and what year are they available for expenditure?

Sueborough recently received settlement proceeds as a result of a class action products liability lawsuit brought against manufacturers and distributors of an additive to gasoline that contaminated water supplies throughout the country, including Sueborough's wells. The settlement did not include any restrictions on the use of the proceeds. The Sueborough board of water commissioners believes that only the Water Department has legal authority to spend these funds and wants the proceeds directed to a special account for water purposes generally or to fund remediation in the event of further contamination.

Questions:

1. Must the settlement proceeds be directed to a special account for the benefit of the Water Department?
2. Can Sueborough reserve these settlement proceeds?

Five years ago, Sueborough's police department used federal grant money to purchase 18 bullet-proof vests. The vests turned out to be defective. The federal government initiated a class action lawsuit, which Sueborough joined, against the manufacturer of the vests. Sueborough recently received a \$10,000 distribution of

compensatory damages from the settlement of the class action. That represents about 75% of the original cost of the vests. The police department is already in the process of replacing the vests, but has been awaiting the settlement to complete the transaction.

Questions:

1. Does the \$10,000 distribution have to be returned to the original grant account?
2. Can the police department use the \$10,000 distribution for replacement vests without appropriation?

Sueborough is negotiating a legal settlement for a grievance claim of a custodian related to the teachers' 3-day strike. However, the town does not have funds budgeted within the current fiscal year's budget for this expenditure. One member of the School Committee believes that if Sueborough settles the claim this fiscal year, the payment may be added to the subsequent year's tax recap to be raised in the next fiscal year.

Question:

1. Can Sueborough fund payment of this settlement by raising it in next year's tax levy?
2. What type of claims (pre-litigation, arbitrator's decision, adjudicatory agency decision, court judgment) can be funded without appropriation and raised in the next tax levy?

### **SCHOOL DEPARTMENT RECEIPTS CASE STUDY 4**

Flatbroke's school department had its budget reduced for FY10. It anticipates receiving the following monies during the year and wants to retain them to supplement its budget:

- Medicaid reimbursements for medical services provided to low-income special needs students.
- Fees charged for drivers' education training.
- Fees charged for non-mandated bus service.
- Fees charged for pre-kindergarten and after school programs.
- Monies raised by the Class of 2010 from student run car washes, bike-a-thons and a variety of other student fundraisers.
- Monies received on a claim under the town's insurance policy for loss due to the theft of Class of 2011 student funds by a teacher serving as the class advisor.
- Monies left in the account for the Class of 2008.

- Fees charged for students to park in school parking lots.
- Lease payments received for the annual rental of a vacant wing of the elementary school.
- Fees charged to an informal basketball group that rents the gym on Monday nights.
- Monies raised by the Boosters Club to help defray the costs of various athletic and other programs, including proceeds from a raffle for the specific purpose of buying new boys and girls track equipment.

Question:

1. Can the school committee retain and spend any of these revenues?
2. If so, how may they be used?
3. If not, by what process may they be spent and for what purposes?

# Focus

## on Municipal Finance

### An Analysis of the Treatment of Municipal Revenue

by Kathleen Colleary, Esq.

Increasingly over the past few years, the Division of Local Services' (DLS) legal and accounting staffs are asked if certain payments made to cities and towns may be reserved for a particular purpose. With limited general revenues and tight budgets, municipalities are looking to raise additional revenue for particular purposes and want to know if a special fund can be used for those monies.

This article discusses the treatment of municipal revenue under Massachusetts law and looks at the following three categories of payments municipalities receive frequently:

- Payments made by developers, or parties to an agreement with the municipality, for a particular purpose.
- Cash payments from developers or vendors to secure performance of obligations, so-called performance deposits.
- Donations or other monies received from municipal fundraising activities.

#### Overview

One of the most fundamental principles of municipal finance in Massachusetts is established by M.G.L. Ch. 44 Sec. 53. It creates the basic rule that all revenues from any source are unrestricted general revenues available for expenditure for any valid municipal purpose after appropriation by the municipality's legislative body. Any analysis of the treatment of a particular receipt begins with this statutory presumption that any money received by any department or officer in the regular course of municipal business belongs to a common pool of financial resources referred to as the general fund, and spending priorities

for those resources are established through the budget and appropriation process.

There are many exceptions that permit particular receipts to be segregated into a separate, special fund. However, any exception to M.G.L. Ch. 44 Sec. 53 must be created by another statute, either a general law or special act that applies to the particular city or town. A special fund cannot be created by the selectmen, mayor, finance director, or department head, a vote of the legislative body, or bylaw or ordinance. *Chart 1* (on page 5) includes a list of the general laws that create some type of special fund.

*Chart 2* (on page 6) is a summary of the different treatments of municipal monies that are permitted by various general laws. This article looks at "special revenue" funds, which are funds where particular receipts are earmarked and restricted for expenditure for particular purposes. Special revenue funds include:

- Receipts reserved for appropriation, where the earmarked revenues have to be appropriated;
- Revolving funds, where the earmarked receipts can be spent without appropriation; and
- Gifts and grants, which can be spent without appropriation.

#### Payments by Developers and Vendors for Designated Purposes

Mitigation payments, infrastructure charges or other exactions made by a private party in connection with a regulatory activity or a municipal contract are often the subject of a bylaw or ordinance. Examples include:

- A property owner who has a permit application pending before the conservation commission and as a mitigation measure agrees to make a "donation"

to the conservation fund for the purchase of conservation land.

- A developer of a commercial property makes a payment required under the town's zoning bylaw in lieu of having sufficient parking spaces with the monies to be used for the acquisition, improvement and maintenance of municipal parking.
- A cell phone company that is leasing town-owned property for its equipment agrees to give the town a one-time or annual "gift" in addition to its lease payments.

The parties often characterize these payments as gifts, grants or donations. Under M.G.L. Ch. 44 Sec. 53A, genuine gifts or grants to a city or town department are segregated from the general fund and may be spent by the department head without appropriation for the purpose specified by the donor, but with the approval of the selectmen or mayor. These types of payments are rarely genuine gifts or grants, however. They do not come within the ordinary definition or meaning of a gift, which is a voluntary payment of money or transfer of property made without anything in consideration. Even if a party's decision to develop a property, engage in a regulated activity or contract with a municipality is one of choice, these payments are usually being made with the expectation of receiving something valuable in return. If the payment is a condition of receiving some privilege or benefit, or paid in return for some municipal action or authorization, it is not a voluntary donation or gift and the funds belong to the general fund regardless of the parties' characterization.

In a recent bylaw review, the attorney general took the same position regarding payments made by a developer for storm drainage and traffic light infra-

*continued on page four*

structure under a bylaw that were to be deposited in a "special" gift account to fund the operation, maintenance and repair of the infrastructure.<sup>1</sup> The attorney general ruled that the bylaw was inconsistent with state law regarding the treatment of receipts under M.G.L. Ch. 44 Sec. 53 because the payments were not gifts.

There is a mechanism by which a municipality can reserve these payments for the identified purposes in the future, however. Under M.G.L. Ch. 40 Sec. 5B, a municipality may establish multiple stabilization funds for different purposes. By establishing a fund under that statute and appropriating the amount of the payment into the fund, a community can achieve the objective of reserving or saving these monies for use for a particular purpose in the future.

### Performance Deposits

Performance deposits, which are also often the subject of a bylaw or ordinance, are cash payments made to secure performance of obligations, typically by developers or municipal contractors. For example, a bylaw may require a cash deposit to be held by the treasurer to secure restoration of a public road way under a street opening permit, or completion of work required under a drainage or driveway permit within two years of issuance. The intent is to hold the deposit and refund it if the work is performed, but if there is a default, for the municipality to use the funds to complete the work itself.

These arrangements make practical sense, but no statute generally governs when a third party escrow or surety is not used and cash is paid directly to the municipality to be held to secure performance. The only statutes dealing with these deposits apply to city contracts, M.G.L. Ch. 43 Sec. 29, and cash deposits of less than \$100,000 that are accepted in lieu of performance bond to secure installation of infrastructure required by a municipal planning board under the subdivision control law, M.G.L. Ch. 41 Sec. 81U.

Two recent attorney general bylaw review letters provide guidance in structuring the deposits in order to make them consistent with the general rule that receipts belong to the general fund.<sup>2</sup> Officials should work with municipal counsel so that the deposits are not received by and do not belong to the municipality unless and until there is a default, *i.e.*, they are not subject to M.G.L. Ch. 44 Sec. 53 until that time. This requires having clear standards for defining default. Counsel would also advise about any liability issues with having the treasurer act as the escrow agent, so that a third party escrow might be considered instead. If there is a default, an appropriation is required before any expenditure may be made to complete the work.

### Gifts, Fundraisers and Trusts

DLS is often asked how to handle many small contributions a community may receive when it is accepting donations for a particular project. For example, the parks department wants to refurbish a playground and is raising money to help pay for the new improvements and equipment. People are sending in small checks for the project. These payments are gifts under M.G.L. Ch. 44 Sec. 53A, but it is impractical to create a separate gift account for each payment. The accounting officer can create a consolidated gift account to accumulate the many smaller and general contributions for the same identified purpose. Some formal title or designation should be given to the account, *e.g.*, the "Yourtown Park Playground Project," and the specific spending purposes identified. Donors can then identify their contributions for that account fully aware of the purpose and terms and conditions of the gift. The formal designation can be made by the applicable board or officer, or a vote of the legislative body, for example if it appropriates money for the project, but sets a condition that a certain amount must be raised in gifts first.

Communities also ask how they can establish their own trust funds, *i.e.*, declare certain municipal revenues are held in trust. A community cannot create its own trust. A trust is created by a donor who gives a gift to the municipality in the form of a trust, which would typically mean there is some trust instrument or specific instruction authorizing a specified municipal trustee to hold the donated monies in trust. Typically, trusts are used when the gifts are given with the intention that they be continuing, *i.e.*, accumulate interest and that the municipality spend from the annual earnings for particular purposes.

There are some statutory special funds commonly called trust funds because they hold particular funds in a fiduciary capacity. An example would be perpetual care funds, which are paid by a person buying a plot in a municipal cemetery, with the interest to be used for the perpetual care of the plot. The local scholarship fund is another, with the primary source of revenue being voluntary contributions (gifts) made by taxpayers when they pay their property tax or excise bills.

A community does not create a trust, it administers one created by a donor, or established under a statute for particular receipts.

### Summary

Any money received by the community belongs to the general fund and can only be spent by appropriation under M.G.L. Ch. 4 Sec. 53. Only another statute, either general law or special act, can authorize a different treatment for any particular revenue. If there is a statute permitting a different treatment, local officials must follow the specific requirements of the statute in accounting for and spending the revenue. ■

1. Case 3157, Bellingham (December 22, 2004).

2. Case 3171, Plainville (February 22, 2005); Case 3130, Sharon (December 13, 2004).

# TREATMENT OF MUNICIPAL REVENUES

## GENERAL FUND REVENUES (Estimated Receipts)

Unrestricted revenues, including property taxes, state aid and other local revenues available to support general government operations. Revenue belongs to the general fund unless otherwise provided by statute. G.L. c. 44, § 53.

## SPECIAL REVENUE FUNDS

Particular revenues that are earmarked for and restricted to expenditure for specified purposes. Special revenue funds include receipts reserved for appropriation, revolving funds, grants from governmental entities and gifts from private individuals and organizations. Special revenue funds must be established by statute.

### Receipts Reserved for Appropriation

Receipts from a specific revenue source that by law is accounted for separately from the general fund (segregated) and must be spent by appropriation.

Examples are:

Parking Meter Receipts	G.L. c. 40, §§ 22A - 22C
Sale of Real Estate	G.L. c. 44, § 63
Waterways Improvement Fund	G.L. c. 60B, §§ 2(i) & 4 G.L. c. 40, § 5G
Sale of Cemetery Lots	G.L. c. 114, § 15
County Dog Fund	G.L. c. 140, § 172

### Revolving Funds

Receipts from a specific revenue source that are accounted for separately (segregated) from the general fund and may be spent without appropriation to support the activity, program or service that generated the revenue. Examples are:

Arts Lottery Council Fund	G.L. c. 10, § 58
School Rental Receipts	G.L. c. 40, § 3
Parks and Recreation Revolving Fund	G.L. c. 44, § 53D
Departmental Revolving Fund	G.L. c. 44, § 53E½
Planning/Zoning/Health Boards Consultants Fund	G.L. c. 44, § 53G
Anniversary Celebration Fund	G.L. c. 44, § 53I
Student Athletic and Activity Fund	G.L. c. 71, § 47
Wetlands Protection Fund	G.L. c. 131, § 40 c. 43, § 218 of the Acts of 1997 c. 194, § 349 of the Acts of 1998

## **TRUST AND AGENCY FUNDS**

Fiduciary funds segregated from the general fund to account for assets held by the city or town in a trustee capacity or as an agent for individuals, private organizations, other governmental units, etc. These include expendable trust funds, non-expendable trust funds, pension trust funds and agency funds.

Examples of Trust Funds are:

Scholarship Fund	G.L. c. 60, § 3C
Local Education Fund	G.L. c. 60, § 3C
Educational/Instructional Materials Trust Fund	G.L. c. 71, § 20A
Cemetery Perpetual Care Fund	G.L. c. 114, § 25

Examples of Agency Funds are:

Police Outside Detail Fund	G.L. c. 44, § 53C
Student Activity Agency Account	G.L. c. 71, § 47
Sporting License Receipts	G.L. c. 131, § 18
County Dog License Receipts	G.L. c. 140, § 172

## **ENTERPRISE FUNDS**

Funds segregated from the general fund to account for services financed and delivered in a manner similar to private enterprises where the intent of the municipality is that all costs, direct or indirect, of providing the goods or services be financed or recovered primarily through user charges. Where the service is not fully financed by fees, provides information about the level of general fund subsidy of the service. G.L. c. 44, § 53F½ (formerly G.L. c. 40, § 39K).

## **APPROPRIATED SPECIAL PURPOSE FUNDS**

Statutory funds to account for allocation of general revenues by the appropriating authority to particular purposes. Examples are:

Reserve Fund	G.L. c. 40, § 5A (cities) G.L. c. 40, § 6 (towns)
Stabilization Fund (unrestricted)	G.L. c. 40, § 5B
Pension Reserve Fund	G.L. c. 40, § 5D
Unemployment Compensation Fund	G.L. c. 40, § 5E
Conservation Fund	G.L. c. 40, § 8C
Overlay (annual accounts)	G.L. c. 59, § 25
Overlay Surplus (balances)	G.L. c. 59, § 25

# LIST OF SPECIAL FUNDS AND CITATIONS

## ENTERPRISE REVENUES

Water Surplus	G.L. c. 41, § 69B
Landfill/Trash Collection Charges	G.L. c. 44, § 28C(f)
Landfill Closure Reserve	G.L. c. 44, § 28C (f)
Enterprise Funds	G.L. c. 44, § 53F½
Electric Light Receipts	G.L. c. 164, § 57

## TEMPORARY FUNDS (Expire at Year's End)

Reserve Fund	G.L. c. 40, § 5A (cities)
	G.L. c. 40, § 6 (towns)
Free Cash	G.L. c. 59, § 23
Overlay Surplus	G.L. c. 59, § 25

## REVOLVING FUNDS (No appropriation needed)

Arts Lottery Council Monies	G.L. c. 10, § 58
School Lunch Fund	c. 548 of the Acts of 1948
School Rental Receipts	G.L. c. 40, § 3
Performance Bond Forfeitures (Up to \$100,000 by local option)	G.L. c. 41, § 81U
Expedited Permitting	G.L. c. 43D, § 6(b)
Police Special Detail	G.L. c. 44, § 53C
Parks and Recreation Fund	G.L. c. 44, § 53D
Departmental Revolving Fund	G.L. c. 44, § 53E½
Planning/Zoning/Health Boards Consultants Fund	G.L. c. 44, § 53G
Anniversary Celebration	G.L. c. 44, § 53I
Affordable Housing Trust	G.L. c. 44, § 55C
Culinary Arts Programs	G.L. c. 71, § 17A
School Day Care Receipts	G.L. c. 71, § 26C
Student Athletic and Activities	G.L. c. 71, § 47
Student Activity Agency	G.L. c. 71, § 47
Community Schools Programs	G.L. c. 71, § 71C
Adult Continuing Education	G.L. c. 71, § 71E
Use of School Property	G.L. c. 71, § 71E
Non-resident Students' Tuition	G.L. c. 71, § 71F
METCO Reimbursements	G.L. c. 71B, § 12
Vocational Education Programs	G.L. c. 74, § 14B
School Choice	G.L. c. 76, § 12B(O)
Law Enforcement Trust	G.L. c. 94C, § 47
Wetlands Protection Fund	G.L. c. 131, § 40
	c. 43, § 218 of the Acts of 1997
	c. 194, § 349 of the Acts of 1998
Multi-community Yard Waste Program	c. 179 of the Acts of 1993
Millennium/Centennial Celebration	c. 59 of the Acts of 1998
School Bus Advertising Receipts	c. 184, § 197 of the Acts of 2002
Extended Election Polling Hours	c. 503 of the Acts of 1983

**OTHER SPECIAL PURPOSE FUNDS (Held-over from Year to Year)**

Self-Insurance Health Fund	G.L. c. 32B, § 3A
<b>Other Post Employment Benefits (OPEB) Liability Trust Fund</b>	<b>G.L. c. 32B, § 20</b>
Stabilization Fund	G.L. c. 40, § 5B
Pension Reserve Fund	G.L. c. 40, § 5D
Unemployment Compensation Fund	G.L. c. 40, § 5E
Ambulance Receipts Reserved	G.L. c. 40, § 5F
Beach and Pool Receipts Reserved	G.L. c. 40, § 5F
Golf Course Receipts Reserved	G.L. c. 40, § 5F
Skating Rink Receipts Reserved	G.L. c. 40, § 5F
Waterways Improvement Fund	G.L. c. 40, § 5G
	G.L. c. 60B, § 2(i)
Conservation Fund	G.L. c. 40, § 8C
Recycling Commission Fund	G.L. c. 40, § 8H
Building Insurance Fund	G.L. c. 40, § 13
Workmen's Compensation Fund	G.L. c. 40, § 13A
Parking Meter Fees	G.L. c. 40, § 22A
Off-street Parking Receipts	G.L. c. 40, §§ 22B & 22C
Commission on Disabilities Fund	G.L. c. 40, § 22G
Bond Proceeds	G.L. c. 44, § 20
State Highway and Water Pollution Funds	G.L. c. 44, § 53
Insurance/Restitution Proceeds (Up to \$20,000)	G.L. c. 44, § 53
Lost School Books/Industrial Arts Supplies	G.L. c. 44, § 53
Grants and Gifts	G.L. c. 44, § 53A
Sale of Real Estate Proceeds	G.L. c. 44, § 63
Community Preservation Fund	G.L. c. 44B, § 7
Overlay	G.L. c. 59, §§ 25 & 70A
Local Education Fund	G.L. c. 60, § 3C
Scholarship Fund	G.L. c. 60, § 3C
Low Income Seniors and Disabled Tax Relief Fund	G.L. c. 60, § 3D
Wastewater Disposal Receipts	G.L. c. 83, § 1G
Bicyclist Traffic Fines Receipts Reserved	G.L. c. 85, § 11E
Non-Resident Student Motor Vehicle Registration Fines Receipts Reserved	G.L. c. 90, § 3½
Weight and Measure Fines Receipts Reserved	G.L. c. 98, § 29A
Educational/Instructional Materials Trust Fund	G.L. c. 71, § 20A
Cemetery Sale of Lots Fund	G.L. c. 114, § 15
Cemetery Perpetual Care Funds	G.L. c. 114, § 25
Spay and Neuter Deposits	G.L. c. 140, § 139A
County Dog Fund	G.L. c. 140, § 172
Building and Fire Code Enforcement Fines Receipts Reserved	G.L. c. 148A, § 5

## MODEL MULTIPLE DEPARTMENTAL REVOLVING FUNDS ARTICLE AND VOTE

**Article 5 - DEPARTMENTAL REVOLVING FUNDS AUTHORIZATION.** To see if the town will vote to authorize revolving funds for certain town departments under Massachusetts General Laws Chapter 44, § 53E½ for the fiscal year beginning July 1, 2009, or take any other action relative thereto.

**Motion** – That the town establish revolving funds for certain town departments under Massachusetts General Laws Chapter 44, § 53E½ for the fiscal year beginning July 1, 2009, with the specific receipts credited to each fund, the purposes for which each fund may be spent and the maximum amount that may be spent from each fund for the fiscal year (if optional information included (shaded columns) then insert: the disposition of the balance of each fund at the end of the current fiscal year and restrictions on expenditures that may be made from each fund), as follows:

<u>Revolving Fund</u>	<u>Authorized to Spend Fund</u>	<u>Revenue Source</u>	<u>Use of Fund</u>	<u>FY10 Spending Limit</u>	<u>Disposition of FY09 Fund Balance (Optional)</u>	<u>Spending Restrictions or Comments (Optional)</u>
Hazardous Materials	Fire Chief	Fees charged to persons spilling or releasing hazardous materials	Training and special equipment needed to respond to hazardous materials incidents	\$15,000	New fund	
Title V Inspection	Board of Health	Septic system inspection fees	Salaries of inspectors or contractual services related to septic system inspections	\$40,000	Balance available for expenditure	
Teen Center	Teen Center Director	Teen center snack bar receipts, dance admission charges, activity charges and receipts	Expenses, supplies and contractual services to operate Teen Center	\$15,000	Balance available for expenditure	Fund may not be spent for salaries of more than one part-time employee. Full-time director salary funded in annual budget
Senior Citizens Bus	Council on Aging	Bus user fees	Salaries, expenses, contractual services to operate bus service to senior citizen housing developments and debt service on bus purchased for program	\$50,000	\$5,000 of balance available for expenditure, remainder to revert to General Fund	Fund may not be spent for salaries of more than two full-time employees, or any capital item over \$500
<b>TOTAL SPENDING<sup>2</sup></b>				\$120,000		

<sup>1</sup> FY10 per department spending limit is \$100,000 (1% of FY09 levy of \$10,000,000)

<sup>2</sup> FY10 total spending limit is \$1,000,000 (10% of FY09 levy of \$10,000,000)

## **TOWN PROPERTY – LEASE OF SURPLUS SCHOOLS**

### **General Laws Chapter 40, § 3**

Section 3. A town may hold real estate for the public use of the inhabitants and may convey the same by a deed of its selectmen thereto duly authorized, or by a deed of a committee or agent thereto duly authorized; may by its selectmen let or lease for not more than ten years, on such terms as the selectmen determine, a public building or part thereof, except schoolhouses in actual use as such; may by its selectmen let or lease for not more than twenty-five years, real estate to the Massachusetts Bay Transportation Authority for use by the authority as a parking lot for commuters; may hold personal estate for the public use of the inhabitants, and alienate and dispose of the same; may hold real and personal estate in trust for the support of schools, and for the promotion of education, within the limits of the town; may receive, hold and manage any devise, bequest or gift for the establishment or equipment of memorials for properly commemorating the services of the soldiers, sailors and marines who have served the country in war, and for the establishment or maintenance of any reading room for which it may grant money under the provisions of section five; and may make such orders as it may deem necessary or expedient for the disposal or use of its corporate property. All real estate or personal property of the town, not by law or by vote of the town placed in the charge of any particular board, officer or department, shall be under the control of the selectmen, except as is otherwise provided in this section or section nine.

Notwithstanding the provisions of this section, a city or town, with the approval of the school committee, may rent or lease any school building not in actual use and, with the approval of the commissioner of education, surplus space in a school building in actual use to any one or more public or private profit-making businesses or nonprofit organizations; provided, however, that joint occupancy of a school building in actual use as such shall not interfere with educational programs being conducted in said building. The terms of any such rental or lease shall be as approved by the school committee; provided, however, that no school building not in actual use shall be rented or leased for an initial term longer than ten years, but with renewal options if approved by the school committee.

The monies received from such rental or lease shall be kept separate and apart from other city or town funds in the city or town treasury and may be expended by the school committee without further appropriation for the upkeep of the facility so rented or surplus space which is so rented; provided, however, that any balance remaining in such account at the close of a fiscal year shall be paid into the General Fund of such city or town; and, provided further, that in any city or town that accepts this proviso, any such balance shall remain in said account and may be expended for the upkeep and maintenance of any facility under the control of the school committee.

## **PREPAYMENT TO EDUCATIONAL COLLABORATIVES**

### **General Laws Chapter 40, § 4E**

Section 4E. Pursuant to the provisions hereof, two or more school committees of cities, towns and regional school districts may enter into a written agreement to conduct education programs and services which shall complement and strengthen the school programs of member school committees and increase educational opportunities for children. The school committees shall collaborate to offer such programs and services, and the association of school committees which is formed pursuant hereof to deliver such programs and services shall be known as an education collaborative.

The education collaborative shall be managed by a board of directors which shall be comprised of one person appointed by each member school committee. Such person shall be either a school committee member or his designee or the superintendent of schools or his designee. Members of said board of directors shall be entitled to a vote according to the terms of the education collaborative agreement. The department of education shall appoint an individual to serve in an advisory capacity to the education collaborative board. Said individual shall not be entitled to vote on any matter which comes before the board of directors of the education collaborative.

The written agreement which shall form the basis of the education collaborative shall set forth the purposes of the program or service, the financial terms and conditions of membership of the education collaborative, the method of termination of the education collaborative and of the withdrawal of member school committees, the procedure for admitting new members and for amending the collaborative agreement, the powers and duties of the board of directors of the education collaborative to operate and manage the education collaborative and any other matter not incompatible with law which the member committees deem advisable. The agreement shall be subject to the approval of the member school committees and the commissioner of education.

Each board of directors of an education collaborative shall establish and manage a trust fund, to be known as an Education Collaborative Trust Fund, and each such fund shall be designated by an appropriate name. All monies contributed by the member municipalities, and all grants or gifts from the federal government, state government, charitable foundations, private corporations, or any other source, shall be paid to the board of directors of the education collaborative and deposited in the aforesaid Fund.

The board of directors of the education collaborative shall appoint a treasurer who may be a treasurer of a city, town or regional school district belonging to such collaborative. Such treasurer shall be authorized, subject to the direction of the board of directors of the education collaborative, to receive and disburse all monies of the trust fund without further appropriation. The treasurer shall give bond annually for the faithful performance of his duties as collaborative treasurer in a form approved by the department of revenue and in such sum, not less than the amount established by said department, as shall be fixed by the board of directors of the education collaborative. The board of directors of the education collaborative in its discretion may pay compensation to the treasurer for his services. No member of the board of directors of the education collaborative shall be eligible to serve as treasurer of said collaborative.

The treasurer of the education collaborative board of directors shall have the authority to make appropriate investments of the monies of the Education Collaborative Trust Fund consistent with the provisions of section fifty-four of chapter forty-four.

The board of directors of an educational collaborative shall have the authority to borrow money, enter into long-term or short-term loan agreements or mortgages and to apply for state, federal or corporate grants or contracts to obtain funds necessary to carry out the purpose for which such collaborative is established; provided, that the board of directors has determined that any such borrowing, loan or mortgage is cost-effective and in the best interest of the collaborative and its member municipalities. Such borrowing, loans or mortgages shall be consistent with the written agreement and articles of incorporation, if any, of the educational collaborative and shall be consistent with standard lending practices.

The board of directors of the education collaborative shall have the authority to employ an executive officer who shall serve under the general direction of such board and who shall be responsible for the care and supervision of the education collaborative.

The board of directors of the education collaborative shall be deemed to be a public employer and have the authority to employ personnel, including teachers, to carry out the purposes and functions of the education collaborative. No person shall be eligible for employment by said board of directors as an instructor of children with severe special needs, teacher of children with special needs, teacher, guidance counselor or school psychologist unless such person has been granted a certificate by the board of education under the provisions of section thirty-eight G of chapter seventy-one or section six of chapter seventy-one A or an approval under the regulations promulgated by the board of education under chapter seventy-one B or chapter seventy-four with respect to the type of position for which he seeks employment; provided, however, that nothing herein shall be construed to prevent a board of directors of an education collaborative from prescribing additional qualifications. A board of directors of an education collaborative may, upon its request, be exempted by the board of education for any one school year from the requirements of this section to employ certified or approved personnel when compliance therewith would in the opinion of the board constitute a great hardship.

The education collaborative shall be deemed to be a public entity and shall have standing to sue and be sued to the same extent as a city, town or regional school district. An education collaborative, acting through its board of directors, may enter into contracts for the purchase of supplies, materials and services, and for the purchase or leasing of land, buildings and equipment as deemed necessary by such board of directors.

A school committee of any city, town or regional school district may authorize the prepayment of monies for any educational program or service of the education collaborative, to the treasurer of an education collaborative, and the city, town or regional school district treasurer shall be required to approve and pay such monies in accordance with the authorization of the school committee.

## **STABILIZATION FUND**

### **General Laws Chapter 40, § 5B**

Section 5B. For the purpose of creating 1 or more stabilization funds, cities, towns and districts may appropriate in any year an amount not exceeding, in the aggregate, 10 per cent of the amount raised in the preceding fiscal year by taxation of real estate and tangible personal property or such larger amount as may be approved by the director of accounts. The aggregate amount in such funds at any time shall not exceed 10 per cent of the equalized valuation of the city or town as defined in section 1 of chapter 44. Any interest shall be added to and become part of the fund.

The treasurer shall be the custodian of all such funds and may deposit the proceeds in national banks or invest the proceeds by deposit in savings banks, co-operative banks or trust companies organized under the laws of the commonwealth, or invest the same in such securities as are legal for the investment of funds of savings banks under the laws of the commonwealth or in federal savings and loans associations situated in the commonwealth.

At the time of creating any such fund the city, town or district shall specify, and at any later time may alter, the purpose of the fund, which may be for any lawful purpose, including without limitation an approved school project under chapter 70B or any other purpose for which the city, town or district may lawfully borrow money. Such specification and any such alteration of purpose, and any appropriation of funds into or out of any such fund, shall be approved by two-thirds vote, except as provided in paragraph (g) of section 21C of chapter 59 for a majority referendum vote. Subject to said section 21C, in a town or district any such vote shall be taken at an annual or special town meeting, and in a city any such vote shall be taken by city council.

## **APPROVAL OF PAYROLLS**

### **General Laws Chapter 41, § 41**

Section 41. No treasurer or other fiscal officer of any town or city shall pay any salary or compensation to any person in the service or employment of the town or city unless the payroll, bill or account for such salary or compensation shall be sworn to by the head of the department or the person immediately responsible for the appointment, employment, promotion, or transfer of the persons named therein, or, in the case of the absence or disability of the head of the department or of such person, then by a person designated by the head of the department and approved by the board of selectmen in towns, and by the mayor in cities, or by the city manager in cities operating under a Plan D or Plan E charter. A commission, committee or board of trustees in a city or town, including a city council, board of aldermen or common council in a city, may for purposes of this section designate any one of its members to make oath to a payroll, bill or account for salary or compensation of its members or employees. This provision shall not limit the responsibility of each member of any such body in the event of a noncompliance with this section.

## **APPROVAL OF WARRANTS FOR PAYMENT**

### **General Laws Chapter 41, § 56**

Section 56. The selectmen and all boards, committees, heads of departments and officers authorized to expend money shall approve and transmit to the town accountant as often as once each month all bills, drafts, orders and pay rolls chargeable to the respective appropriations of which they have the expenditure. Such approval shall be given only after an examination to determine that the charges are correct and that the goods, materials or services charged for were ordered and that such goods and materials were delivered and that the services were actually rendered to or for the town as the case may be; provided, however, that such approval may be given to any bill received from a state agency for the town's share of the costs of a federal urban planning assistance program, established under the provisions of section 701 of Public Law 83-560, as amended, before any goods, materials or services ordered or to be ordered under such a program have been delivered or actually rendered, as the case may be. The town accountant shall examine all such bills, drafts, orders and pay rolls, and, if found correct and approved as herein provided, shall draw a warrant upon the treasury for the payment of the same, and the treasurer shall pay no money from the treasury except upon such warrant approved by the selectmen. If there is a failure to elect or a vacancy occurs in the office of selectman, the remaining selectman or selectmen, together with the town clerk, may approve such warrant. The town accountant may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive, and in such case he shall file with the town treasurer a written statement of the reasons for such refusal. The treasurer shall not pay any claim or bill so disallowed by the town accountant. So far as apt this section shall apply to cities.

## **TOWN ACCOUNTANTS**

### **General Laws Chapter 41, §57**

Section 57. The town accountant shall keep a complete set of books wherein shall be entered the amount of each specific appropriation, the amounts and purposes of expenditures made therefrom, the receipts from each source of income, the amount of each assessment levied, and the abatements made; and he shall keep his accounts, so far as practicable, in conformity with the classifications and forms prescribed by the director of accounts in accordance with section forty-three of chapter forty-four and in conformity with any systems, classifications, forms and designations prescribed pursuant to regulations of the board of education for use by school committees. The town accountant shall have custody of all contracts of the town, shall keep a register of the sureties on all bonds of indemnity given to the town, shall keep a detailed record of the town debt, showing the purpose for which it was incurred, when incurred, when due, the rate of interest and the provisions made for the payment of the debt.

## **TOWN BUDGETS**

### **General Laws Chapter 41, §59**

Section 59. The selectmen and all boards, committees, heads of departments, or other officers of a town authorized by law to expend money shall furnish to the town accountant, or, if there is no town accountant, to the appropriation, advisory or finance committee, if any, otherwise to the selectmen, not less than ten days before the end of the calendar year, or not less than ninety days prior to the date of the start of the annual town meeting, whichever is later, detailed estimates of the amount necessary for the proper maintenance of the departments under their jurisdiction for the ensuing fiscal year, with explanatory statements as to any changes from the amounts appropriated for the same purposes in the then current fiscal year, and an estimate of amounts necessary for outlays or permanent improvements. They shall also prepare estimates of any income likely to be received by the town during the ensuing fiscal year in connection with the town's business or property intrusted to their care. The selectmen shall include in their estimates the salaries and expenses connected with their own office, and the salaries of all other town officers shall be included in the estimates for the office, department or branch of the public service of which they are in charge. The treasurer shall, in addition to his estimate of the amount required for the maintenance of his own office, prepare a separate statement indicating the amounts required for the payment of interest on the town debt and for the payment of such portions of the town debt as may become due during the ensuing fiscal year.

## **LIABILITIES IN EXCESS OF APPROPRIATION**

### **General Laws Chapter 44, § 31**

Section 31. No department financed by municipal revenue, or in whole or in part by taxation, of any city or town, except Boston, shall incur a liability in excess of the appropriation made for the use of such department, each item recommended by the mayor and voted by the council in cities, and each item voted by the town meeting in towns, being considered as a separate appropriation, except in cases of major disaster, including, but not limited to, flood, drought, fire, hurricane, earthquake, storm or other catastrophe, whether natural or otherwise, which poses an immediate threat to the health or safety of persons or property, and then only by a vote in a city of two-thirds of the members of the city council, and in a town by a majority vote of all the selectmen. Payments of liabilities incurred under authority of this section may be made, with the written approval of the director, from any available funds in the treasury, and the amounts of such liabilities incurred shall be reported by the auditor or accountant or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors who shall include the amounts so reported in the aggregate appropriations assessed in the determination of the next subsequent annual tax rate, unless the city or town has appropriated amounts specified to be for such liabilities; provided, that, if proceedings are brought in accordance with provisions of section fifty-three of chapter forty, no payments shall be made and no amounts shall be certified to the assessors until the termination of such

proceedings. Payments of final judgments and awards or orders of payment approved by the industrial accident board rendered after the fixing of the tax rate for the current fiscal year may, with the approval of the director of accounts if the amount of the judgment or award is over ten thousand dollars, be made from any available funds in the treasury, and the payments so made shall be reported by the auditor or accountant or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors, who shall include the amount so reported in the aggregate appropriations assessed in the determination of the next subsequent annual tax rate, unless the city or town has otherwise made provision therefor.

The provisions of this section, so far as apt, shall apply to districts, and the prudential committee, if any, otherwise the commissioners, shall act in place of the members of the city council or selectmen.

## **APPROPRIATION TRANSFERS**

### **General Laws Chapter 44, § 33B**

Section 33B. (a) On recommendation of the mayor, the city council may, by majority vote, transfer any amount appropriated for the use of any department to another appropriation for the same department. In addition, the city council may, by majority vote, on recommendation of the mayor, transfer within the last 2 months of any fiscal year, or during the first 15 days of the new fiscal year to apply to the previous fiscal year, an amount appropriated for the use of any department other than a municipal light department or a school department to the appropriation for any other department, but the amount transferred from 1 department to another may not exceed, in the aggregate, 3 per cent of the annual budget of the department from which the transfer is made. Except as provided in the preceding sentence, no transfer shall be made of any amount appropriated for the use of any city department to the appropriation for any other department except by a 2/3 vote of the city council on recommendation of the mayor and with the written approval of the amount of the transfer by the department having control of the appropriation from which the transfer is proposed to be made. No transfer involving a municipal light department or a school department shall be made under the previous sentence without the approval of the amount of the transfer by a vote of the municipal light department board or by a vote of the school committee, respectively.

(b) A town may, by majority vote at any meeting duly held, transfer any amount previously appropriated to any other use authorized by law. Alternatively, the selectmen, with the concurrence of the finance committee or other entity established under section 16 of chapter 39, may transfer within the last 2 months of any fiscal year, or during the first 15 days of the new fiscal year to apply to the previous fiscal year, any amount appropriated for the use of any department other than a municipal light department or a school department to the appropriation for any other department or within a department, but the amount transferred from 1 department to another or within a department may not exceed, in the aggregate, 3 per cent of the annual budget of the department from or within which the transfer is made or \$5,000, whichever is greater.

(c) No approval other than that expressly provided in this section shall be required for any transfer under this section.

## **TREATMENT OF MUNICIPAL REVENUES**

### **General Laws Chapter 44, § 53**

Section 53. All moneys received by any city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury. Any sums so paid into the city, town or district treasury shall not later be used by such officer or department without specific appropriation thereof; provided, however, that (1) sums allotted by the commonwealth or a county to cities or towns for highway purposes and sums allotted by the commonwealth to cities, towns or districts for water pollution control purposes shall be available therefor without specific appropriation, but shall be used only for the purposes for which the allotment is made or to meet temporary loans issued in anticipation of such allotment as provided in section six or six A, (2) sums not in excess of twenty thousand dollars recovered under the terms of fire or physical damage insurance policy and sums not in excess of twenty thousand dollars received in restitution for damage done to such city, town or district property may be used by the officer or department having control of the city, town or district property for the restoration or replacement of such property without specific appropriation and (3) sums recovered from pupils in the public schools for loss of school books or paid by pupils for materials used in the industrial arts projects may be used by the school committee for the replacement of such books or materials without specific appropriation.

## **TREATMENT OF GIFTS AND GRANTS**

### **General Laws Chapter 44, § 53A**

Section 53A. An officer or department of any city or town, or of any regional school or other district, may accept grants or gifts of funds from the federal government and from a charitable foundation, a private corporation, or an individual, or from the commonwealth, a county or municipality or an agency thereof, and in the case of any grant or gift given for educational purposes may expend said funds for the purposes of such grant or gift with the approval of the school committee, and in the case of any other grant or gift may expend such funds for the purposes of such grant or gift in cities having a Plan D or Plan E form of government with the approval of the city manager and city council, in all other cities with the approval of the mayor and city council, in towns with the approval of the board of selectmen, and in districts with the approval of the prudential committee, if any, otherwise the commissioners. Notwithstanding the provisions of section fifty-three, any amounts so received by an officer or department of a city, town or district shall be deposited with the treasurer of such city, town or district and held as a separate account and may be expended as aforesaid by such officer or department receiving the grant or gift without further appropriation. If the express written terms or conditions of the grant agreement so stipulate, interest on the grant funds may remain with and become a part of the grant account and may be expended as part of the grant by such officer or department

receiving the grant or gift without further appropriation. Any grant, subvention or subsidy for educational purposes received by an officer or department of a city, town or school district from the federal government may be expended by the school committee of such city, town or district without including the purpose of such expenditure in, or applying such amount to, the annual or any supplemental budget or appropriation request of such committee; provided, however, that this sentence shall not apply to amounts so received to which section twenty-six C of chapter seventy-one of the General Laws, and chapter six hundred and twenty-one of the acts of nineteen hundred and fifty-three, as amended, and chapter six hundred and sixty-four of the acts of nineteen hundred and fifty-eight, as amended, apply; and, provided further, that notwithstanding the foregoing provision, this sentence shall apply to amounts so received as grants under the Elementary and Secondary Education Act of 1965, (Public Law 89-10). After receipt of a written commitment from the federal government approving a grant for educational purposes and in anticipation of receipt of such funds from the federal government, the treasurer, upon the request of the school committee, shall pay from the General Fund of such municipality compensation for services rendered and goods supplied to such federal grant programs, such payments to be made no later than ten days after the rendition of such services or the supplying of such goods; provided, however, that the provisions of such federal grant would allow the treasurer to reimburse the General Fund for the amounts so advanced.

## **GIFTS OF PERSONAL PROPERTY**

### **General Laws Chapter 44, § 53A<sup>1</sup>/<sub>2</sub>**

Section 53A<sup>1</sup>/<sub>2</sub>. A city council, with the mayor's approval if the charter so provides, or a board of selectmen or town council may, in its sole discretion and authority, accept gifts of tangible personal property on behalf of the city or town from the federal government, a charitable foundation, private corporation, individual, or from the commonwealth or any political subdivision thereof, and may, in its sole discretion and authority, use said gifts, without specific appropriation thereof, for the purpose of such a gift or, if no restrictions are attached to the gift, for such other purposes as it deems advisable.

## **DEPARTMENTAL REVOLVING FUND**

### **General Laws Chapter 44, § 53E<sup>1</sup>/<sub>2</sub>**

Section 53E<sup>1</sup>/<sub>2</sub>. Notwithstanding the provisions of section fifty-three, a city or town may annually authorize the use of one or more revolving funds by one or more municipal agency, board, department or office which shall be accounted for separately from all other monies in such city or town and to which shall be credited only the departmental receipts received in connection with the programs supported by such revolving fund. Expenditures may be made from such revolving fund without further appropriation, subject to the provisions of this section; provided, however, that expenditures shall not be made or liabilities incurred from any such revolving fund in excess of the balance of the fund nor in excess of the total authorized expenditures from such fund, nor shall any expenditures be made unless approved in accordance with sections forty-one, forty-two, fifty-two and fifty-six of chapter forty-one.

Interest earned on any revolving fund balance shall be treated as general fund revenue of the city or town. No revolving fund may be established pursuant to this section for receipts of a municipal water or sewer department or of a municipal hospital. No such revolving fund may be established if the aggregate limit of all revolving funds authorized under this section exceeds ten percent of the amount raised by taxation by the city or town in the most recent fiscal year for which a tax rate has been certified under section twenty-three of chapter fifty-nine. No revolving fund expenditures shall be made for the purpose of paying any wages or salaries for full time employees unless such revolving fund is also charged for the costs of fringe benefits associated with the wages or salaries so paid; provided, however, that such prohibition shall not apply to wages or salaries paid to full or part-time employees who are employed as drivers providing transportation for public school students; provided further, that only that portion of a revolving fund which is attributable to transportation fees may be used to pay such wages or salaries and provided, further, that any such wages or salaries so paid shall be reported in the budget submitted for the next fiscal year.

A revolving fund established under the provisions of this section shall be by vote of the annual town meeting in a town, upon recommendation of the board of selectmen, and by vote of the city council in a city, upon recommendation of the mayor or city manager, in Plan E cities, and in any other city or town by vote of the legislative body upon the recommendation of the chief administrative or executive officer. Such authorization shall be made annually prior to each respective fiscal year; provided, however, that each authorization for a revolving fund shall specify: (1) the programs and purposes for which the revolving fund may be expended; (2) the departmental receipts which shall be credited to the revolving fund; (3) the board, department or officer authorized to expend from such fund; (4) a limit on the total amount which may be expended from such fund in the ensuing fiscal year; and, provided, further, that no board, department or officer shall be authorized to expend in any one fiscal year from all revolving funds under its direct control more than one percent of the amount raised by taxation by the city or town in the most recent fiscal year for which a tax rate has been certified under section twenty-three of chapter fifty-nine.

Notwithstanding the provisions of this section, whenever, during the course of any fiscal year, any new revenue source becomes available for the establishment of a revolving fund under this section, such a fund may be established in accordance with this section upon certification by the city auditor, town accountant, or other officer having similar duties, that the revenue source was not used in computing the most recent tax levy.

In any fiscal year the limit on the amount that may be spent from a revolving fund may be increased with the approval of the city council and mayor in a city, or with the approval of the selectmen and finance committee, if any, in a town; provided, however, that the one percent limit established by clause (4) of the third paragraph is not exceeded.

The board, department or officer having charge of such revolving fund shall report to the annual town meeting or to the city council and the board of selectmen, the mayor of a city or city manager in a Plan E city or in any other city or town to the legislative body and the chief administrative or executive officer, the total amount of receipts and expenditures for

each revolving fund under its control for the prior fiscal year and for the current fiscal year through December thirty-first, or such later date as the town meeting or city council may, by vote determine, and the amount of any increases in spending authority granted during the prior and current fiscal years, together with such other information as the town meeting or city council may by vote require.

At the close of a fiscal year in which a revolving fund is not reauthorized for the following year, or in which a city or town changes the purposes for which money in a revolving fund may be spent in the following year, the balance in the fund at the end of the fiscal year shall revert to surplus revenue unless the annual town meeting or the city council and mayor or city manager in a Plan E city and in any other city or town the legislative body vote to transfer such balance to another revolving fund established under this section.

The director of accounts may issue guidelines further regulating revolving funds established under this section.

## **ENTERPRISE FUND**

### **General Laws Chapter 44, § 53F<sup>1</sup>/<sub>2</sub>**

Section 53F<sup>1</sup>/<sub>2</sub>. Notwithstanding the provisions of section fifty-three or any other provision of law to the contrary, a city or town which accepts the provisions of this section may establish a separate account classified as an "Enterprise Fund", for a utility, health care, recreational or transportation facility, and its operation, as the city or town may designate, hereinafter referred to as the enterprise. Such account shall be maintained by the treasurer, and all receipts, revenues and funds from any source derived from all activities of the enterprise shall be deposited in such separate account. The treasurer may invest the funds in such separate account in the manner authorized by sections fifty-five and fifty-five A of chapter forty-four. Any interest earned thereon shall be credited to and become part of such separate account. The books and records of the enterprise shall be maintained in accordance with generally accepted accounting principles and in accordance with the requirements of section thirty-eight.

No later than one hundred and twenty days prior to the beginning of each fiscal year, an estimate of the income for the ensuing fiscal year and a proposed line item budget of the enterprise shall be submitted to the mayor, board of selectmen or other executive authority of the city or town by the appropriate local entity responsible for operations of the enterprise. Said board, mayor or other executive authority shall submit its recommendation to the town meeting, town council or city council, as the case may be, which shall act upon the budget in the same manner as all other budgets.

The city or town shall include in its tax levy for the fiscal year the amount appropriated for the total expenses of the enterprise and an estimate of the income to be derived by the operations of the enterprise. If the estimated income is less than the total appropriation, the difference shall be added to the tax levy and raised by taxation. If the estimated income is more than the total appropriation, the excess shall be appropriated to a separate

reserve fund and used for capital expenditures of the enterprise, subject to appropriation, or to reduce user charges if authorized by the appropriate entity responsible for operations of the enterprise. If during a fiscal year the enterprise incurs a loss, such loss shall be included in the succeeding fiscal year's budget.

If during a fiscal year the enterprise produces a surplus, such surplus shall be kept in such separate reserve fund and used for the purposes provided therefor in this section.

For the purposes of this section, acceptance in a city shall be by vote of the city council and approval of the mayor, in a town, by vote of a special or annual town meeting and in any other municipality by vote of the legislative body.

A city or town which has accepted the provisions of this section with respect to a designated enterprise may, in like manner, revoke its acceptance.

## **MEDICAID REIMBURSEMENTS**

### **General Laws Chapter 44, § 72**

Section 72. Notwithstanding the provisions of any general or special law to the contrary, any local government entity may receive federal funds for reimbursable medical services where all conditions set forth in this section are met. Federal payments under Title XIX of the Social Security Act, claimed pursuant to this section, shall be distributed as follows: (1) with regard to federal payments that are attributable to reimbursable medical services provided to students who are in residential special education programs pursuant to the provisions of chapter 71B, (a) 50 per cent of such payments shall be returned to the local government entity, and (b) 50 per cent of such payments shall be deposited into the general fund; (2) with regard to federal payments that are attributable to any other reimbursable medical service, 100 per cent of such payments shall be returned to the local government entity, except that, for the purpose of paying the contingency fee due to a commonwealth contractor for obtaining federal payments attributable to such non-education-related services, the comptroller shall retain from such a local government entity payments in an amount equal to such contingency fee. For purposes of this section, "commonwealth contractor" shall mean any party with whom the commonwealth has entered into a contingency agreement for the purpose of assisting the local government entity in obtaining federal reimbursement. Federal payments under Title XXI of the Social Security Act, claimed pursuant to this section, shall be distributed as follows: (1) any federal payment amount in excess of 50 per cent of the expenditure amount claimed by the division of medical assistance on the federal claim form shall be deposited into the Children's and Seniors' Health Care Assistance Fund established by section 2FF of chapter 29; and (2) the remaining federal payment amount shall be distributed in the manner described in the preceding sentence. Any funds received by a local government entity pursuant to the provisions of this section shall be considered unrestricted revenue of the local government entity and may be spent in accordance with any general or special law governing the expenditure of the entity's revenues. Before incurring any cost or providing any service for which it intends to claim federal payments under this section, the local government entity shall obtain the approval of the division, but the division, in

its sole discretion, may waive this requirement where it determines that such a waiver would be in the best interests of the commonwealth. To receive any amounts under this section, the local government entity shall enter into a written agreement with the division directly or indirectly through an agency or other political subdivision, which agreement shall contain all provisions that the division deems suitable or necessary to support any claim for federal payments under this section. In addition, any local government entity that has entered into a written agreement with the division shall provide to the division, on such forms and at such times as the division may require, any information that the division deems suitable or necessary to support any claim for federal payments under this section. The division shall have the sole discretion to approve or disapprove any local government entity's proposal to claim federal payments. No action or failure to act by the division under this section shall be subject to any administrative or judicial review. The parent or guardian of any child who receives any service for which a local government entity is responsible under this section and which otherwise would be a reimbursable medical service shall, upon request, disclose to such local government entity the child's member identification number established by the division. For the purposes of this section, "federal payments" shall mean amounts received by the commonwealth as reimbursement for the federal share of payments for services described herein. For the purposes of this section, "local government entity" shall mean any city or town, public health commission, charter school or regional school district that is responsible, or assumes responsibility, either directly or indirectly through an agency or other political subdivision, for payment of the state share for services described herein. Such state share shall consist exclusively of public funds. Any local or regional school district or committee and the department of education may also contribute to the state share for any such services that are provided under the auspices of said department. For the purposes of this section, "reimbursable medical services" shall mean services, including administrative activities related to such services, that are medically necessary and for which federal payment otherwise is available under the programs of medical care and assistance established under chapter 118E and policies, procedures and criteria established by the division. For the purposes of this section, "state share" shall mean amounts which the commonwealth is obligated to assume in order to claim federal payment for reimbursable medical services.

## **DEFICITS AND AVAILABLE FUNDS**

### **General Laws Chapter 59, § 23**

Section 23. The assessors shall annually assess taxes to an amount not less than the aggregate of all amounts appropriated, granted or lawfully expended by their respective towns since the last preceding annual assessment and not provided for therein, of all amounts required by law to be raised by taxation by said towns during said year, of all debt and interest charges matured and maturing during the next fiscal year and not otherwise provided for, of all amounts necessary to satisfy final judgments against said towns, and of all abatements granted on account of the tax assessment of any year in excess of the overlay of that year and not otherwise provided for or any such deficits resulting from section fifty-three E of chapter forty-four; but such assessment shall not include liabilities for the payment of which towns have lawfully voted to contract debts.

Any estimate of interest charges attributable to variable interest rates on obligations issued pursuant to section twenty-two A of chapter forty-four shall be subject to the approval of the commissioner. The assessors shall deduct from the amount required to be assessed (a) the amount of all estimated receipts of their respective towns lawfully applicable to the payment of the expenditures of the next fiscal year, excluding sums to be received from the commonwealth or county for highway purposes, other than funds required to be distributed under section eighteen B of chapter fifty-eight, and excluding estimated receipts from loans and taxes, but including estimated receipts from the excise levied under chapter sixty A and receipts estimated by the commissioner under section twenty-five A of chapter fifty-eight, (b) the amount of all appropriations voted from available funds for the purpose of deduction, and (c) the amount of all other appropriations voted from available funds. Deductions made by the assessors under any provision of this section shall not be subject to the approval of the commissioner; provided, however, that deductions made under clause (a) on account of estimated receipts, other than those estimated by the commissioner, shall not exceed the aggregate amount of actual receipts received during the preceding fiscal year from the same sources, except with the written approval of the commissioner; and provided, further, that deductions made under clauses (b) and (c) shall not exceed the sums certified to the assessors and the commissioner by the director of accounts, after such examination of the accounts of the town as he may deem proper, as the amounts of available funds on hand on the preceding July the first with such additional funds as are hereinafter authorized not otherwise appropriated. Said director shall promulgate and from time to time revise rules and regulations for determining the available funds of a city or town in accordance with established accounting practices of said bureau of accounts. This section shall not be construed to require any approval for the use, application, transfer, appropriation or expenditure of any funds or accounts provision for which use, application, transfer, appropriation or expenditure is made under any other general or special law, beyond such approval or approvals as are required by such other general or special law.

In determining the amount of available funds to be deducted under the provisions of clauses (b) and (c), such available funds shall be the amount certified by the director of accounts as available on July the first next preceding the date of the appropriation, reduced by the amount of all intervening appropriations from available funds, and increased by the total of the proceeds from the sale of tax title possessions and the receipts from tax title redemptions, in addition to the real and personal property taxes of prior fiscal years, and such other amounts as the director may authorize, collected between said July first and a date which shall in no event be later than March thirty-first; provided, however, that no increases to the amount of certified available funds shall be allowed unless such increases have received the written approval of the director prior to the appropriation of such amounts. Such amounts of available funds so certified by the director of accounts as available on the July first immediately preceding shall be reported by the town accountant to the board of selectmen, or by the city auditor to the mayor or city manager and to the city council or board of aldermen, and shall be subject to appropriation.

To the extent that appropriations for programs provided for under chapter seventy-one B have been made without taking into account any reimbursement to which the city or town is entitled during the fiscal year under section thirteen of said chapter seventy-one B, the amount of such reimbursement, but not in excess of such appropriations, shall be

included with other estimated receipts by the board of assessors of every city or town when compiling the local tax rate under this section. Such board of assessors shall show as an offset when compiling such rate the amount which represents the excess of such reimbursement over such appropriations.

The auditor or similar accounting officer in each city or town shall certify as soon as may be to the board of assessors the total of the proceeds from the sale of tax title possessions and receipts from tax title redemptions, in addition to the total real and personal taxes of prior years collected from July the first of the current fiscal year up to and including March the thirty-first of the same year.

If, prior to June first the assessors of any city except Boston shall not have received from the city clerk a certificate under section fifteen A of chapter forty-one of the appropriations voted for the annual budget for the next fiscal year and if it appears to them, after inquiry of the city clerk, that such appropriations have not been voted, they shall forthwith assess a tax for said year in accordance with the provisions of this section, except that, in determining the amount of the tax to be assessed, there shall be considered as having been appropriated for the annual budget for said year an amount equal to the aggregate appropriations voted for the annual budget for the then current fiscal year. Notwithstanding the provisions of any general or special law, the provisions of this section, so far as apt, shall apply to fire, water and improvement districts.

No city, town or district tax rate for any fiscal year shall be fixed by the assessors until such rate has been approved by the commissioner, and a rate shall not be approved until the commissioner determines that the deductions under this section and the overlay addition under section twenty-five are in full compliance of law and are reasonable in amount. No city, town or district tax rate for any fiscal year shall be changed after it has been approved by the commissioner and returned to the assessors.

## **SCHOOL DAY CARE REVOLVING FUND**

### **General Laws Chapter 71, §§ 26A-26C**

Section 26A. If the school committee of a town determines that sufficient need exists therein for extended school services for children, between three and fourteen years of age, of parents who are employed, and whose employment is determined by said committee to be necessary for the welfare of their families, said school committee, subject to section twenty-six B, and with the approval of the city council or selectmen may establish and maintain such services.

Section 26B. If said school committee, upon determination by it of sufficient need, votes that said services should be established by it in such town upon approval of the city council or selectmen, it shall submit in writing a plan of said services to the commissioner of education for his written approval; provided, that said extended school services proposed in said plan shall consist of such care as shall be determined by standards established by said commissioner in consultation with the state department of public health and shall be operated by said school committee under the general supervision of said commissioner; and provided further, that said school committee shall

establish as one of the rules of admission of any such child to the benefits of said extended school services that the parents of such child shall pay toward the cost of said services such sum as said school committee shall determine. For the purposes of clause (2) of section five of chapter forty, the establishment and maintenance of said extended school services shall be deemed to be included within the term "support of public schools".

Section 26C. The commonwealth and the school committee of any town may accept funds from the federal government for the purposes of sections twenty-six A to twenty-six F, inclusive. The school committee of any town may receive contributions in the form of money, material, quarters or services for the purposes of said sections from organizations, employers and other individuals. Such contributions received in the form of money, together with fees from parents and any allotments received from the federal government for said purposes, shall be deposited with the treasurer of such town and held as a separate account and expended by said school committee without appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four.

## **SCHOOL APPROPRIATIONS**

### **General Laws Chapter 71, § 34**

Section 34. Every city and town shall annually provide an amount of money sufficient for the support of the public schools as required by this chapter, provided however, that no city or town shall be required to provide more money for the support of the public schools than is appropriated by vote of the legislative body of the city or town. In acting on appropriations for educational costs, the city or town appropriating body shall vote on the total amount of the appropriations requested and shall not allocate appropriations among accounts or place any restriction on such appropriations. The superintendent of schools in any city or town may address the local appropriating authority prior to any action on the school budget as recommended by the school committee notwithstanding his place of residence. The city or town appropriating body may make nonbinding monetary recommendations to increase or decrease certain items allocating such appropriations.

The vote of the legislative body of a city or town shall establish the total appropriation for the support of the public schools, but may not limit the authority of the school committee to determine expenditures within the total appropriation.

## **STUDENT ATHLETIC AND ACTIVITIES REVOLVING FUND**

### **STUDENT ACTIVITY AGENCY FUND**

### **General Laws Chapter 71, § 47**

Section 47. The committee may supervise and control all athletic and other organizations composed of public school pupils and bearing the school name or organized in connection therewith. It may directly or through an authorized representative determine under what conditions the same may compete with similar organizations in other schools.

Expenditures by the committee for the organization and conduct of physical education, athletics, sports, games and play, for providing proper apparatus, equipment, supplies, athletic wearing apparel, including appropriate souvenir garments and trophies, and facilities for the same in the buildings, yards and playgrounds under the control of the committee, or upon any other land which it may have the right or privilege to use for this purpose, and for the employment of experienced athletic directors to supervise said physical education, athletics, sports, games and play, shall be deemed to be for a school purpose. Expenditures by the committee for making special awards to pupils who have performed meritoriously in the fields of art, debating, distributive education, music, science, social studies or languages shall also be deemed to be for a school purpose. Cities and towns may appropriate for the employment of coaches to supervise in public schools physical education, athletics, sports, games and play, and for the transportation and expenses of public school athletic teams, coaches, cheerleaders, bands and any other groups composed of public school pupils which bear the school name and are under the control of the school committee, within and without the commonwealth, to places where athletic contests or physical education, sports, games, play, musical festivals, competition or other events are held, and for the purchase of band and cheerleaders' uniforms and musical instruments for the members of bands composed of public school pupils and bearing the school name and under the control of the school committee. All receipts by the committee in connection with the conduct of activities provided for under this section or any other activity not expressly provided for in this chapter but sponsored by the school committee in which participation is contingent upon the payment of a fee by the participant, shall be deposited with the treasurer of such town or, in cases where the town is a member of a regional school district, with the treasurer of such district and held as a separate account and expended by said school committee without further appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four. No moneys may be expended from an appropriation or from the separate fund authorized by this section except upon the approval of the school committee, or of the selectmen in towns and of mayors in cities, for travel to other states.

Notwithstanding the provisions of the preceding paragraph or section fifty-three of chapter forty-four, the school committee of a city, town or district may authorize a school principal to receive money in connection with the conduct of certain student activities and to deposit such money, with the municipal or regional school district treasurer, into an interest bearing bank account, hereinafter referred to as the Student Activity Agency Account, duly established by vote of the school committee to be used for the express purpose of conducting student activities. Interest earned by such Student Activity Agency Account shall be retained by the fund and the school committee shall determine for what purpose such earnings may be used. In addition to such Student Activity Agency Account, the school committee may authorize the municipal or regional school district treasurer to establish a checking account, hereinafter referred to as the Student Activity Checking Account, to be operated and controlled by a school principal and from which funds may be expended exclusively for student activity purposes for the student activities authorized by the school committee. Such account shall be used for expenditures only and funds received for student activities may not be deposited directly into such account.

The school committee shall vote to set the maximum balance that may be on deposit in such Student Activity Checking Account. The principal designated to operate and control such Student Activity Checking Account shall give bond to the municipality or district in

such amount as the treasurer shall determine to secure the principal's faithful performance of his duties in connection with such account. To the extent that the funds are available in such Student Activity Agency Account, funds up to the maximum balance set by the school committee shall be transferred from the Student Activity Agency Account through the warrant process to initially fund such Student Activity Checking Account.

Periodically, to the extent that funds are available in such Student Activity Agency Account, the municipal or regional school district treasurer shall reimburse such Student Activity Checking Account, through the warrant process, to restore the limit set by the school committee. The principal shall adhere to such administrative procedures as the municipal or regional school district treasurer or accountant may prescribe. There shall be an annual audit of the student activity funds which shall be conducted in accordance with procedures as agreed upon between the school committee and the auditor based upon guidelines issued by the department of education.

## **ORDERS FOR SCHOOL MATERIALS**

### **General Laws Chapter 71, § 49A**

Section 49A. At any time after the annual appropriations for the ensuing fiscal year are made by a city or town or by all the member cities and towns of a regional school district, a school committee may order materials, supplies and equipment and may contract for services for the public schools which are chargeable against such appropriations, provided that no payment therefor shall be made prior to the commencement of said ensuing fiscal year.

## **USE OF SCHOOL PROPERTY**

### **General Laws Chapter 71, § 71**

Section 71. For the purpose of promoting the usefulness of public school property the school committee of any town may conduct such educational and recreational activities in or upon school property under its control, and, subject to such regulations as it may establish, and, consistently and without interference with the use of the premises for school purposes, shall allow the use thereof by individuals and associations for such educational, recreational, social, civic, philanthropic and like purposes as it deems for the interest of the community. The affiliation of any such association with a religious organization shall not disqualify such association from being allowed such a use for such a purpose. The use of such property as a place of assemblage for citizens to hear candidates for public office shall be considered a civic purpose within the meaning of this section. A school committee shall award concessions for food at any field under its control only to the highest responsible bidder. This section shall not apply to Boston.

## **PREPAYMENT OF SPECIAL NEEDS TUITIONS**

### **General Laws Chapter 71, § 71D**

Section 71D. A school committee of any city, town, or regional school district may authorize the prepayment of tuition for a period not exceeding three months to any approved private school or approved program source which a student is attending under the provisions of chapter seventy-one B, and the city, town or regional school district treasurer shall be required to approve and pay such monies in accordance with the authorization of the school committee.

## **USE OF SCHOOL PROPERTY FUND**

### **General Laws Chapter 71, § 71E**

Section 71E. In any city or town which accepts this section, all moneys received by the school committee in connection with the conduct of adult education and continuing education programs, including, but not limited to adult physical fitness programs conducted under section seventy-one B, summer school programs and programs designated by prior vote of said committee as community school programs, and in connection with the use of school property under section seventy-one, shall be deposited with the treasurer of the town or city and held as separate accounts. The receipts held in such a separate account may be expended by said school committee without further appropriation for the purposes of the program or programs from which the receipts held in such account were derived or, in the case of the use of school property account, for expenses incurred in making school property available for such use, notwithstanding the provisions of section fifty-three of chapter forty-four of the General Laws. A city or town may appropriate funds for the conduct of any such program or for expenses incurred in making school property available for such use, which funds shall be expended by the school committee in addition to funds provided from other sources. Three years from the date a city or town accepts the provisions of this paragraph, and every third year thereafter, said city or town may act to rescind its original acceptance.



August 12, 1998

Donald F. Kaminsky  
Finance Director  
Town Hall  
325 Main Street  
Oxford, MA 01540-1727

Re: The *Wilmington* Decision & School Encumbrances  
Our File No. 98-520

Dear Mr. Kaminsky:

This is in reply to your letter concerning the relationship between the *Wilmington* case (*School Committee of Wilmington v. Town Accountant of Wilmington*, (1985) 19 Mass. App. Ct. 964) and the ordinary rules governing the encumbrance of departmental appropriations at the end of a fiscal year. You asked particularly about the rules governing school department contracts for services to be performed in the following fiscal year.

We do not believe that the cost of a school department contract for services, which by the contract's very terms are to be performed entirely in a succeeding fiscal year, can be charged against the current fiscal year's appropriation. However, if some part of the services are to be performed in the current year, then we think the entire cost of the contract, including the part related to the portion of the contract to be performed in the following year, may be encumbered against the current year's appropriation.

The landscape of municipal school finance has been substantially changed since *Wilmington* by Education Reform, Ch.71 of the Acts of 1993. One provision of Education Reform has a direct bearing on the questions at issue in *Wilmington*. G.L. Ch.70 §11 provides that to the extent a school district underspends its net school spending obligation, the balance of the appropriation (up to 5% of the required net school spending) is automatically carried forward to the following year. No purchase orders are necessary for such carry-forward amounts. But for unspent school budget balances in municipalities that have met their net school spending obligation, this automatic carry-forward rule is inapplicable. The normal rules governing encumbrances based on purchase orders apply.

Other provisions of Education Reform have an indirect bearing on the issues in *Wilmington*. The entire elaborate apparatus of financial formulas in G.L. Ch.70, which sets out the calculation of schools' spending requirements and municipalities' school funding obligations, rests on the premise that each fiscal year's school budget is for spending of that school year, with the one exception referred to above that derives from §11. This presupposition in Ch.70 highlights the significance of the language of G.L. Ch.71 §34, which says that municipalities "...shall *annually* provide an amount of money sufficient for the support of the public schools... (emphasis added)." Ch.71 §40 and Ch.44 §§56 & 56A provide that teachers' salaries paid over the summer must be charged to the budget of the year in which they were earned. Special acts were required to create an exception to that rule for fiscal years 1991 and 1992 (Chs.223 & 336 of the Acts of 1990). Another statutory exemption, Ch.71 §49A, was needed to allow school departments to make contracts payable from the following year's budget for the delivery of goods and supplies in the following fiscal year. Taken together, these general provisions and statutory exceptions make it clear that each fiscal year's school budget is a distinct spending authorization, within which the school's line-item fiscal autonomy under §34 is operative.

The idea that annual departmental appropriations are for operating expenditures of the fiscal year is reflected in numerous other statutes relating to municipal finance. For example, Ch.44 §§56 and 56A, in addition to dealing with teachers' summer pay, provide for the closing of accounts each fiscal year as of June 30th. The municipal budgeting provisions of Ch.41 §§59-60 and Ch.44 §§31, 31A, 32-33B likewise assume that annual appropriations are for the operations of the fiscal year to which they relate. Courts, in construing the budgeting statutes, have worked from the same assumption. In *McHenry v. City of Lawrence*, (1936) 295 Mass. 119, the Supreme Judicial Court had to decide whether hiring extra employees during a fiscal year incurred a liability in excess of the departmental appropriation under G.L. Ch.44 §31. In analyzing the question, the court treated the sum of the entire annual salaries of regular employees already on the payroll as though it were an encumbrance against the departmental salary appropriation. It concluded that hiring the additional employees violated §31, because the appropriation was not enough to pay the additional employees as well as the full annual salaries of existing employees.

The limitation of the annual school appropriation to operating purposes of the fiscal year for which the appropriation is made does not implicate schools' fiscal autonomy under G.L. Ch.71 §34. That section constrains a municipal appropriating body's power to prescribe the details of school spending through the annual budget process: a city or town cannot through school budget line items provide for a high school French teacher instead of a middle school algebra teacher. The limitation on spending from one fiscal year's appropriation for purposes of another fiscal year derives not from the details of any municipality's budget, but from the scheme of municipal finance established by the General Laws.

The Appeals Court's decision in *Wilmington* is a rescript opinion, which contains an abbreviated and largely conclusory discussion of the legal principles involved. Although *Wilmington* is sometimes read very broadly, the facts of the case presented the court with quite a narrow question to decide: could the town accountant prohibit additional school purchase orders for goods and supplies after June 10th of the fiscal year, thereby limiting the school department's budgetary discretion during the fiscal year? The appeals court upheld a superior court ruling that the accountant's policy improperly limited the school department's fiscal autonomy. Although the school committee conceded that the goods to be ordered after June 10th would be *used* in the following year, the court declined to rule on whether that concession was proper. Because the facts of the case did not raise the issues, the court did not consider the validity of contracts for services to be performed entirely in the following fiscal year, nor contracts for supplies that called for *delivery* in the following fiscal year. That may be one reason the court did not discuss the relevance of G.L. Ch.71 §49A. Such a discussion was to be expected if the court had intended its decision as a broad holding that annual school appropriations are not in any way limited to the operating purposes of their respective fiscal years.

The accountant in *Wilmington* had sought to enforce his rule forbidding purchase orders after June 10th against all town departments. Such a rule not only impinges on schools' fiscal autonomy, but by cutting off departments' spending from the current appropriation before the end of the fiscal year, it also raises difficult legal and administrative issues for other departmental appropriations. Quite apart from the lack of any statutory basis for the arbitrary choice of a June 10th cut-off date, many contracts for supplies and services do not fall neatly within a single fiscal year. If a department leased a vehicle for a full year, beginning June 1st, it would be committing (and therefore encumbering) its current year's appropriation for the full amount of the lease contract. Unlike schools (see Ch.71 §49A), other municipal departments do not have the right to make commitments against the following year's approved budget before July 1st. But unless a contract's terms make it clear that goods or supplies are to be delivered or services are to be performed entirely in the following fiscal year, it will normally not be feasible to determine, at the time a purchase order is placed with the vendor, that the contract should not be charged to the current appropriation. A rule requiring that it be known at the time goods and services were ordered that they would be delivered and *used* in the current fiscal year could prove unreasonably burdensome to most municipal departments, not merely to schools. It would be even more burdensome for town accountants and city auditors to have to approve or disapprove purchase orders against departments' current year's appropriations based upon *estimates* of when the services would be performed or the goods used.

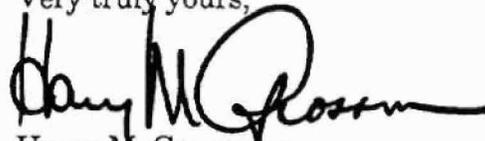
Certain kinds of recurring services are provided year after year, sometimes without written contracts or purchase orders. Typical cases are utility services, dues, and insurance. In such cases, payment due dates may fall in one fiscal year for services to be provided largely in the following fiscal year. The essential point about such recurring

services is that one year's worth of charges should be paid for from each year's budget. For example, municipal departments - including schools - should not be paying thirteen months' worth of utility bills in years when they have budget surpluses, nor deferring part of such costs to the following year by paying only eleven months' worth of bills when they have tight budgets.

For these reasons, we think that the result in *Wilmington*, although correct, does not stand for the proposition that schools can spend from one year's budget for purposes that are unambiguously attributable to subsequent fiscal years' operations.

Please do not hesitate to contact us if we may be of further assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Harry M. Grossman". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Harry M. Grossman  
First Deputy Commissioner

HMG/jeb



May 10, 2004

Pamela Dukeman  
Finance Director  
Town Hall  
580 High St.  
Westwood, MA 02090

Re: School Encumbrances  
Our File No. 2003-413

Dear Ms. Dukeman:

This is in reply to your letter concerning the validity of certain school department encumbrances.

The resolution of several of the issues raised in your letter appears to turn at least in part on the specific facts of the situation, which we are not well placed to evaluate. For example, the determination of what constitutes adequate documentation for an encumbrance may depend upon local practice, bylaws and the allocation of responsibilities among various town officials. We will therefore limit our comments to certain general principles that we hope will help in the resolution of the particular encumbrances.

Encumbrances are an accounting device to ensure that municipalities do not close out operating appropriation balances against which vendors and employees may have enforceable contractual claims at the end of the fiscal year. Appropriations, whether for operating purposes or special purposes, constitute a delegation to the department of the municipality's power to make contracts. Without an appropriation or other funding source such as a grant, municipal officials generally do not have the power to incur obligations that will bind the city or town. G.L. Ch.44 §31.

Special purpose appropriations are not related to a particular fiscal year, and therefore remain open until the purpose is fulfilled or abandoned. There is no need for encumbrances against such an appropriation because the appropriation has no pre-determined expiration date. Operating appropriations in the annual budget are limited to spending for the operation of the city or town department in that fiscal year, and must be closed out at the end of the fiscal year. G.L. Ch.44 §§56 & 56A. If the municipal accounting officer closed out the undisbursed balance of an operating appropriation against which the department had already incurred an obligation, the city or town would still be liable for that obligation. The closed-out appropriation balance would in the ordinary course of things be certified as part of its free cash; if that free cash were

spent, the result would be a deficit. To avoid such deficits, operating budget appropriations need be encumbered to the extent that the department has already entered into binding contractual arrangements in reliance upon the appropriation. Encumbrances should not be made merely on the basis of a department's planned or intended expenditures, where no other party could have acquired legally binding rights to payment based upon the municipality's actions. Thus, the amount of an outstanding purchase order that has been placed with a vendor by June 30 should be encumbered; the amount of a proposed purchase that has gone out to bid by June 30 but for which no contract has been awarded should not be encumbered.

G.L. Ch.71 §34 does not by its terms have any direct bearing on the issues raised by encumbrances. §34 constrains the power of a *municipal appropriating body* to prescribe the details of school spending through the annual budget process. Cities and towns can generally appropriate departmental budgets other than the schools' budget in as much detail as they wish, and such details will be binding on the departments, but any details within the school department's operating budget are no more than a recommendation to the school committee. The limitation on spending from one fiscal year's appropriation for purposes of another fiscal year derives not from the details of any municipality's budget, but from the scheme of municipal finance established by the General Laws, in particular, the provisions for *annual* operating budgets.

One provision of Education Reform is relevant to encumbrances. G.L. Ch.70 §11 provides that to the extent a school district underspends its net school spending obligation, the balance of the appropriation (up to 5% of the required net school spending) is automatically carried forward to the following year. No purchase orders are necessary for such carry-forward amounts. But for unspent school budget balances in municipalities that have met their net school spending obligation, this automatic carry-forward rule is inapplicable. The normal rules governing encumbrances based on purchase orders apply.

Other provisions of Education Reform have an indirect bearing on the issue of encumbrances. The entire elaborate apparatus of financial formulas in G.L. Ch.70, which sets out the calculation of schools' spending requirements and municipalities' school funding obligations, rests on the premise that each fiscal year's school budget is for spending of *that school year*, with the one exception referred to above that derives from §11. This presupposition in Ch.70 highlights the significance of the language of G.L. Ch.71 §34, which says that municipalities "...shall *annually* provide an amount of money sufficient for the support of the public schools... (emphasis added)." Ch.71 §40 and Ch.44 §§56 & 56A provide that teachers' salaries paid over the summer must be charged to the budget of the year in which they were earned. Special acts were required to create an exception to that rule for fiscal years 1991 and 1992 (Chs.223 & 336 of the Acts of 1990). Another statutory exception, Ch.71 §49A, was needed to allow school departments to make contracts payable from the following year's budget for the delivery of goods and supplies in the following fiscal year. Taken together, these general provisions and statutory exceptions make it clear that each fiscal year's school

budget is a distinct spending authorization, within which the school's line-item fiscal autonomy under §34 is operative.

The idea that annual departmental appropriations are for operating expenditures of the fiscal year is reflected in numerous other statutes relating to municipal finance as well. As noted above, Ch.44 §§56 and 56A, in addition to dealing with teachers' summer pay, provide for the closing of accounts each fiscal year as of June 30th. The municipal budgeting provisions of Ch.41 §§59-60 and Ch.44 §§31, 31A, 32-33B and the annual tax rate setting provisions of Ch.59 §23 likewise rest on the assumption that annual appropriations are for the operations of the fiscal year to which they relate. Courts, in construing the budgeting statutes, have proceeded on the same assumption. In *McHenry v. City of Lawrence*, (1936) 295 Mass. 119, the Supreme Judicial Court had to decide whether hiring extra employees during a fiscal year incurred a liability in excess of the departmental appropriation under G.L. Ch.44 §31. In analyzing the question, the court treated the sum of the entire annual salaries of regular employees already on the payroll as though it were an encumbrance against the departmental salary appropriation. It concluded that hiring the additional employees violated §31, because the appropriation was not enough to pay the additional employees as well as the full annual salaries of existing employees.

We do not believe that the cost of a school department contract for services, which by the contract's very terms are to be performed entirely in a succeeding fiscal year, can be charged against the current fiscal year's appropriation. However, if some part of the services are to be performed in the current year, then we think that the entire cost of the contract, including the part related to the portion of the contract to be performed in the following year, may be encumbered against the current year's appropriation.

Periodic charges such as utility bills, whose billing periods overlap the end of the municipal fiscal year, raise awkward problems. Such liabilities arise for a particular billing period not by virtue of any separate purchase order or contract entered into by the department, but merely because of the volume of service used in that period. Theoretically, the departmental appropriation could be encumbered based upon the cost of services provided through June 30<sup>th</sup>, and the bill paid partly from the encumbrance and partly from the succeeding year's appropriation, in the same way salaries for a pay period that includes parts of two fiscal years are paid. But such an approach is administratively impractical for charges such as utility bills, which unlike salaries cannot simply be pro-rated between different fiscal years based upon the number of days of the billing period in each year. It is reasonable in our view to pay such bills for periods that overlap the end of the fiscal year either by encumbering the prior year's appropriation and paying the bill from the encumbrance, with any surplus in the encumbered amount reverting to the general fund, or by charging the bill to the following year's appropriation. But we believe that whichever practice is adopted should be followed consistently, so that no more than a year's worth of bills are paid from any given fiscal year's appropriation. In the case of monthly bills, that would

mean no more than twelve bills paid from any given annual budget. A rule allowing a department discretion to pay thirteen months of bills from one fiscal year's operating budget would in effect allow that department to transfer appropriations between fiscal years. The power to transfer appropriations between different spending purposes is reserved to the municipal appropriating authority under G.L. Ch.44 §33B.

Although it is clear that school committees cannot simply spend for capital purposes without specific authorization (see *Arthur R. Murphy, A.I.A., & Associates Inc. v. Brockton*, 364 Mass 377 and *Plymouth-Carver Regional School District v. David M. Crawley Associates Inc.*, 17 Mass.App.Ct. 901), the proper characterization of expenditures as operating or capital is sometimes difficult. Whether an expense is one for which the town could borrow is a useful threshold test, but not sufficient in itself to resolve the issue. For schools, the purchase of instructional equipment from the operating budget is within the school committee's line-item autonomy even if a comparable equipment purchase by another department would be a capital expense. See *Ring v. Woburn*, 311 Mass 679 (1942).

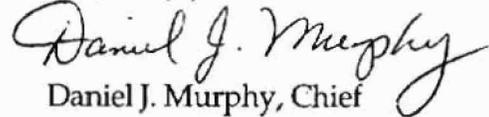
Whether the purchase of non-instructional equipment by a local school department is properly characterized as a capital purpose is an issue on which the statutes and the case law give little specific guidance; it is largely a matter of the town's established practice. If the town had a bylaw requiring all departmental purchases of items costing more than, say, \$10,000 to be separately appropriated in a capital budget, we think that such a bylaw would bind the school department, so that it could not charge such items to its operating budget. Even in the absence of a bylaw, a consistent practice by the town of separately appropriating for the purchase of such items by all town departments, and refusing to pay for such items from departmental operating budgets, should be binding on the local school system too. With respect to your question regarding the purchase of a copier for \$31,500, we note that the school superintendent acknowledged in a letter to the department of education that the town had made separate capital appropriations for the school system to purchase photocopiers. In that context, we do not see how a similar additional purchase can qualify as an operating expense. The superintendent's assertion in his letter to the department of education that the copiers will be used for educational purposes is beside the point; all school expenditures, whether capital or operating, are for educational purposes. The cost of building a new school is an expenditure for educational purposes, but a school department could not divert part of its operating budget to supplement the capital appropriation for such construction.

The issue whether a school department may charge purchases of large amounts of supplies at the end of the fiscal year to the budget of the fiscal year that is ending was decided by *School Committee of Wilmington v. Town Accountant of Wilmington*, (1985) 19 Mass.App.Ct. 964. The Appeals Court's decision in *Wilmington* dealt with quite a narrow question: did the town accountant have the authority to prohibit additional departmental purchase orders for goods and supplies after June 10th of the fiscal year, thereby limiting the school department's budgetary discretion during the fiscal year?

The appeals court ruled that the accountant's policy improperly limited the school department's fiscal autonomy. The school committee conceded that the goods to be ordered after June 10th would be *used in* the following year. Because the facts of the case did not raise the issues, the court did not consider the validity of contracts for services to be performed entirely in the following fiscal year, nor contracts for supplies that called for *delivery in* the following fiscal year. That may be one reason the court did not discuss the relevance of G.L. Ch.71 §49A. Such a discussion was to be expected if the court had intended its decision as a broad holding that annual school appropriations are not in any way limited to the operating purposes of their respective fiscal years. We are skeptical that a town accountant has inherent authority to impose a cut-off date other than June 30<sup>th</sup> for purchase orders by any departments.

We hope that these general considerations help resolve Westwood's encumbrances issues.

Very truly yours,



Daniel J. Murphy, Chief  
Property Tax Bureau

DJM/CH



October 14, 2004

Jeff Wulfson  
Associate Commissioner for School Finance  
Department of Education  
17 Pleasant Street  
Malden MA 02148-5106

Re: Prepaid Special Education Tuition  
Our File No. 2004-319

Dear Mr. Wulfson:

You asked whether a school committee may prepay tuition expenses for services to be provided to special needs students in one fiscal year from its prior year's budget. We think it may do so.

As a general rule, the costs of any school department's contract for services to be performed entirely in the subsequent fiscal year cannot be charged against a current year's appropriation. Your question relates specifically to G.L. c. 71 §71D, however, which states:

*A school committee of any city, town, or regional school district may authorize the prepayment of tuition for a period not exceeding three months to any approved private school or approved program source which a student is attending under the provisions of chapter seventy-one B, and the city, town or regional school district treasurer shall be required to approve and pay such monies in accordance with the authorization of the school committee. (Emphasis added).*

This statute creates a limited exception to the basic rule that municipalities may not make advance payments for either goods or services. G.L. c. 41 §56. It does not specifically address prepaying special needs students' tuitions in the fiscal year preceding the year in which the services are to be rendered, however. Nevertheless, the statute broadly authorizes prepayments without specifically limiting when such payments may be made and therefore, we believe a court could reasonably conclude that a school committee may properly pay special needs students' tuition costs for the subsequent fiscal year from the current year's budget. See *School Committee of Wilmington v. Town Accountant of Wilmington*, 19 Mass. App. Ct. 964 (1985).

At the same time, tuitions for special needs students are recurring costs that must be paid year after year. As with other recurring costs, such as those for utilities and insurance, we think school committees should fund only one year's worth of tuition expenses from any fiscal year's budget.

If you have any further questions, please do not hesitate to contact me again.

Very truly yours,

A handwritten signature in cursive script that reads "Daniel J. Murphy".

Daniel J. Murphy  
Chief, Property Tax Bureau

DJM:KC

Post Office Box 9569, Boston, MA 02114-9569, Tel: 617-626-2300; Fax: 617-626-2330



# Informational Guideline Release

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Bureau of Municipal Finance Law  
Informational Guideline Release (IGR) No. 06-209  
May 2006

## APPROPRIATION TRANSFERS

Chapter 77 of the Acts of 2006  
(G.L. Ch. 44 §33B)

This Informational Guideline Release (IGR) informs local officials about new legislation that gives cities and towns greater flexibility to make end of year budget transfers.

### Topical Index Key:

Appropriations  
Budgets  
Town Meetings

### Distribution:

Accountants/ Auditors  
Mayors/Selectmen  
Finance Directors  
Finance Committees  
City/Town Councils  
City Solicitors/Town Counsels

**APPROPRIATION TRANSFERS**

**Chapter 77 of the Acts of 2006  
(G.L. Ch. 44 §33B)**

**SUMMARY:**

These guidelines explain recent legislation that amends G.L. Ch. 44 §33B, which governs appropriation transfers in cities and towns. The amendment gives cities and towns greater flexibility to make end of year budget transfers in order to avoid appropriation deficits. A provision of the 2003 Municipal Relief Act that provided similar flexibility was in effect for fiscal year 2004 and 2005 only. Ch. 46 §123 of the Acts of 2003.

The alternative year-end transfer procedures apply for the last two months of the fiscal year, *i.e.*, May and June, and the first 15 days of July, which is the statutory period for closing the municipality's financial records for the fiscal year. G.L. Ch. 44 §§56 and 56A.

This legislation took effect on May 4, 2006.

**GUIDELINES:**

**A. Appropriation Transfers in General**

The amount of any appropriation available to be used as a financing source for another appropriation is the unspent and unencumbered balance, *i.e.*, the amount after all potential liabilities to be charged to the appropriation are considered. Accounting officers should determine this amount before any transfer from an appropriation is approved.

Transfers from surplus bond proceeds after a project that was financed by borrowing has been completed or abandoned may only be made in the manner and for the purposes set forth in G.L. Ch. 44 §20. Transfers from appropriations financed by other restricted sources, *e.g.*, stabilization, enterprise, water surplus or community preservation funds, are subject to the same statutory restrictions as the original appropriations.

**B. Appropriation Transfers in Towns**

**1. General Procedure**

Any town meeting may by majority vote transfer any appropriation to any other municipal use.

**2. Alternative Year-end Procedure**

During May and June, and the first fifteen days of July, the selectmen, with the agreement of the finance committee, may transfer any departmental appropriation to another appropriation within the same or other department. This procedure may **not** be used, however, to transfer:

- a. From a municipal light or school department budget.
- b. More than three percent of a department's annual budget, or \$5,000, whichever is greater.

An end of year transfer using this alternative procedure requires a majority vote of the board of selectmen and a majority vote of the finance committee.

Any end of year transfer from the light or school department, or involving more than three percent (or \$5,000 if greater) of a department's budget, requires town meeting approval. See Section B-1 above.

**C. Appropriation Transfers in Cities**

**1. General Procedure**

**a. Intra-departmental Transfers**

At any time during the fiscal year, the city council, upon recommendation of the mayor, may transfer any departmental appropriation to another appropriation within the same department. Intra-departmental transfers require a majority vote of the council.

**b. Inter-departmental Transfers**

At any time during the fiscal year, the city council, upon recommendation of the mayor, may transfer any departmental appropriation to an appropriation within another department. Inter-departmental transfers require the prior written approval of the amount by the department from which the transfer is being made and a two-thirds vote of the council. If the transfer is being made from a municipal light or school department appropriation, the light board or school committee must approve the amount by majority vote.

**2. Alternative Year-end Procedure**

During May and June, and the first fifteen days of July, the city council, upon the recommendation of the mayor, may transfer any departmental appropriation to another appropriation within the same or other department. This procedure may **not** be used, however, to transfer:

- a. From a municipal light or school department budget.
- b. More than three percent of a department's annual budget.

An end of year transfer using this alternative procedure requires only a majority vote of the council.

Any end of year transfer from the light or school department, or involving more than three percent of a department's budget, requires approval under the applicable general transfer procedure. See Section C-1-a and C-1-b above.



December 10, 2001

John J. Welch, Ed.D. Superintendent  
63 Chestnut St.  
Ludlow, MA 01056

Re: Payment of Prior Year's Bills  
Our File No.2001-772

Dear Dr. Welch:

This is in reply to your letter concerning the payment of a bill of a prior fiscal year (FY2000) for which there was a sufficient appropriation balance, but which the town did not encumber. An upcoming town meeting to consider unpaid bills of prior fiscal years will decide how to fund this account as well as other unpaid bills. You asked whether the town accountant could refuse to pay the bill if the school department had sent her notice to encumber it, and whether the town could transfer from the school department's fiscal 2002 budget to fund the payment.

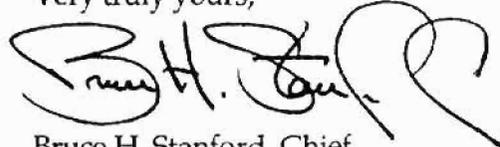
Under education reform (G.L. Ch.70 §11), an unspent balance up to 5% of a school budget is automatically encumbered to the extent by which the school district has fallen short of its minimum spending obligations under Ch.70. More generally, where a town has failed to encumber funds against the balance of a departmental appropriation for an outstanding contract or purchase order, it can correct the oversight only so long as it has not certified its free cash. Once its free cash is certified, a town cannot go back and create the encumbrance that it should have made, because the unspent balance of the appropriation has become part of its free cash. If it then established and paid the prior year's bill from an encumbrance, it would in effect be spending the same money twice. In terms of what a town must do in order to pay a prior year's bill for which there is no encumbrance, it does not matter whether the department or the town accountant was responsible for the failure properly to encumber the funds.

Where there was a sufficient appropriation balance to pay for the goods or services for which the contract was made when the department entered into the contract, the subsequent failure to encumber the appropriation would not be a defense to the vendor's right to payment. The liability would still be an enforceable obligation of the town. If the vendor sued and got a court judgment against the town, the amount of the judgment could be raised without appropriation and included in the tax rate (G.L. Ch.59 §23). It is of course obviously not in the town's interest to require a vendor with a clearly legitimate claim to sue the town in order to get paid. But if there is no encumbrance for a bill that belongs to a prior fiscal year, the town needs to appropriate money to create a funding source to which the bill can be charged. The appropriation requires only a majority vote, since there was originally a sufficient appropriation for the contract. See G.L. Ch44 §64, which requires a special town meeting to appropriate by a nine-tenths vote to pay a prior year's bill for which there was not a sufficient appropriation.

How to fund such an appropriation is up to the special town meeting. It can transfer from a departmental operating budget, including the school department's budget, from an available fund, or raise the money in the levy, provided the tax rate has not been set and it can accommodate the appropriation within its Proposition 2½ levy limit.

Please do not hesitate to contact us again if we may be of further assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bruce H. Stanford". The signature is stylized with large, sweeping loops and a prominent initial "B".

Bruce H. Stanford, Chief  
Property Tax Bureau

Copy: Mary Ann Harris  
Town Accountant

**From:** Colleary, Kathleen  
**Sent:** Tuesday, May 27, 2008 5:42 PM  
**To:** 'ChristineF@townofgreenfield.org'  
**Cc:** Nunes, Robert G.  
**Subject:** School spending

Dear Mayor Forgey,

Deputy Commissioner Nunes asked me to respond to your email regarding deficit spending by the Greenfield School Committee.

While we cannot give you legal advice about as the specific course of action to follow, we can provide the following information about the obligations of school and city officials in regard to municipal spending generally and the actions they may take under state law to ensure that overspending does not occur. You should consult with the city attorney regarding any relevant charter provisions as well.

1. As you know, no city department, including the school department, can incur liabilities in excess of its annual appropriation. G.L. c. 44, § 31. Annual departmental appropriations are intended to provide for operating expenditures for the entire fiscal year. Therefore, after the adoption of the city budget for any fiscal year, the school committee has a legal obligation to conform its spending plan and line item allocations to the amount appropriated and to notify the city accountant of those allocations for the fiscal year.
2. At the beginning of each fiscal year, the accountant can and should encumber the school (and other) department's line items in the amount necessary to pay employee salaries, fixed or contractual expenses, etc., based on the department's statutory and contractual commitments, for the entire fiscal year. (See *McHenry v. City of Lawrence*, 295 Mass. 119 (1936), in which the Supreme Judicial Court determined that the hiring of additional police officers and firefighters by the city's director of public safety violated G.L. c. 44, §31 because the department's appropriation for salaries was not sufficient to pay the additional employees and all persons already employed in the department their full annual salaries for the rest of the fiscal year. The court effectively treated the salaries of existing employees as encumbrances against the amount appropriated.)
3. Unlike other city department heads, however, the school committee may vote to reallocate unspent and unencumbered funds from any of its items to other school operating purposes. It must notify the accountant whenever it votes to do so. All departments should keep the accountant informed whenever employees retire or leave service, contracts are complete, etc., so that encumbrances can be adjusted accordingly throughout the year.
4. The accountant should send the school committee (and other department heads) report at least once a month showing the amount allocated to each line item for the fiscal year (original amount, transfers to and transfers from), the amounts spent and encumbered year to date, and the unspent and unencumbered balance available for the remainder of the year. If the accountant determines at any time that an item is fully spent or committed, he should inform the department head that no further payments chargeable to that item will be approved until other funds become available (e.g., by supplemental city appropriations, grants, or in the case of the school department, school committee transfers of uncommitted funds from other items).
5. With respect to sanctions for deficit spending, knowing violation of G.L. c. 44, § 31 is a criminal offense. The mayor or five taxpayers may report any violation to the district attorney for investigation and prosecution. G.L. c. 44, § 62. Also see G.L. c. 44, § 59 (Mayor, attorney general, one or more taxpayers or certain creditors may bring action in the Supreme Judicial or Superior Court to compel city officials to conform to G.L. c. 44). At the beginning of each fiscal year, the accountant should send all department heads a reminder of their obligations under state law and any applicable charter provision, ordinance or policy. A warning about these sanctions should also be sent to the department head whenever the accountant determines that particular department is projected to deficit spend without corrective action (see No. 4 above).
6. Given the notice of a potential school deficit notwithstanding the supplemental funding already provided this year, the accountant should review all school department spending to date and

determine whether there are sufficient funds available to pay salaries and any fixed and existing contractual obligations through the rest of the fiscal year. If not, the accountant should immediately notify the school committee that it may not make any new contracts or order any additional goods and services under existing contracts, and that it must take immediate action to bring spending within its appropriation for the year. The accountant can also notify school vendors that the school department's budget is fully committed and the city will not pay them for any additional liabilities incurred in FY08.

7. If the school department does end the year in deficit, the city will have to provide for that deficit in its FY09 tax rate. It may reduce the FY09 school appropriation to offset the deficit, but only to the extent the city is still in full compliance with its funding obligations under education reform (G.L. c. 70).

8. To prevent recurrence in future years, the city can adopt a strong purchase order and encumbrance system if it does not already have one. It can also adopt a policy that the financing source for any prior year's unpaid bills presented for funding under G.L. c. 44, § 64 will be the department's current year budget. That policy can deter departments from hiding deficits by withholding bills for payment at year end. Finally, it can amend its charter to add personal liability to possible sanctions for overspending and to establish a budget allotment system. Those extraordinary spending control measures have been put in place in some communities where deficit spending resulted in a state control board or other heightened state oversight. See, for example, Section 3 of the Lynn control board legislation, Chapter 8 of the Acts of 1985, which was necessitated in part by school department deficits.

We hope this information is of assistance.

Kathleen Colleary, Chief  
Bureau of Municipal Finance Law  
Division of Local Services  
Massachusetts Department of Revenue  
617-626-2400  
[DLSLAW@dor.state.ma.us](mailto:DLSLAW@dor.state.ma.us)

This e-mail response is intended to provide general information about the application of municipal tax and finance laws and Department of Revenue policies and procedures. It is not a public written statement, as defined in 830 CMR 62C.3.1, and does not state the official position of the Department on the interpretation of the laws pertaining to local taxes and finance. It should be considered informational only.

**From:** Christine Forgey [mailto:ChristineF@townofgreenfield.org]  
**Sent:** Tuesday, May 20, 2008 10:53 AM  
**To:** Nunes, Robert G.  
**Subject:** Financial Stability of Greenfield Schools

Good morning Mr. Nunes,

We have a serious situation in Greenfield regarding the financial stability of our public schools. To date the City has already transferred over 1M into the School Department budget and given them an adjusted bottom line that reflects the amendments. However, at the School Committee meeting on May 15, I was informed by school personnel that the "deficit" is larger than expected and the schools will need more money to finish the year. No dollar amount has been projected at this time as they are "working on it." School personnel seem oblivious to the fact that they must back into the amended budget line.

As Mayor I have serious concerns that the inability of the School Department to keep within their bottom line amended budget will result in a large deficit at the end of this fiscal year. Can you determine what the impact will be to the whole municipality if they continue to spend? I am aware



March 21, 1997

Irwin Marks, Chairman  
Acushnet Historical Commission  
Acushnet, MA 02743

Re: Meetinghouse Restoration Trust Fund  
Our File No. 97-59

Dear Mr. Marks:

You have requested a legal opinion concerning the rules (especially rule 2) adopted by the Historical Commission for the Meetinghouse Restoration Trust Fund. That rule provides that the Historical Commission acting as trustees "will hold and dispose of all property now or later transferred by any person to them as Trustees in accordance with the provisions of [the] rules". The rule also states that the trust fund will include "donations or bequests from local residents, businesses and foundations and other interested parties." You wish to know whether these rules conflict with the municipal finance laws with respect to future donations.

As a general matter the historical commission may accept gifts of funds to them as trustees for a specific trust fund, the terms of which are sufficiently specified by the donor or donors, such that the trust may retain interest. In addition, the commissioners, acting as such trustees, may accept subsequent gifts of funds specifically made to the trust, to the extent it may be ascertained that the donors intend the gifts to be governed by the terms of the trust.

However, the commission has no authority to deposit funds to the trust which have been gifted to the commission in its municipal capacity. Under **Massachusetts General Laws Chapter 40 Section 8D** a town historical commission may provide for the preservation, protection and development of historical or architectural assets of the town. The commission "may accept gifts, contributions and bequests of funds ... for the purpose of furthering the commission's programs...". Under this statute general gifts of funds to the commission for preservation purposes would ordinarily be deposited in the treasury in a separate gift account for that purpose, under **G.L. Ch. 44, §53A**. Neither **G.L. Ch. 40, §8D** nor **G.L. Ch. 44, §53A** provide that interest from such gifts remain with the gift account and unless the express terms of the gift so provide, interest would ordinarily go to the general fund. **G.L. Ch. 44, §53**.

Nevertheless, the commission is clearly permitted to accept gifts of funds with restrictions or in the form of a trust making them the trustees. Trustees of Pub. Lib. of Melrose v. Melrose, 316 Mass. 584, 588-89 (1944); Boston v. Dolan, 298 Mass. 346, 350 (1937). To the extent the donor establishes trustees as fiduciaries by means of a trust instrument, providing for accumulation and expenditure from interest, the donation will be governed by the terms of the trust. In addition, subsequent donations of funds to the trustees of the trust for trust purposes may be said to be accepted by the trustees subject to the terms of the trust.

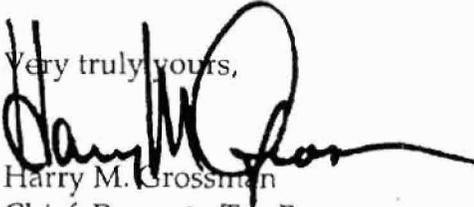
It appears that in this case the historical commission purported to set up a Meetinghouse Restoration Trust Fund with a \$1000 anonymous donation, in November, 1991. The declared purpose of the fund was for the restoration or maintenance of the Long Plain Friends Meetinghouse, which was given to the town in 1986 on the condition that the town's historical commission restore and maintain it in perpetuity. No trust fund was established pursuant to the 1986 gift and the property was apparently restored with public and gift funds.

The 1991 trust document provided that principal would remain untouched indefinitely and that interest would be used exclusively for restoration and maintenance. No trustees of such a fund were specifically established as such, but power to expend from interest was retained by the historical commission. The original trust rules also provided that the fund was to be composed of donations by citizens and local businesses. However, we have some doubt that a true trust was created by this process, since we have no indication that the "anonymous donor" actually gave the money to the trust, rather than to the commission in its official capacity, or agreed to the terms of the trust upon making the donation. We have insufficient information to determine whether this donation should have gone to a **Section 53A** gift account for the commission or was correctly placed in a separate trust account.

Nevertheless, the bulk of the corpus of the "trust" was received by means of a bequest in the will of Gertrude Braley to "Acushnet Historical Commission of Acushnet, Massachusetts, for the benefit of the Meetinghouse Restoration Trust Fund, to preserve and maintain the old Quaker Meeting House in Long Plain, in the Town of Acushnet." It appears that the decedent was aware of and believed in the existence of the trust fund at the time of making the will, in January, 1992, and intended to make a bequest of a portion of the residue of her estate to the commission as trustees of that fund. Whether such a fund previously existed in fact or was established by this instrument, we believe the donation was probably specific enough to require that the funds be treated as trust funds under the direction and control of the historical commission. Trustees of Pub. Lib. of Melrose v. Melrose, 316 Mass. 584, 589 (1944).

With respect to further gifts to the fund, some written declaration of the donor of an intent to donate the funds to this specific trust would be required in order to effectuate a donation to the trust, as opposed to the usual gift account. Merely providing a check payable to the commission as trustees or even in the specific name of the trust does not necessarily indicate an intent of the donor to have the funds treated pursuant to trust rules. Some declaration of the donor that the funds are being given for the specific purpose of the trust and in accordance with the trust rules would be preferable.

We hope this addresses your concerns. If we can be of further service, please do not hesitate to contact us again.

Very truly yours,  
  
Harry M. Grossman  
Chief, Property Tax Bureau

cc: Alan Coutinho  
Town Accountant



September 17, 1996

Roscoe A. Cole, Treasurer  
Town Hall  
Drawer "E"  
23 Green Street  
Kingston, MA 02364

Re: Establishment of Trust Fund for Historic Preservation  
Our File No. 96-672

Dear Mr. Cole:

This is in reply to your letter requesting our comments on the proposal of the Kingston Historical Commission to establish within the Town's financial framework a so-called trust fund for historic preservation purposes. For the inadvertent delay in responding, please accept my apologies.

Apparently, the Town of Kingston has already accepted the provisions of G.L. Chapter 40, Section 8D, which establishes an Historical Commission and explicitly authorizes such Commission to receive "...gifts, contributions and bequests of funds..." for historical preservation purposes.

At this time, it has been proposed by the Historical Commission that the Commission and Town Treasurer execute an agreement for purposes of establishing a formal trust fund and creating certain rights and obligations regarding the administration, management and use of monies directed to the trust fund.

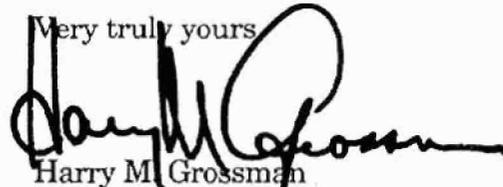
In our view, the custody, management, use and disbursement of general revenue, gift or grant funds, and trust funds is governed and prescribed by the statutory municipal finance provisions, and agreements (formal or otherwise) may not alter or operate inconsistently with such statutory provisions. Likewise, the specific authority, duties and obligations of municipal finance officers with respect to various types of funds are established in the General Laws. Certainly, the Historical Commission may accept grants or gifts of funds to further their statutory purposes, and if the gift of funds is in the form of trust, accept the same. However, there is no authority, in our view, for town

officers to pre-arrange specific treatments for various types of funds to be applied universally, or prescribe requirements or obligations that may be inconsistent with provisions of the General Laws.

G.L. Chapter 44, Section 53A sets in place the requirements pertaining to gifts or grants of funds, and authorizes a particular town officer or department to accept gifts of monies and expend such funds for the purposes of the gift with the approval of the Board of Selectmen. Interest on such funds accrues to the General Fund in the absence of an express directive of the donor that it remain with the gift. Moreover, upon the acceptance of the gift, the Town is subject to any conditions attached. Where funds are given in the more formal trust context, such funds must be accounted for and administered in strict compliance with the specific terms of the trust indenture or instrument. Accordingly, we do not think an agreement of the type at issue is appropriate where it is envisioned that a variety of types of monies would be deposited to the "Trust Fund".

In closing, however, we would note that there may be instances where a city or town may wish to accept donations generally for a particular purpose, and a single or consolidated "gift account" designed for such purpose would prove efficient. In such a case, we would consider it appropriate for Town Meeting, the Board of Selectmen or a town officer to request of the Town Accountant that a "consolidated gift account" be established and identify the objects and purposes of this gift account. As a practical matter, it would also be useful to provide a specific title or designation for such consolidated gift account. By such action, we think a municipality may establish an account to accumulate and consolidate many smaller (or larger) and general contributions for the same identified purpose. Such funds, however, would continue to be "gift" funds governed fully by the provisions of G.L. Chapter 44, Section 53A and the other pertinent municipal finance provisions.

I hope this information proves helpful. If I may be of any additional assistance in this or any other matter, please do not hesitate to contact me.

Very truly yours  
  
Harry M. Grossman  
Acting Deputy Commissioner

HMG/jeb



MASSACHUSETTS DEPARTMENT OF REVENUE  
DIVISION OF LOCAL SERVICES

200 Portland Street  
Boston 02114-1715

MITCHELL ADAMS  
Commissioner

(617) 727-2300

LESLIE A. KIRWAN  
Deputy Commissioner

March 6, 1992

Cynthia D. McRae  
Town Accountant  
346 Bedford St.  
Lakeville, MA 02347

Re: Expenditure of Insurance Proceeds  
Our File No. 92-46

Dear Ms. McRae:

You have asked several questions concerning the ability of the town to use \$21,290.00 in insurance proceeds received for damage to a town building caused by Hurricane Bob in August, 1991. The building is physically located in a park which is under the jurisdiction of the park commission enterprise. A portion of the town's building insurance premium is paid from the enterprise budget and presumably includes this building.

Specifically, you ask:

1. May the proceeds be spent without town meeting appropriation, given G.L. Ch. 44, S. 53?
2. Are the proceeds under the control of the park enterprise?
3. May the board of selectmen declare an emergency and request authorization to deficit spend to fix the building and would that require town meeting vote to authorize the insurance proceeds to be used to offset the created deficit?

I conclude that the proceeds must be deposited to the general fund under G.L. Ch. 44, S. 53 and may not be used until after town meeting appropriation under that statute. The proceeds are not under the control of the park enterprise but are considered reserved for appropriation to repair the building until the end of

Cynthia D. McRae  
Page Two

the fiscal year. If not so used by the end of the fiscal year the proceeds close out and become part of the free cash calculation and may be used for any municipal purpose as part of free cash. In my opinion this expenditure is not warranted as an "emergency" since there is no "immediate threat to the health or safety of persons or property" under G.L. Ch. 44, S. 31. Thus, the town could not deficit spend for this purpose.

1. As a general rule, any town officer who receives money on behalf of the town must deposit it into the town treasury and it may not be used without subsequent town meeting appropriation. G.L. Ch. 44, S. 53. In addition, most funds received which are not part of the town's estimated receipts, may not be appropriated until certified as part of free cash under G.L. Ch. 59, S. 23.

However, there are several exceptions to these rules, one of which is contained in clause (2) of the statute, i.e.,:

(now \$20,000)

sums not in excess of ten thousand dollars recovered under the terms of fire or physical damage insurance policy and sums not in excess of ten thousand dollars received in restitution for damage done to such city, town or district property may be used by the officer or department having control of the city, town or district property for the restoration or replacement of such property without specific appropriation...

(20,000)

We have interpreted this clause as applying only to proceeds of \$10,000 or less. If, as in the current case, the amount of the proceeds is in excess of \$10,000, then none of the proceeds may be used to restore the damage without an appropriation therefor.

(20,000)

However, since the statute implicitly authorizes the establishment of a receipts reserved fund for restoration of property up to the \$10,000 limit, we have concluded that such proceeds, if in excess of \$10,000, may be reserved for appropriation. This procedure requires town meeting appropriation, but would bypass the normal free cash certification requirement. If no such appropriation is made by year end, the receipt reserved account would close out to the general fund and would be certified as part of free cash and could be appropriated for any purpose.

2. You have indicated that town meeting has voted an enterprise fund for the park department which includes this building. In addition, a portion of the town's premium is included in the enterprise budget, presumably to cover this building. Nevertheless, the enterprise fund statute grants control to the park department only of those amounts appropriated by town meeting from the levy and from "an estimate of the income to be derived by the operations of the enterprise." G.L. Ch. 44, S. 53F 1/2. Insur-

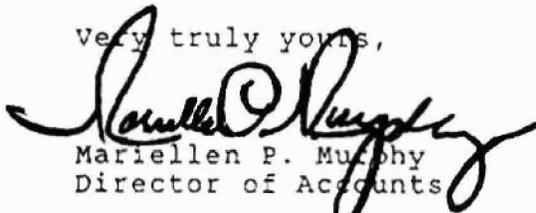
Cynthia D. McRae  
Page Three

ance proceeds in payment of a claim by the town for damage to this building, used by the enterprise, is not income derived from the operation of the enterprise. Thus, it is general fund revenue under G.L. Ch. 44, S. 53.

3. Under G.L. Ch. 44, S. 31 a town department may incur a liability in excess of appropriation if the board of selectmen, by majority vote, declare an emergency due to a major disaster, such as Hurricane Bob, "which poses an immediate threat to the health or safety of persons or property". This authorizes expenditures shortly after such a disaster to the extent that failure to make repairs promptly would create an imminent hazard. That authority does not extend to discretionary spending for repair of a building which is not essential to the town and which does not present a hazard in its unrepaired condition. I have not been made aware of any such requirement in this case. The fact that the building has not been repaired for several months indicates that there is no such immediate danger.

I hope this addresses your concerns. If I may be of further service, please do not hesitate to contact me again.

Very truly yours,



Mariellen P. Murphy  
Director of Accounts



# Bulletin

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2008-13B

## MTBE Litigation Settlement Proceeds

TO: Accountants, Auditors, Assessors, Mayors, Selectmen, City/Town Managers and Finance Directors

FROM: Gerard D. Perry, Director of Accounts

DATE: November 2008

SUBJECT: Treatment of MTBE Products Liability Litigation Settlement Proceeds

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We have received a number of inquiries regarding the treatment of settlement proceeds received as a result of a class action products liability lawsuit, *In Re: Methyl Tertiary Butyl Ether ("MTBE")*, brought against manufacturers and distributors of gasoline containing MTBE. This *Bulletin* explains the accounting treatment and expenditure of proceeds received from the settlement. G.L. c. 44, §§ 38 and 43.

We understand the settlement compensates cities, towns and districts for damages attributable to MTBE contamination of their water supplies. In addition to the monies now being distributed, the settlement provides for additional compensation should contamination be detected in other supplies in the future. We also understand the settlement does not place any restrictions on the use of these funds, although recipients may use all or some of the monies for current or future clean-up costs.

As is the case for proceeds payable to a city, town or district from the settlement of litigation claims generally, the MTBE settlement monies are unrestricted revenues that belong to the general fund and require an appropriation to spend. G.L. c. 44, § 53. Due to the timing of these distributions, many recipients would be unable to appropriate these monies for water or other purposes until after the close of FY09. The reason is that ordinarily any unanticipated general fund proceeds not reported in the tax rate are unavailable for appropriation until the Director of Accounts certifies them as part of a community's free cash at the close of the fiscal year. G.L. c. 59, § 23. In this case, however, recipients may reserve these settlement proceeds for appropriation during FY09. This treatment is consistent with longstanding Bureau policy that allows payments over \$20,000 received as restitution for damage to public property to be accounted for as available funds during the fiscal year received. (See G.L. c. 44, § 53(2), which allows smaller restitution payments to be spent without appropriation for repairs.)

Therefore, a city, town or district has the following options regarding the treatment and use of MTBE settlement proceeds received during FY09:

- It may report all or a part of the proceeds as estimated receipts when setting the FY09 tax rate. The receipts may be applied to offset existing appropriations, or if a town or council meeting is held before the rate is set to offset new appropriations, for water or other purposes.
- It may reserve and appropriate the proceeds as an available fund for water or other purposes during FY09. Any monies not appropriated in FY09 will close to fund balance (free cash) at the end of FY09.
- It may reserve the proceeds for appropriation during FY09 by requesting an update to free cash. See [Bulletin 2008-04B](#).

The same options will apply to additional payments received in any other fiscal year as compensation for newly detected contamination. The monies may be reported as estimated receipts in that year's tax rate, reserved and appropriated as an available fund during the year or reserved for appropriation through a free cash update.

For FY09 and future years, any proceeds not used or reserved under these options will close to fund balance at the end of that year.

Any questions you have should be directed to your Bureau of Accounts representative.



MASSACHUSETTS DEPARTMENT OF REVENUE  
DIVISION OF LOCAL SERVICES

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MITCHELL ADAMS  
Commissioner

LESLIE A. KIRWAN  
Deputy Commissioner

June 28, 1995

Benjamin W. Husted, Jr.  
Town Accountant  
23 Green Street  
Kingston, MA 02364

Re: Court Judgments  
Our File No. 95-588

Dear Mr. Husted:

You have asked for an opinion setting out ways the town may pay a substantial court judgment rendered in FY95. You have listed six methods and request comments on them, as well as additional mechanisms. The methods you suggest are:

1. Raise amount on the recap
2. Appropriate from available funds
3. Borrowing or bonding
4. Transfers from budgeted items
5. Add amount to tax rate
6. Special legislation

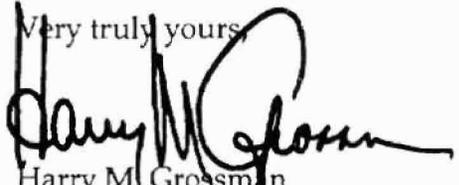
Methods 1 and 5 are really aspects of the same procedure, i.e., payment without appropriation from available funds. After the tax rate has been set for a given fiscal year a town may in such year pay a final court judgment from available funds, without specific appropriation therefor, with the approval of the director of accounts. **G.L. Ch. 44, §31.** Such amounts must then be added to the tax rate and raised on the recap in the following year if no appropriation or other method of paying the judgment has otherwise been provided. **G.L. Ch. 59, §23.** If the tax rate has not been set for the particular fiscal year, the assessors must assess taxes to include final court judgments, unless the town has otherwise provided for payment by means of appropriation. **G.L. Ch. 59, §23.**

Methods 2 and 4 are related and would be the usual approach to authorizing payment to meet any town expense, i.e., by town meeting appropriation from available funds to cover the liability. **G.L. Ch. 40, §5.** This mechanism includes appropriations from the levy, if the tax rate has not been set. It also includes appropriations from the stabilization fund (two-thirds vote required), overlay reserve and other undesignated funds as well as transfers from special

article or operating budget appropriations which have not been spent or encumbered. See G.L. Ch. 40, §5B; G.L. Ch. 59, §25; G.L. Ch. 44, §33B.

Methods 3 and 6 involve borrowing to pay the judgment. G.L. Ch. 44, §7(11) specifically authorizes borrowing for no longer than one year to pay final judgments. This mechanism usually only gives the municipality the ability to defer raising the amount of the judgment for one planning year, during which the town may arrange to appropriate sufficient funds in the next annual budget to cover the debt, or arrange for special legislation (method 6) to permit borrowing for more than a year to amortize the expense.

The above are the only methods generally available to towns to voluntarily satisfy a court judgment. We hope this addresses your concerns. If we may be of further service, please do not hesitate to contact us again.

Very truly yours,  
  
Harry M. Grossman  
Chief, Property Tax Bureau



# Bulletin

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2009-10B

## FY2010 BUDGET ISSUES AND PROCEDURES

TO:            Mayors and Selectmen                      City and Town Managers  
                  Boards of Assessors                            Executive Secretaries and Finance Directors  
                  Auditors and Accountants                    City Solicitors and Town Counsels  
                  Collectors                                        Regional School District Committees  
                  Treasurers                                        Regional School District Superintendents

FROM:        Gerard D. Perry, Director of Accounts

DATE:        March 2009

SUBJECT:     FY2010 Budget Issues

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This *Bulletin* addresses several issues that cities, towns, regional school and other districts may consider for FY2010 revenue and expenditure budgeting and for accounting purposes.

### **FY2009 Local Aid Reductions**

In January, the Bureau of Accounts issued [Bulletin 2009-04B](#) that discussed the budgetary and financial implications of FY2009 local aid reductions and addressed several actions that may be taken by cities and towns to avert a FY2009 revenue deficit that otherwise must be provided for in FY2010. Here is some additional guidance regarding a revenue deficit.

- *Calculating a revenue deficit:* A revenue deficit occurs when actual revenues and expenditures (exclusive of legal appropriation deficits) compare unfavorably to budgeted non-property tax revenues and appropriations. If appropriation turn-backs are insufficient to cover the non-property tax revenue shortfall, a revenue deficit exists that must be provided for in the following fiscal year no later than the setting of the following fiscal year's tax rate.

- *Averting a revenue deficit prior to June 30, 2009:* A revenue deficit is not finalized until the fiscal year's books are closed. Therefore, action to avert such a deficit before June 30, 2009 can only be estimated. Any estimate made closer to June 30<sup>th</sup> will likely be more accurate.
- Bulletin 2009-04B indicated several suggestions on how to avert this deficit prior to June 30, 2009. In addition, Boards of Selectmen with the agreement of the Finance Committee may consider their appropriations transfer option pursuant to G.L. Chapter 44, § 33B (see [Informational Guideline Release \(IGR\) 06-209](#)) in this case. If this option is considered, the Bureau recommends that the Board transfer a sufficient amount of unspent appropriations to a budget line item which will continue to go unspent through the end of the fiscal year.
- *Extinguishing a revenue deficit by appropriation after June 30, 2009:* Before June 30, 2009, communities may appropriate free cash certified as of July 1, 2008 to a stabilization fund to be used for appropriation after June 30, 2009 to extinguish a FY2009 revenue deficit (see [IGR 04-201](#)). A stabilization fund has dollar limits per G.L. Chapter 44, § 5B that can only be increased by permission of the Director of Accounts.

In addition, free cash certified as of July 1, 2009, the tax levy or other legal funding source may be appropriated after June 30, 2009 to extinguish this deficit.

- *Raising a revenue deficit on the FY2010 Tax Rate Recapitulation form (Recap):* A revenue deficit as of June 30, 2009 may be raised on page 2, Part IIB, line 6 of the FY2010 Recap.

### **Storm Damage Deficits**

The Bureau issued Bulletin [2009-01B](#) in January 2009 regarding financing damage expenses from the December 2008 ice storm. All expenses paid as of June 30, 2009 and (1) not provided for by borrowing as indicated in the Bulletin or by appropriation and (2) not reimbursed by the time the FY2010 Recap is submitted to the Bureau of Accounts for tax rate certification must be provided for on page 2, Part IIB of the FY2010 Recap. Treasurers are advised that an expected cash shortfall caused by these expenses may be relieved through the provisions explained in the Bulletin and not through normal tax anticipation borrowing.

The Federal Single Audit Act of 1984 as amended requires a financial audit or, if properly petitioned to the appropriate federal oversight or cognizant agency, a specific program audit if \$500,000 or more in federal funds are expended during any one fiscal year. The Massachusetts Emergency Management Agency's (MEMA) Disaster Recovery and Mitigation reimbursement packet included this reminder.

### **MTBE Litigation Settlement Proceeds**

In November of 2008, the Bureau issued [Bulletin 2008-13B](#) regarding the treatment and use of these settlement proceeds during FY2009. Because these settlement proceeds are unrestricted, they belong to a city or town's General Fund pursuant to G.L. Chapter 44, § 53 even if that city or town adopted a Water department enterprise fund or has a Water department special revenue fund under G.L. Chapter 41, § 69B or special act. The city or town appropriating authority may

appropriate these proceeds for any legal purpose, which may include specific Water department activities. Proceeds appropriated to a Water department with no specific purpose must close to that department's fund balance or retained earnings. Any amount not so appropriated must be closed to the city or town's General Fund on June 30, 2009.

### **Revenue Budgeting for FY2010, Estimated Receipts**

- *Motor Vehicle and Investment Income:* The Bureau for the second fiscal year cautions against unreasonable FY2010 estimates above FY2009 actuals which may be rejected without strong supporting documentation.
- *Municipal Medicaid:* The Bureau has been notified by the State's Office of Municipal Medicaid that unless the United States Congress takes certain action to continue benefit levels seen in prior fiscal years, FY2010 reimbursements will be significantly lower than in FY2009. The Congress is expected to consider this matter in April. Until this matter is resolved, the Bureau recommends that communities estimate this revenue source conservatively and revise the estimate upward if Congressional action warrants. The Bureau will consider for free cash update the difference between the amounts budgeted and expected (see **Free Cash Update and Non-Recurrent Distributions to Cities and Towns** below) once the expected amount has been determined.
- *Medicare Part D:* These payments belong to the General Fund whether or not the city or town has a Claims Trust Fund and may be estimated on page 3 of the Recap as "Miscellaneous Non-Recurring". The estimate will be reviewed by the Bureau using the same standard as other estimated receipts.
- *Sale of Real Estate:* Proceeds from the sale of real estate acquired by other than tax title foreclosure are not allowed as an estimated receipt on page 3 of the Recap without special legislation. These proceeds must be placed into an available fund for appropriation toward certain restricted purposes indicated in G.L. Chapter 44, § 63.
- *Marijuana Fines:* Paid civil fines imposed upon individuals for marijuana use belong to the community's General Fund and cannot be directed to any municipal department. The city or town's legislative body may raise and appropriate an amount of funds for any municipal department and offset the appropriation with an estimated receipt on page 3, line 19 of the Recap until the tax rate is certified by the Bureau.
- *Mitigation Payments:* Mitigation payments are often characterized as grants or gifts, but are generally unrestricted general receipts. (see *City and Town, Focus, January 2006*) They can be substantial in amount and may be used as an estimated receipt on page 3 of the Recap provided there is strong supporting documentation. Under current economic conditions, the Bureau will not generally approve a FY2010 estimated receipt from a private party where (1) FY2010 is the first year of the payment and (2) the payment is not received by the time the FY2010 Recap is submitted to the Bureau of Accounts. Once received, however, mitigation payments not included as estimated receipts on the FY2010 Recap may become part of a free cash update request (see **Free Cash Update and non-Recurrent Distributions to Cities and Towns** below).

### **Revenue Budgeting for FY2010, Other Receipts**

- *Massachusetts School Building Authority:* As in prior years, FY2010 estimated payments will be allowed on the Recap provided (a) the amount is reported on MSBA's website, and/or (b) an additional amount is indicated in separate correspondence from MSBA apart from the website amount. See [IGR 08-102](#) for instructions on receipt of payments and reservation for debt exclusion if applicable.
- *Community Preservation Fund:* Of the 140 cities and towns that have voted to adopt the Community Preservation Act (CPA), 135 collected the local surcharge in FY2009 and are eligible for state matching grants in FY2010. As a result of the downward trend in the collection of Registry of Deeds' fees that provide state funding for the CPA program and the increasing number of communities participating in the program, the Division estimates that the balance in the state trust fund will be sufficient to provide a first round match of approximately 29 percent of the surcharge levied by each city and town. This will trigger a second round or equity distribution for those communities that have adopted the maximum three percent surcharge. With the equity distribution, the total state reimbursement for qualifying communities will increase, depending on the community's quartile and total surcharge amount (see [FY2010 CPA Decile Report](#) for applicable quartile). Please note that these estimates are subject to change depending on Registry collections between now and September.
- *Enterprise Retained Earnings:* In April of 2008, the Bureau issued [IGR 08-101](#) regarding Enterprise Funds pursuant to G.L. Chapter 44, § 53F½. Included in the Guideline are significant rule changes including the proper use of retained earnings, funding a retained earnings deficit, a recommended indirect cost allocation methodology and funding for indirect costs. Local officials are strongly urged to review this IGR.

### **Revenue Budgeting for FY2010, Available Funds**

- *Transfers to Overlay Surplus:* Overlay surplus is an available fund that is available for appropriation for any lawful purpose until June 30<sup>th</sup>, after which it must be closed to the city or town's General Fund. Assessors must exercise care in calculating the amount of each transfer from Overlay to Overlay Surplus so as to abide by G.L. Chapter 59, § 25. An IGR on this matter is expected to be released soon by the Division.
- *Pension Reserve Transfers and PERAC Approval:* Any city or town with a Pension Reserve Fund pursuant to G.L. Chapter 40, § 5D and considering a transfer from this fund pursuant to G.L. Chapter 32, § 22 part 6A(b) must first receive permission in writing to do so from the Massachusetts Public Employee Retirement Administration Commission (PERAC).

### **Expenditure Budgeting for FY2010**

- *Other Amounts to be Raised:* During the tax rate approval process, the Bureau has noted several communities attempting to raise in the tax levy prior and current fiscal year deficit

amounts. State law allows for only certain deficits to be raised on the Recap without appropriation. Any other amounts being so raised must be supported by special legislation.

- *Court Judgments and Settlements for Judgment:* Any final court judgment or settlement for judgment rendered between July 1<sup>st</sup> and the time of setting the next tax rate must be raised on the Recap without appropriation on page 2, Part IIB, line 3 if not otherwise provided for. Any such judgment or settlement for judgment rendered (1) after the setting of the tax rate through June 30<sup>th</sup> and (2) in an amount greater than \$10,000, may with the written approval of the Director of Accounts be paid from available funds in the treasury and be raised on the next fiscal year's Recap.
- *Other Post-Employment Benefits (OPEBs):* Several communities have been granted special legislation to create an OPEB account. Chapter 479 of the Acts of 2008 provided for the establishment of OPEB Liability Trust Funds in Municipalities and Certain Other Governmental Units. The Division will issue an IGR on this new fund. Local officials may wish to review the Governmental Accounting Standards Board's (GASB) current guidance in administering such an account at [www.gasb.org](http://www.gasb.org).
- *Budgeting in Full Prior to Tax Rate Certification:* In the Bureau's opinion, although events may occur after tax rate certification that require additional budget action, the city or town budget as reported on the Recap should represent final spending authority as budgeted and appropriated. Cities and towns should not submit the form for tax rate certification with the intention of funding the remainder of the budget as funds become available.
- *Self-Insurance Plans for Employee Health Insurance:* If the June 30, 2009 Claims Trust Fund balance is in deficit for any cities, towns or regional school districts with a Claims Trust Fund, the deficit must be provided for (1) in a city or town by appropriation or by raising it on the Recap as an Other Amount to be Raised and (2) in a regional school district by providing for it in the FY2010 regional school district budget. Any such deficit is also a reduction to a city or town's certified free cash or to a regional school district's certified excess and deficiency amount.
- *Cherry Sheet Assessments and the Overlay:* Cherry Sheet assessments and the Amount provided for Abatements and Exemptions (Overlay) do not require appropriation. Although the amounts should be included as part of the city or town's FY2010 overall spending plan, we recommend they not be included as items in the budget. If they are appropriated as part of the budget, however, then care must be taken to avoid raising the amounts as both overlay and appropriations.
- *The Overlay:* Adequate provision must be made in the FY2010 Overlay to cover potential abatements on taxes assessed to telecommunications companies for poles and wires erected upon public ways, construction work in progress and other taxable property in place but not in service. In recent telephone central valuation cases, the Appellate Tax Board (ATB) has ruled that this property is taxable, but appeals are expected (see [Bulletin 2008-03B](#)). Until this litigation is final, the Bureau will review form OL-1 submitted with the Recap to ensure the Overlay is adequate in the event the ATB's rulings are not upheld.

### **Certification of City, Town, District and Regional School District Notes and Receipt of Audit Reports**

Audit reports of cities, towns and districts are required if expenditure of federal funds exceed threshold amounts promulgated by the federal Office of Management and Budget. Audits of regional school districts are required under provisions of G.L. Chapter 71, § 16A. For FY2010, the Bureau of Accounts will not certify revenue notes of a city, town, district or regional school district if a required audit for the period ended June 30, 2008 has not been submitted.

### **Free Cash Update and Non-Recurrent Distributions to Cities and Towns**

The Bureau will continue its policy to allow cities and towns an opportunity to request from the Director authority to reserve and appropriate non-recurrent distributions over a certain period of time through the free cash update process.

For cities and towns, state law permits inclusion of receipts attributable to prior years, principally collection of property taxes, up to March 31<sup>st</sup>. This update to the amount previously certified provides additional spending authority based on such items, but must first be certified by the Director prior to appropriation. The Director will not certify an additional amount if use of such funds could, in the Director's opinion, result in a negative free cash as of the following June 30<sup>th</sup>. Only one request may be made by a city, town per fiscal year. If an amount is certified by the Director and a negative free cash as of the following June 30<sup>th</sup> results, the city or town may not request a similar update for the following fiscal year.

### **Regional School District Balance Sheet Required**

Regional school districts must submit a Balance Sheet to the Bureau for certification of excess and deficiency as of June 30<sup>th</sup>. The Board of the Department of Elementary and Secondary Education (DESE) regulations indicate that if a Balance Sheet is not filed timely, the DESE Commissioner may request of the Commissioner of Revenue to withhold all or some part of the quarterly distribution of state aid for that school district until a Balance Sheet is submitted.

State law and the Board's regulation require such a Balance Sheet to be submitted to the Bureau on or before October 31<sup>st</sup> of each year. Annual Bureau instructions indicate the submission requirements. Audited Balance Sheets are not required, but the submission must be in a format that will allow the Bureau to calculate an excess and deficiency amount.

### **Levy Limits on the Website**

FY2010 preliminary levy limits for budget planning purposes and instructions will be available soon on the Division's website. The levy limit calculation is the same as in FY2009 unless otherwise noted in the instructions' cover letter.

### **Gateway: FY2010 Tax Rates and FY2009 Schedule A's**

For Tax Rate and Schedule A form completion during FY2010, forms will be on-line for direct data entry, review, retrieval, signing and submission by authorized local officials. The data may then be entered once with immediate feedback on potential problems. At the same time, *Gateway* has an internal tracking system to more efficiently move workflow through the people involved in form approval.

For FY2009, 87% of cities and towns submitted Recap forms directly on *Gateway* while 67% submitted FY2008 Schedule A's. Enhancements suggested by Assessors and Accountants will be rolled out this spring. The Excel-based Recap and Schedule A programs will remain available, but local officials should realize that they are uploaded to the *Gateway* database and their status is visible to authorized local users.

End of year accounting forms or upload links are also available on *Gateway* under Misc Forms for CPI, CP2, Snow & Ice, Cash Reconciliation, Statement of Indebtedness, Outstanding Receivables, Quarterly Cash Report, and Balance Sheet Checklist.