**Massachusetts Department of Revenue** Division of Local Services
Navjeet K. Bal, Commissioner Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs

February 2, 2009

Marilyn A. Mathieu
Millville Town Accountant
P.O. Box 703
Millville, MA 01529

Re: Spending Issues
Our File No. 2008-993

Dear Ms. Mathieu:

You have requested our opinion on whether G.L. c. 48, § 42 gives the Fire Chief authority to spend in excess of the budgeted appropriation for his Department. The answer is no. Departmental spending in excess of budgeted appropriations is prohibited by G.L. c. 44 § 31, with exceptions not applicable absent a "major disaster." There is no language in G.L. c. 48, § 42 to modify the effect of the prohibition at G.L. c. 44 § 31. Indeed, the requirement of an appropriation for spending authority is recognized in the statutory text: "The chief ... shall receive such salary as the selectmen may from time to time determine, *not exceeding in the aggregate the amount annually appropriated therefor. ...In the expenditure of money the chief shall be subject to such further limitations as the town may from time to time prescribe."* G.L. c. 48, § 42 (Emphasis added.) It is incumbent upon the town accountant to disallow payment of any departmental spending claims that would put total expenditures above the amount of unencumbered funds remaining in the department's appropriation. *See* G.L. c. 41, § 56.

You further inquire as to whether receipts from the town's ambulance service, which are reserved for appropriation for ambulance-related expenses under G.L. c. 40, § 5F, may be appropriated for any lawful purpose by voters acting at a Town Meeting. The answer is yes. Nothing in the language of G.L. c. 40, § 5F precludes an appropriation from ambulance service receipts for any purpose within the ambit of G.L. c. 40, § 5. Moreover, as indicated in the opinion letter you refer to, Town Meeting may vote to transfer funds appropriated for the ambulance service to another purpose, in reliance on G.L. c. 44, § 33B(b).

Please do not hesitate to contact us if you have any further questions.

Very truly yours,

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC: DG

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