



February 4, 2010

Jeff Wulfson  
Associate Commissioner  
Massachusetts Department of Elementary and Secondary Education  
75 Pleasant Street  
Malden, MA 02148

Re: Assabet Valley Regional Vocational School District  
Our File No. 2010-62

Dear Mr. Wulfson:

This letter is in response to your request for an opinion about whether the Assabet Valley Regional Vocational School District may continue to operate its self-insurance claims trust fund. That fund, authorized under Massachusetts General Laws Chapter 32B Section 3A, allows political subdivisions providing group health insurance to its employees and retirees under Chapter 32B to self-insure, or partially self-insure. Self-insurance is provided using a claims trust fund into which is deposited employee and employer contributions and from which employee health insurance claims are paid. Your request asks "What happens to the claims trust fund when the political subdivision establishes a self-insurance plan, but later returns to a premium based insurance plan and is no longer self-insured." Apparently counsel for the school district has opined that the statute permits the use of a claims trust fund even if the district is merely paying group insurance premiums to private insurance companies from the fund.

We have arrived at a different interpretation and have concluded that the claims trust fund is for the operation of a self-insurance fund directly from which health insurance claims are paid. While we concluded in our November 21, 2005 letter to counsel for Walpole (enclosed) that the trust fund may be used to pay insurance premiums when a governmental unit switches from self-insured to private insurance for its group insurance needs, we believe that use is limited to the period during which the claims trust fund still has assets. During that period no further amounts should be deposited to the claims trust fund, either from the employees or the governmental unit, and the trust fund is to be closed out when funds no longer remain in it.

The language of the statute relied upon by the school district's counsel is as follows:

Funds made available by appropriations ... for purposes of this chapter ... shall, upon authorization by the subdivision, be transferred from said appropriation account by the treasurer and shall be deposited from time to time by the treasurer in a separate fund to be known as the claims trust fund.

He relies on the language "for purposes of this chapter" as referring to all purposes of the chapter, including provisions in Chapter 32B that authorize the procurement of private insurance. However, we

believe the wording in the first paragraph that authorizes self-insurance and the claims trust fund necessary for providing such coverage is the operative language.

In particular, M.G.L. c. 32B, §3A provides in the opening paragraph:

A city, town, county, except Worcester county, or other subdivision of the commonwealth, when providing hospital, surgical, medical, dental and other health care coverage as authorized by this chapter, and subject to the adequacy of a claims trust fund as hereinafter described, may, in lieu of or in addition to entering into the insurance policies, agreements, or contracts described in this chapter, enter into an administrative services or other contract with one or more insurance companies, nonprofit hospital, medical or dental service corporations organized under chapter one hundred and seventy-six A, chapter one hundred and seventy-six B, or chapter one hundred and seventy-six E, or with one or more health care organizations, or with one or more third-party administrators or other entities to organize, arrange, or provide for the delivery or payment of health care coverage or services, whereby the funds for the payment of claims of eligible persons, including appropriate service charges of the insurance carrier, third party administrator or other intermediary, shall be furnished by the respective subdivision from the claims trust fund for the payment by such intermediary to the health care vendors or persons entitled to such payment in accordance with the terms and provisions of said contract. (emphasis added)

This language makes clear that the purpose of the claims trust fund is solely to cover health service claims, as well as administrative and incidental expenses necessary for providing self-insurance coverage for employees, not to pay insurance premiums to regular health insurance companies.<sup>1</sup>

In addition, the details of the trust fund, as further spelled out in the statute, are not consistent with a private insurance system. First, the trust fund is set up to retain employee and employer contributions that will reside in the trust fund indefinitely until needed to pay claims. As a result, the statute provides for interest to remain with the fund and to become part of it. However, if the fund is merely used as a conduit for payment of insurance premiums almost immediately after the funds are withheld from the employees and provided by the employer, there will be no interest or negligible interest earned while the amounts are in the fund. Accounting for any minor interest earned by the funds would be a mere nuisance.

Also, the treasurer is required to make accountings at least annually and earlier, if necessary, to determine if the fund contains the correct ratio of employee to employer contributions that applies to the governmental unit. This task would be irrelevant and burdensome if all the contributions are immediately used to pay private health insurance premiums upon deposit into the fund.

Finally, we see no particular school district purpose in retaining a trust fund that cannot be used for the purpose intended. Thus, when a governmental entity switches from a self-insured health care program to one that is based on payment of premiums to a health insurance company, the claims trust fund should be used to pay off any outstanding claims incurred while the self-insurance program applied, and the balance of any surplus in the trust fund used to pay insurance premiums for covered employees, until the surplus is exhausted. The fund should then be closed. This provides an equitable transition

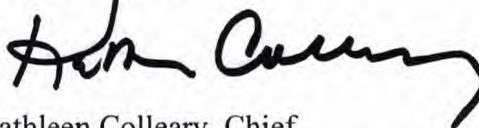
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<sup>1</sup> We believe that trust funds may be used to pay for health insurance premiums in two instances. First, we believe the terms of the self-insurance plan may include a stop-loss policy of insurance to place a cap on the trust fund liability in the case of catastrophic circumstances. That form of insurance is more of an incidental or administrative expense of the self-insured plan, not a regular group health insurance premium based system. In addition, as stated earlier, we believe the trust funds may be used to pay group health insurance premiums when the governmental unit switches from a self-insured system to a premium based plan.

back to premium based insurance, with the maximum benefit of the claims trust fund being applied to employees who paid into the fund and anticipated payment of their claims from it.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen Colleary". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Kathleen Colleary, Chief  
Bureau of Municipal Finance Law

KC:GAB

CC: Patrick Collins, Director of Business, Assabet Valley Reg. Voc. School District

Kevin P. Feeley, Jr., Collins, Loughran & Peloquin, P.C.

Barbara Hansberry, General Counsel, Office of the Inspector General

John J. Sullivan, Melanson Heath & Company, P.C.

Gerard D. Perry, Director of Accounts, Massachusetts Department of Revenue

Enclosure (Our File No. 2005-100)



November 21, 2005

Joyce Frank  
Kopelman & Paige  
31 St. James Ave.  
Boston, MA 02116-4102

Re: Walpole - Health Insurance Claims Trust Fund  
Our File No. 2005-100

Dear Ms. Frank:

You have requested our opinion on several questions involving expenditures from the town's health claims trust fund established under GL c. 32B, §3A of the General Laws. In particular, you wish to know:

1. May the town use funds remaining in the trust after the town has switched to a premium based health insurance policy to fund the programs that have replaced the town's previous use of an administrative services contract and claims trust fund?
2. May the town spend such funds in annual increments?
3. Would the appropriate method for the town to make such purchases be to offset the town and employee contributions in the same proportions as their respective shares for each year such funds are used to offset premium costs?
4. Are there any other permissible purposes for which these funds may be spent?
5. May the excess funds be returned to the General Fund?

#### **Summary Answers**

1. Any excess remaining in the group health insurance claims trust fund after all obligations of the fund have been paid may be used to pay premiums of current enrollees until the funds have been exhausted.
2. Payment of the funds for insurance premiums may be done incrementally or in lump sum, subject to collective bargaining over the issue.
3. The expenditures for premiums should offset the current employee and employer obligations in the percentages contributed by each to the excess determined at the time of conversion to the fully insured plan.
4. We believe the excess funds may only be used to pay for group health expenses, including premiums and group health administrative expenses.
5. We believe the excess funds may not be returned to the general fund.

## Discussion

1. The municipal group insurance claims trust fund is authorized in Massachusetts General Laws Chapter 32B, §3A<sup>1</sup>. In cities and towns that choose to employ this provision, the municipal employer's contribution appropriation to

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<sup>1</sup> Section 3A. A ... town..., when providing ... health care coverage as authorized by this chapter, and subject to the adequacy of a claims trust fund as hereinafter described, may, in lieu of or in addition to entering into the insurance policies, agreements, or contracts described in this chapter, enter into an administrative services ... contract ... to organize, arrange, or provide for the delivery or payment of health care coverage or services, whereby the funds for the payment of claims of eligible persons, including appropriate service charges of the insurance carrier, third party administrator or other intermediary, shall be furnished by the respective subdivision from the claims trust fund for the payment by such intermediary to the health care vendors or persons entitled to such payment in accordance with the terms and provisions of said contract. ...

Funds made available by appropriations by the ... town ... for purposes of this chapter on the basis of the contributory share of the subdivision as set forth and applicable therein shall, upon authorization by the subdivision, be transferred from said appropriation account by the treasurer and shall be deposited from time to time by the treasurer in a separate fund to be known as the claims trust fund. ... Any interest or return of premium or claims advance, excluding dividends applicable to section eight or eight A, shall be added to and become part of the fund. ... The treasurer shall take measures that will assure a sufficient balance at all times in said fund to make prompt payment for incurred and unpaid claims and other related liabilities. The subdivision insofar as practicable shall prepare annually or sooner a schedule for the treasurer which shall be an estimate of the amounts of anticipated monthly disbursements to be made from said fund and shall as frequently as necessary authorize disbursements therefrom in accordance with the terms and conditions of the contracts authorized by this section.

Where an annual or earlier accounting of administrative service charges, claims paid, and claims incurred and unpaid, under a contract authorized by this section to the subdivision, discloses that payment from the fund has resulted in the contributions of the subdivision and its employees and retirees toward a previously established total monthly premium or rate has been shared on a ratio inconsistent with the share of the contributions as provided from time to time by applicable sections of this chapter, the subdivision shall adjust future contributions toward the total monthly premium or rate to compensate for the inconsistency. Payment to the subdivision by the employees, retirees and surviving spouses of their contribution toward the total monthly premium or rate shall be to the extent and manner as required in the applicable sections of this chapter. (emphasis added)

employee group health insurance costs is deposited in part from time to time into the claims trust fund to match the agreed upon contribution ratio with the employee contributions deducted under GL c. 32B, §7 or §7A. Under those later sections, such employee contributions “shall be paid by the treasurer ... to the carrier or carriers entitled to ...” the premium. GL c. 32B, §7(c) & §7A(c). In the case of self-insurance under GL c. 32B, §3A, the carrier is essentially the town acting in a trustee capacity. Since employee contributions are for the same purposes as the funds appropriated by the town to the claims trust fund; i.e., for paying health service claims and related expenses, we have concluded that it is appropriate for the employee contributions to be commingled in that trust fund.

The clear intent of GL c. 32B, §3A is to assure a steady and predictable source of revenue to cover the administrative expenses and employee benefit claims of the group health insurance plans provided to municipal employees. Unfortunately, the section is silent about what happens to amounts remaining in the claims trust fund when the municipality converts to a third-party insurance premium based system.

Nevertheless, the statute does emphasize that the fund should continually operate utilizing the monthly “premium” contribution ratios determined under Chapter 32B and that if payment of benefits and administrative expenses from time to time deviate from this established ratio, that adjustments have to be made to the contribution rates ongoing until the previously established ratio has been reestablished. Thus, if the fund were to remain ongoing, contributions made thereto would continue to pay future benefits of employees in the predetermined ratios, and future employee/employer contributions could be reduced to reduce any unnecessary surplus or imbalance in the established contribution ratio. By converting to a premium based third party insurance plan, payment for premiums logically substitutes for payment of future administrative expenses and employee benefit claims.

Nothing in GL c. 32B, §3A requires that excess amounts in the trust fund be returned to the employees or employee organizations directly, or that they become the town’s funds. The only direction in the statute is that the trust funds, including interest from the funds, be used to cover administrative and claims expenses related to providing health care to covered employees. If Section 3A were the only provision that governed, we think it would be clear that the excess funds should and must be used to pay future benefits, and the easiest way to do that would be to offset future premiums paid by the town and its employees.

A review of the other provisions of Chapter 32B reveals two sections that arguably could require a different use of the excess trust funds. Sections 8 and 8A specifically provide for the distribution of dividends and refunds from an insurance based plan when the insurer declares such a dividend or refund under the policy, or otherwise. Conceivably, any excess retained in a self-insurance fund

could be considered the equivalent of a premium-based dividend or refund, and those statutes might govern, or at least provide some guidance in the matter. In the case of a dividend or refund payable by a third-party insurance provider, the municipality either retains the entire amount under Section 8 (the default provision)<sup>2</sup> or its proportional share, after taking out amounts necessary to cover administrative expenses of the plan, under Section 8A<sup>3</sup>. Section 8A requires local acceptance and then supersedes Section 8. We understand that the town of Walpole accepted section 8A in 1969, prior to the establishment of the claims trust fund.

If Section 8A governs, then the use of the excess would first be applied to offset any town administrative expenses incurred during the period the excess was

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<sup>2</sup> GL c. 32B, §8. Any dividend or other refund or rate credit shall inure to the benefit of the governmental unit or to the governmental units participating under section eleven in proportion to the gross premiums paid by each governmental unit.

<sup>3</sup> GL c. 32B, §8A. In any governmental unit which accepts the provisions of this section, all dividends, their equivalent and other such refunds accepted by the governmental unit from the carrier or carriers as a result of any policy or policies entered into under the authority of this chapter shall be deposited by the treasurer thereof in a separate fund to be known as the employees' group insurance trust fund.

Prior to the distribution of all such dividends or refunds, the appropriate public authority shall determine the total administrative cost of all policies of insurance entered into under authority of this chapter for the calendar year preceding the date of receipt of the dividend, and shall notify the treasurer to transfer the amount of said total administrative cost from the said trust fund to the appropriate general revenue accounts of the governmental unit.

If the said total administrative cost exceeds the dividend receipts, the entire dividend shall be so transferred; if the dividend receipts exceed the said total administrative cost, the appropriate public authority shall notify the treasurer to transfer to the appropriate revenue accounts that portion of the remaining balance which represents the governmental units' proportionate share of the premium cost of the policy year to which the dividend or refund is attributable. The balance of said dividend remaining in the trust fund shall represent the employees' and retirees' proportionate share of the premium cost. The appropriate public authority at a date deemed practicable shall then authorize the treasurer to expend the remaining balance of the trust fund on behalf of the insured employees and retired employees to reduce the insured employees' and retired employees' share of future premium costs or by a proportionate refund to insured members. The reduction of such costs shall be determined by using the ratio of the dividends received to the insured employees' and retired employees' share of the total premiums which yielded the dividend.

In the event two or more governmental units are participating in accordance with section eleven, all dividends or their equivalent or other such refunds shall first be allocated to the respective governmental units in proportion to the gross premiums paid by each governmental unit to the respective carrier or carriers. ...

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acquired, and then to offset the town and employee contributions. The town's proportionate share would then be general fund revenue, under GL c. 44, §53 and could be appropriated for any town purpose, including group insurance purposes. The employee contributions would then be applied to reduce the employee contributions for future premium costs.

Although not free from doubt, we think the better answer is that Sections 8 and 8A do not apply to surplus amounts remaining in a claims trust fund when a town converts to a third party insurance carrier. The rationale for that opinion is several fold. As an initial matter, to the extent any excess were to develop in the fund as it continues from year to year, the employee and town health insurance contribution amounts should be adjusted accordingly to use the surplus to the extent it is not needed to cover extraordinary claims. Secondly, the fund itself is a statutory trust fund established exclusively for payment of health service claims and related expenses, unlike premium contributions paid to a third party insurer. Excess amounts remaining in that fund are therefore arguably not the equivalent of a refund or dividend under Sections 8 and 8A.

In addition, we note that Sections 8 and 8A pre-dated the enactment of Section 3A in 1977. Self-insurance arose as a mechanism to reduce group health insurance costs to the towns and employees by eliminating the expense of the insurance company profit margins reflected in third party insurance premiums. The option was not available when Sections 8 and 8A were enacted, and the prospect of a self-insurance fund as an equivalent dividend or refund was likely not contemplated by the legislature at the time. We would not impute any such intention as a result of the subsequent authorization for self-insurance. Finally, we note that Sections 8 and 8A may have been added in order to clarify and establish a municipal entitlement to any insurance refund in the absence of a vote of acceptance of Section 8A, to avoid ambiguity in the interpretation otherwise. In the absence of Section 8 one might conclude that a refund was in effect a return of premium, which, having been shared by the employer and employees, had to be returned to them in the same proportions as the payments for the premium.

2. With respect to whether the excess funds may be expended in a lump sum or may be paid over a period of time, we think the matter may very well be a term and condition of employment for, or at least a matter of impact on, the active employee members of the plan, and thus subject to negotiation. See Anderson v. Board of Selectmen of Wrentham, 406 Mass. 508 (1990) (duty to negotiate over premium contribution percentage for group insurance under collective bargaining law); (Group Insurance Commission v. Labor Relations Commission, 381 Mass. 199 (1980) (Labor Relations Commission ordered the commonwealth to bargain with state employees over repayment of group insurance premiums not withheld from employee pay, which ought to have been withheld, but appeal of Group Insurance Commission of decision dismissed due to lack of standing of the GIC in the case).

We note that the group of employees on the plan is continually changing, and the longer the surplus is kept the population gaining the benefit of premium reductions will be increasingly different from the population that contributed to the fund. However, depending on the size of the surplus and the amount necessary to provide coverage on an annual basis, it may not be possible to use the surplus within a particular year. Since the payment of the surplus to reduce future covered employee premiums is based on practicality and does not require complete equity, we cannot say that extending the recouping period would necessarily be unlawful. We think the better answer is that any payment to reduce premiums should be subject to negotiation with respect to the period of time and amount of premium reductions.

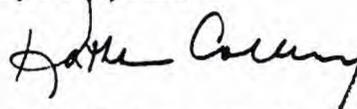
3. We understand the excess in the fund has been maintained so as to reflect the percentage contributions made by the town and its employees during the period when the surplus was generated. The funds, including interest earned thereon, should be used in the same percentage ratios when paying current premium amounts, even if the relative rates of contribution vary in subsequent years.

4. By paying future group insurance premiums from the fund the use would remain consistent with the purposes of the trust fund. Any other use of the funds would be inconsistent with the purpose of the trust fund and we think an impermissible use.

5. Since we have concluded that Section 8A does not apply to an excess retained in a claims trust fund, which requires the excess to be used for health claims and health administrative purposes, we do not believe the funds may be paid to the general fund.

We hope this addresses your concerns. If there are further questions, please do not hesitate to contact us.

Very truly yours,



Kathleen Colleary, Chief  
Property Tax Bureau

KC/GAB