
Massachusetts Department of Revenue
Division of Local Services

LOCAL FINANCES
Accounting, Special Fund and Finance Issues



2011

Workshop B

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LOCAL FINANCES

Current Municipal Finance and Accounting Issues

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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/Conservation Outside 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 | 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 |

September 2010

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/Conservation Outside 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)

| | |
|---|--------------------------|
| Tax Credit Bond Proceeds | G.L. c. 44, § 21B |
| Self-Insurance Health Fund | G.L. c. 32B, § 3A |
| Other Post Employment Benefits (OPEB) Liability Trust Fund | G.L. c. 32B, § 20 |
| 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 |
| Estimated Sewer Betterments | G.L. c. 83, § 15B |
| 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, 2010, 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, 2010, 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>FY11 Spending Limit¹</u> | <u>Disposition of FY10 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 |
| TOTAL SPENDING ² | | | | \$120,000 | | |

¹ FY11 per department spending limit is \$100,000 (1% of FY10 levy of \$10,000,000)

² FY11 total spending limit is \$1,000,000 (10% of FY10 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.

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, § 53A½

Section 53A1/2. 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, § 53E½

Section 53E½. 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, § 53F½

Section 53F1/2. 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.

CASE STUDY 1

END-OF-YEAR FINANCE AND ACCOUNTING ISSUES

It's July 1, the fiscal year has just concluded, you are now determining the status of various appropriation balances, and a number of department heads are awaiting information on the status of *pending* or *proposed* purchases. As you work your way through a number of "appropriations", please offer your thoughts on the following situations:

- 1.) Article 13 of the ATM warrant approved an appropriation for the Parks and Recreation Department to purchase a multi-purpose John Deere Tractor for \$18,000. For a variety of reasons (the department head retired, there were questions of compatibility with older accessories, and the old tractor ran fine all year.) this money has not yet been expended, but the new Director advises that the purchase is close. *What is your response to the Director?*
- 2.) Instead, no separate article was added to the warrant, but the budget in Article 3, under Parks and Recreation Department, was amended to include after the 3 general line items for salaries, expenses and equipment, a fourth line-item, "Replacement John Deere tractor-\$18,000. *In this case what is your response and why?*
- 3.) One last scenario! There was no mention of a John Deere tractor on the warrant. For the P&R Dept, the regular "equipment" line was \$50,000 as it has been for the last several years. During town meeting discussion, the Fin Com motioned to increase the "equipment" line item by \$18,000 to allow the department to purchase a replacement John Deere. *What would you do with the unexpended \$18,000 balance?*

Discussion Points:

Special purpose appropriation, not related to a particular year.

Carries over until purpose is completed, no need to get to encumbrance rules!

Who makes the call?

Location of vote, 3 or 13? (Is a separate article necessary?)

Role of intent, who gleans the intent?

Funding source make a difference?

Sunset provision/by-law for old articles!!

Reference: Opinion 2003-413

Regarding all of your regular operating budget appropriations, you have requested that all invoices be promptly submitted so as to close the year's books. As a part of the process, you have been asked by several department heads "to hold open" some appropriations. When can you "encumber" balances in the past fiscal year's appropriations?

Would you encumber the unexpended balances of an operating budget line item in the following situations?

- 1.) On June 30, the Department Head is still trying to decide on the vendor to purchase clerical supplies from?
- 2.) On June 30, the department Head has requested quotes from several local vendors of clerical supplies, but has not yet selected a vendor?
- 3.) On June 25, the order has been placed but the goods will not be delivered until July 5th.
- 4.) On June 25, a plumber was engaged to do minor repair work, but will not begin until July 25.
- 5.) On June 25, a plumber was engaged to do minor repair work and began on June 29, but won't conclude the work until July 5th.

Discussion Points:

Legal obligation

Effectively spent, enforceable obligation!

Regarding year-end accounting activity, G.L. c. 44, s. 56, provides:

"Section 56. The fiscal year of all towns of the commonwealth shall begin with July first and end with the following June thirtieth, and the returns made to the director under section forty-three shall show the financial condition of the town at the close of business on June thirtieth; provided, however, that the treasurer shall, until July fifteenth, enter in his books all items for the payment of bills incurred and salaries and wages earned during the previous fiscal year, excepting payment of school teachers' salaries which have been deferred under the provisions of section forty of chapter seventy-one, and expenditures thereof shall be deemed to be as of June thirtieth preceding."

(Also, see MFC handbook)

Questions on July 1 to July 15th period.

- 1.) What should transpire during this period?
- 2.) May a department head initiate a purchase between these dates?
- 3.) May the Finance Committee vote transfers during this period from the reserve fund?
- 4.) May year end transfers be made under 44:33B during this period?



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 30th, 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).

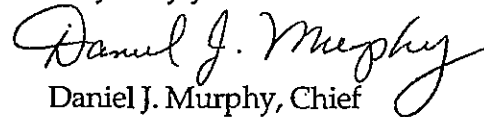
Whether the purchase of non-instructional equipment by a local school department is properly characterized as a capital purpose is an issue on which the statutes and the case law give little specific guidance; it is largely a matter of the town's established practice. If the town had a bylaw requiring 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 30th for purchase orders by any departments.

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

Very truly yours,

A handwritten signature in black ink, reading "Daniel J. Murphy". The signature is fluid and cursive, with the first name "Daniel" and last name "Murphy" clearly legible.

Daniel J. Murphy, Chief
Property Tax Bureau

DJM/CH

2009-770:

Response summarizes position on end of year use of a school (or other municipal) department budget to pay for goods and services that will be used in the next fiscal year and includes or references several opinions (2003-413, 98-520, 92-1012, 2004-319).

A department may spend or encumber from one year's budget to pay for services or recurring expenses (utilities, dues, leases, etc.) to be performed both in the current and following year, or for goods, supplies and materials ordered and delivered before June 30 even if most will be used the next year. In these cases, the department may not charge more than one year's (12 months) worth of goods or services to any particular year's budget.

However, a department may not spend or encumber funds from one year's budget for services that are going to be performed entirely in the next year. There is an exception for certain special education tuitions. At the end of the year, the municipality may pay contractually obligated tuitions for July, August and September of next year. Again, no more than one year's tuition payments can be paid out of any year's budget.

2011-565:

Mr. [REDACTED] is correct in his conclusion that the police department cannot encumber money in its appropriation at the end of the fiscal year to pay for services to be performed in the next fiscal year. G.L. c. 44, s 56 is clear that encumbrances must be "for the payment of bills incurred and salaries earned during the previous fiscal year." (Emphasis added.) However, the following statement is dubious: "Carrying forward unexpended salary and wage appropriations for next year would require a Town Meeting vote." Unencumbered and unexpended portions of the appropriation for a given fiscal year revert to the general fund at the end of that fiscal year. To cover salaries for the upcoming fiscal year, a new operating appropriation must be approved for that fiscal year.

2011-607:

Town may purchase salt and sand at the end of the fiscal year for use in snow & ice abatement in the following year, but must do so from the snow and ice account. Town meeting may transfer the funds sufficient to cover any snow and ice deficit and additional amounts the town may want to expend for next year supplies. The board of selectmen and fincom can transfer amounts without town meeting vote in May & June, but only up to 3% of department budget where transfer comes from or \$5,000 whichever is greater.

CASE STUDY 2

END-OF-YEAR TRANSFERS UNDER G.L. c. 44, §33B

On April 1, selectmen meet with the finance committee to consider the fast approaching, year-end budget situation. As a number of the members of each board plan on being away during May and June, they schedule a joint meeting for April 15. After their thorough analysis of line item balances and careful deliberation on budget adjustments, they decide to vote a package of transfers under §33B that night, with these transfers scheduled to take effect as of May 1. The next morning the list of votes is delivered to the town accountant with instructions to process them come May 1.

Question:

- 1.) Do these line item transfers under G.L. c. 44, §33B comply with the legal requirements of that section?

(See e-mail reply 2010-510)

On 44:33B, what is the scope of this special transfer provision?

Departmental operating items only.
Not special purpose appropriations.
Selectmen and finance committee must both approve
Limitations on amounts that can be transferred.
Not Schools or electric light.!

44:33B:

(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 establish 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.

2010-510

We think the statutory language of §33B requires that the vote of the selectmen and finance committee take place on or after May 1st, the selectmen, with the concurrence of the finance committee or other entity establish 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. (emphasis added)?. If the vote could be taken before May 1st, it's hard to see why it couldn't take place many months earlier, which would give the selectmen and finance committee de facto power to impose a spending freeze up to 3% of municipal departments' budgets, something that does not seem consistent with the statutory purpose. It also raises potential problems about knowing the extent of the unencumbered balance of appropriations in the departments from which the transfers are to be made.

EM2007-670:

1. We do not think a town can use the end of year transfer procedure under G.L. c. 44, §33B to transfer to or from a special purpose appropriation (i.e., an appropriation that will carry over if not expended within a particular fiscal year). The first sentence of paragraph (b), which applies to towns, states town meeting can transfer "any amount previously appropriated" to other uses. The legislature could have used that same broad language in the following sentences, which provide for the alternative end of year transfer procedure. It did not, but limited that procedure to any amount appropriated "for the use of any department" and further limited the amount to be transferred in terms of a department's annual budget. Given that, and the underlying purpose of the end of year procedure to give communities this flexibility in part to avoid operating deficits, we think the alternative transfer procedure can only be used to transfer from annual departmental budgets.

2. The town can transfer from an appropriation in a department funded by general revenues to an item in a department funded by enterprise revenues. The transferred funds are for departmental use within the meaning of the statute and there is no restriction on the original financing source that precludes use for the new purpose. .

CASE STUDY 3

UNPAID BILLS OF THE PRIOR FISCAL YEAR

Several departmental bills got “lost in the shuffle” at the end of FY 2011 and did not get paid. As a result, the line item balances that were sufficient to cover the bills closed out and are no longer available. The vendors want to know what has to happen in order for them to get paid.

Questions:

- 1.) May the bills simply be paid from the FY 2012 budget line item?
- 2.) At an upcoming Special Town Meeting, what would be the quantum of vote necessary to appropriate funds to pay these bills? Majority? 4/5ths? 9/10ths?

(See G.L. c. 44, §64)

2010-481:

A supermajority is only needed under G.L. c. 44, § 64 to pay the bills if the appropriation was not sufficient to cover them when the liability was incurred. That is an unpaid bill for purposes of the statute. If there were sufficient monies in the appropriation at that time, but the bill was presented too late by the vendor, lost, etc, so the appropriation has been closed out, then a majority vote is sufficient (unless the appropriation financing source requires a higher quantum, e.g. stabilization).

Turns out bills are for a capital project financed by debt, i.e. special purpose appropriation so no issue.

44:64:

Any town or city having unpaid bills of previous fiscal years which may be legally unenforceable due to the insufficiency of an appropriation in the year in which such bills were incurred may, in the case of a town, at an annual meeting by a four fifths vote, or at a special meeting by a nine tenths vote, of the voters present and voting at a meeting duly called, and, in the case of a city which accepts this section, by a two thirds vote of the city council, appropriate money to pay such bills; but no bill or payroll shall be approved for payment or paid from an appropriation voted under authority of this section unless and until certificates have been signed and filed with the selectmen or the city auditor, as the case may be, as hereinafter provided, stating under the penalties of perjury that the goods, materials or services for which bills have been submitted were ordered by an official or employee of the town or city and that such goods and materials were delivered and actually received by the town or city or that such services were rendered to or for the town or city, as the case may be.

CASE STUDY 4
SCOPE OF BUDGET LINE ITEMS

The senior center has been a congenial meeting place for the town's elderly for many years and traditionally served beverages and sweets at informal receptions during the week. As good nutrition became more serious, particularly for the elderly, the center began offering more nutritious lunches and offset the expenses by donations from the elderly as well as gifts of foodstuffs and cash from local businesses. At this time, however, the expenses of this informal but regular lunch program have outpaced the available revenue. The Director of the senior center has recently begun to submit bills for paper products and some foodstuffs with the direction they be charged to available balances in her "Office Supplies" line item appropriation.

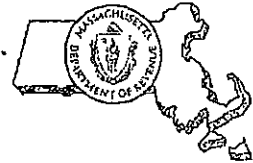
Questions:

- 1.) What is the basic issue presented in this scenario?
- 2.) What statutory provision places this issue within the authority of the town accountant or City Auditor? Who else in a Town has authority regarding this issue?
- 3.) Is there any other board or officer that might weigh-in on this issue?
- 4.) What would DOR's role be in this issue?

(See Letter Opinion – Our File No. 2010-539)

Massachusetts Department of Revenue Division of Local Services

Navjeet K. Bal, Commissioner Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



May 12, 2010

Lina Arena-DeRosa, Director
Holliston Senior Center
150 Goulding Street
Holliston, MA 01746

Re: Senior Center Budget Items
Our File No. 2010-539

Dear Ms. Arena-DeRosa:

Your letter regarding the line item appropriations made for the use of the Senior Center was referred to our office. You are seeking assistance in establishing a budget item for expenses associated with particular nutritional programs operated by the center. Apparently, you were informed that these expenses should not be paid from your supply item.

We suggest you discuss this matter with the officials responsible for presenting the budget to town meeting in Holliston. Whether the expenditures in question are within the scope of your current line item appropriations or require an additional item to be added by town meeting is a local matter. Based on information on the town's web site, it appears the finance committee presents an annual budget with at least three items for each department: Personal Services, Purchased Services, Supplies and Materials. Some departmental budgets include other items such as Other Expenses. The scope of these appropriations, i.e., the type of expenditures that they are intended to fund is ultimately a matter of town meeting intent and the finance committee's review of your department's past expenses and budget request may bear on that intent. We would think Supplies and Materials would include supplies and materials needed to conduct any programs or activities within the charge of the department, but local officials are best positioned to determine town meeting's intent.

We hope this information is helpful.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Kathleen Colleary", written over a horizontal line.

Kathleen Colleary, Chief
Bureau of Municipal Finance Bureau

KC

CASE STUDY 5

CREATIVE FINANCING AND GIFTS AND GRANTS

In Mytown, due to severe budget constraints, the DPW has ordered that certain street lights be turned off in an effort to save money and live within their budget. Not surprisingly, the residents of the selected streets are quite upset. Some, however, have proposed an “Adopt a Light” program whereby they will pay for their own street’s lights. They have explored this proposal with the utility company, but the company will not bill the residents directly. How can this practical proposal be made to work within the municipal finance statutes?

Questions:

- 1.) Is a gift account under G.L. c. 44, §53A an appropriate option for implementing this proposal?
- 2.) Who would administer the account?
- 3.) Who would hold the cash?
- 4.) What practical issues might arise as the program continues in effect?

(See Letter Opinion – Our File No. 2009-1470)



June 18, 2010

MaryAnne M. Gibbs
Town Accountant
Town Hall
485 Main St.
South Dennis, MA 02660

Re: Gift Account for "Adopt-A-Light" Program
Our File No. 2009-1470

Dear Ms. Gibbs:

You have requested our opinion as to whether Dennis may establish a gift account under G.L. c. 44, § 53A to fund an "Adopt-A-Light" program. You have explained that the Department of Public Works (DPW) has had to turn off certain street lights given funding constraints. Yet certain residents are willing to cover the cost of keeping particular street lights illuminated at their own expense. However, the electric utility company will not bill residents willing to sponsor a particular street light directly since the town owns the poles. Accordingly, a funding mechanism is needed whereby residents can pay the DPW to "adopt-a-light" and the town can use the proceeds to continue operating sponsored street lights. We apologize for the delay in providing a written response.

We see no reason under municipal finance law why the town cannot accept gifts from town residents who wish to assume the cost of keeping particular street lights illuminated. Under G.L. c. 44, § 53A, "[a]n officer or department of any ... town ... may accept grants or gifts of funds from ... an individual ... and ... may expend such funds for the purposes of such grant or gift ... with the approval of the board of selectmen." Cash so donated "shall be deposited with the treasurer of such ... town ... 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." *Id.* Therefore, the DPW could accept a gift earmarked for the operation of a street light and pay the corresponding cost out of the gift account with the approval of the selectboard without appropriation.

Any difficulties with using gifts for the "Adopt-a-Light" program seem to us to be mostly administrative in nature. The town should develop policies and procedures to ensure the program is implemented smoothly. With respect to municipal finance law, the town may not spend in excess of its appropriations, gifts, grants or other financing sources. G.L. c. 44, § 31. Accordingly, the DPW would need to match gifts with the particular street lights intended to be illuminated thereby and be assured of having gift funds available in order to incur obligations to pay the electric utility company over and above the amount appropriated for that purpose. Pre-payment of the amount needed for each "adopted" street light would be necessary in advance of the billing period for which the electric utility company would illuminate the light. The town would also have to arrange with the electric utility company to have designated street lights turned on or off depending on the availability of adequate funds to illuminate it for a given billing cycle.

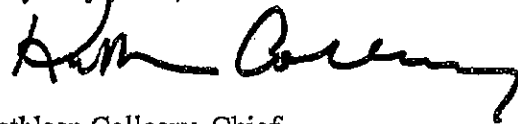
MaryAnne M. Gibbs
Town Accountant
Town of Dennis
Page Two

Program participants would need to be diligent in making their donations. If a resident signifies intent to participate in the program but fails to make the necessary advance donation at any point, the "adopted" street light could not be operated without other available funds to illuminate it. A question arises as to whether the Town would undertake to "bill" participating residents to ensure the timely receipt of their donations. If so, which town officer would be responsible for sending out "billing notices" so as to ensure receipt of the necessary funds to "adopt-a-light," and on what schedule? These are the types of questions that may need to be addressed in the policies and procedures the town develops for the program.

In sum, "Adopt-A-Light" gifts would enable residents to pay, in advance of the relevant billing periods, to operate street lights which would otherwise be dark given the available appropriation. The active cooperation of the selectmen, DPW, treasurer and accountant, would be needed to carry out the program plan.

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".

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC:DG

CASE STUDY 6

FEES AND GENERAL OR SPECIAL FUND ACCOUNTING

The municipal golf course has proven quite successful as of late. In fact, the total annual greens fees and other associated revenues have substantially surpassed the amount of the annual operating appropriation for the course. (The golf course remains a traditional general fund program.) Certain citizens have claimed the fee structure is excessive and illegal and have clamored for fee reductions. These citizens have requested that DOR review the fee structure and financial and accounting procedures. They insist the course must be run as an enterprise fund so as to identify all expenses.

Questions:

- 1.) Must fee based recreational programs be accounted for in an enterprise fund? What other special fund options might be available for the golf course?
- 2.) Is there a different test for the legality of fees run through an enterprise fund rather than the General Fund?
- 3.) Generally, what are the standards for testing the legality of user fees?
- 4.) What are the appropriate costs that may be taken into consideration in setting the greens fees and other golf course related charges?
- 5.) Is a payment-in-lieu of tax to the municipality a proper expense to consider in developing a fee structure?

(See Letter Opinion – Our File No. 2010-56)

Massachusetts Department of Revenue Division of Local Services

Navjeet K. Bal, Commissioner Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



March 30, 2010

Cranberry Valley Golf Course Committee
Town of Harwich
183 Oak Street
Harwich, MA 02645

Re: Golf Course Revenues
Our File No. 2010-56

Dear Committee Members:

This is in reply to your letter regarding golf course revenues. You claim "excess earnings" are being used by the town for non-golf course purposes. We understand that the town currently budgets all course revenues in the general fund so that the committee's annual operating appropriation is made from the levy ("raise and appropriate"). By excess earnings, we assume you mean the estimated revenue from fees and other receipts generated by the course that exceed the course's annual appropriations.

You requested that the Department of Revenue direct the town to cease its current practice of accounting for golf course revenues. We are not aware of any law that prohibits the town from accounting for golf course fees and other revenues in the general fund. On the contrary, the revenues belong to the general fund, G.L. c. 44, § 53, unless the town has opted to use one of several special revenue funds that allow it to segregate and separately account for them. See, e.g., G.L. c. 40, § 5F; c. 44, §§ 53D, 53E, 53E½ and 53F½.

With respect to the town practice of setting golf course fees to recover a payment in lieu of taxes, the Department of Revenue does not have any regulatory authority over municipal fees and therefore, we cannot direct the town to cease this practice either. Under state law, cities and towns have broad authority to impose fees. In most cases, as here, communities may set and collect a particular fee without approval of any state agency. Those aggrieved by the imposition of the fee would have to bring a legal action to challenge its validity.

You noted that one of the characteristics of a fee that distinguishes it from a tax is that it is collected to compensate the governmental entity for its costs, not to raise revenue generally. *Emerson College v. City of Boston*, 391 Mass. 415 (1984). However, depositing a charge in a municipality's general fund instead of a special purpose fund is not decisive in determining whether the charge meets that legal standard. The courts look at whether the charge is reasonably designed to compensate the municipality for its anticipated costs in providing the service. *Silva v. Attleboro*, 454 Mass. 165 (2009). In that regard, the municipality may set fees to recover all anticipated direct and indirect costs, not just those found in any particular annual budget of the department responsible for the service. From an accounting perspective, a payment in lieu of taxes is considered a proper expense for a municipal proprietary service, such as operating a golf course. The appropriate amount depends on the type and amount of property used to provide the service. As a legal matter, however, it is not yet known whether the courts would regard such a payment as part of the cost of providing the service.

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

Very truly yours,

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC

CASE STUDY 7

APPLICATION FEES - DISPOSITION OF REVENUE

The local board of health and planning board are considering raising the application fees they charge applicants for certain permits and licenses. The boards have the following questions for the town accountant.

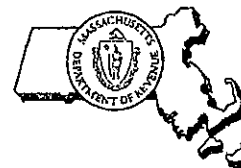
Questions:

- 1.) Will these funds be automatically available for their use in processing the applications?
- 2.) Also, if the additional funds are not automatically available for the board, by what vote, by-law or statute may they be retained by the boards for use in processing the applications?

(See Letter Opinion - Our File No. 2009-792)

Massachusetts Department of Revenue Division of Local Services

Navjeet K. Bal, Commissioner Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



January 27, 2010

Curt T. Bellavance, Director
Community Development Division
1600 Osgood Street
North Andover, MA 01845

Re: Application Fees
Our File No. 2009-792

Dear Mr. Bellavance:

This is in reply to your letter asking our opinion about the extent of the authority of municipal regulatory boards, such as the planning board, zoning board of appeals and board of health, to set or waive application fees where the town has not accepted G.L. c. 40, § 22F. That statute permits department heads to set fees for services rendered or work performed for individuals or for certain licenses, permits or certificates. We have also received a related inquiry from the chairman of the town's zoning board of appeals.

Although we come across issues concerning various municipal fees and charges in the course of reviewing and overseeing municipalities' fiscal situations, the Department of Revenue has regulatory responsibility only for municipal taxes and excises, and for accounting and borrowing. We have no supervisory role over the boards you mentioned, or over their fees. Our comments in response to your letter must therefore be general with respect to the various boards, and strictly advisory.

As far as the general laws are concerned, local regulatory bodies may have inherent power to impose reasonable application fees to cover the administrative cost of processing applications, even in the absence of a statute or by-law authorizing those fees. See *Southview Co-operative Housing Corporation & others vs. Rent Control Board of Cambridge*, 396 Mass. 395. The general law that authorizes a revolving fund for fees charged to pay outside consultants to review certain applications, G.L. c. 44, § 53G, refers to fees set by planning boards, zoning boards, boards of health, and conservation commissions acting under particular statutes. The language of § 53G seems to assume that the specified statutes authorize the imposition of the fees. It is clear, however, that § 53G itself does not authorize those fees. It authorizes only the use of a revolving fund to account for and spend the fees, exempting them from the otherwise applicable requirement of G.L. c. 44, § 53 that they be credited to the general fund and spent only by appropriation.

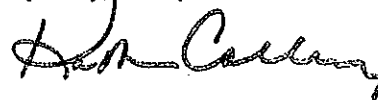
We are not aware of any general law that addresses the issue of waivers or exemptions from regulatory application fees, or what limitations may apply to such waivers and exemptions in a fee schedule promulgated by a regulatory board. We also venture no opinion on whether town meeting, the board of selectmen, or other town officials or boards may have a role in setting or approving such fees under the town charter or by-laws. These matters should be discussed with town counsel.

Curt T. Bellavance, Director
Community Development Division
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With respect to accounting for the application fees, a regulatory board must turn over the fees to the treasurer "upon their receipt." G.L. c. 44, § 53. As a general rule, this means promptly and in most towns, departments are expected to make turnovers at least once a week. Any waiver or abatement of a fee already paid would generate a refund, which would be charged against the receipts of the fiscal year in which the refund is paid, irrespective of the fiscal year in which the fee was originally paid to the town. This is how motor vehicle excise and other abatements are handled, except for abatements of property taxes for which an overlay account is established by statute. See G.L. c. 59, §§ 25 and 70A.

We hope this information proves helpful.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen Colleary".

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC: CH

CC: Albert P. Manzi, III, ZBA Chairman
Carol McGravey, Town Counsel

CASE STUDY 8

LAWFUL APPROPRIATIONS

At the annual town meeting, various appropriations were made to assorted charitable organizations. The town meeting voted \$5,000 to Hospice; \$2,500 to the South Shore Women's Center, and \$2,500 to the Mental Health Association.

- A. Were these appropriations permissible under Massachusetts law?
- B. If these expenditures are not permissible, how could the town meeting votes be worded to allow payment to these charitable organizations?

Article 46 §2 of the Articles of Amendment to the Massachusetts Constitution

Opinion of the Justices, 357 Mass. 836 (1970)

G.L. Ch. 41 §56

CASE STUDY 9

TAX TITLES

The treasurer has been receiving pressure from the selectmen to “clear up” the numerous tax title accounts. In fact, the treasurer’s performance review will be determined primarily on his improvement of the town’s cash flow position.

- A. The treasurer met with a law firm to work on tax title foreclosures. The lawyers were concerned about delays in payment since tax foreclosure can take a long time to resolve. The lawyers suggested any money realized from tax title redemptions or from the sale of tax possessions should be placed in a revolving fund with the money used to pay Land Court filing fees and legal salaries. Can the accountant and treasurer establish such an account?
- B. Two of the parcels were of very modest value and the treasurer obtained and recorded a Land of Low Value affidavit from the Commissioner of Revenue. The treasurer held a Land of Low Value foreclosure auction. The first parcel valued at \$8,500 with a tax title of \$2,400 was sold at auction for \$10,000. The second parcel valued at \$5,000 with a tax title of \$1,700 was sold for \$5,000. How should the amounts from the auction (\$10,000 and \$5,000) be entered on the town’s financial records?
- C. The selectmen praised the treasurer for his efforts over the year. They decided to give him a \$10,000 bonus. Should the accountant approve payment?

G.L. Ch. 59 §23

G.L. Ch. 60 §79

G.L. Ch. 40 §5

CASE STUDY 10

LITIGATION

The town manager, the accountant, the finance committee and local residents met at town hall to discuss the possible implementation of enterprise fund accounting for several town departments. The discussion became heated. When the meeting concluded, the town manager was confronted by a citizen in the parking lot.

- A. The citizen filed a complaint against the town manager with the board of selectmen for battery. The town manager hired a private attorney to defend him against the charges. The town manager submitted a bill for legal services. Can the accountant approve payment?
- B. A \$15,000 settlement has been reached with the citizen. The accountant learned of this when the selectmen submitted a voucher for payment. Can the accountant approve the expenditure?

G.L. Ch. 40 §5

Lawrence v. McAlvin, 109 Mass. 311 (1872)

Whelan v. Hingham, 348 Mass. 402 (1965)

G.L. Ch. 44 §31

CASE STUDY 11

BOND PROCEEDS

In 2004 town meeting authorized a borrowing of seven million dollars to design, construct and equip a new police station. A Proposition 2½ debt exclusion was approved by the voters. The police department moved into the new building in 2005. Of the seven million dollars borrowed, there is now an unexpended, unencumbered balance of \$120,000.

- A. The old communications equipment and antenna were moved to the new building. In 2011 the new police chief was hired and he is interested in purchasing new communications equipment. Can the police now purchase communications equipment and charge this capital purchase to the \$120,000 bond proceeds balance? What action should the accountant take if the purchase price for the new equipment is \$135,000?
- B. The police chief decided to keep the old equipment but he is now interested in using the \$120,000 balance to hire and train new police officers. Can town meeting approve the transfer of the \$120,000 for new hires?

G.L. Ch. 44 §20

CASE STUDY 12

RESERVE FUND

The finance committee has received several requests for reserve fund transfers and the fiscal year has only just begun. The town meeting appropriated \$250,000 for the reserve fund and there have been no expenditures as of this date.

- A. The school committee reported that a boiler in the intermediate school had failed. Repairs are estimated to cost at least several thousand dollars. A new boiler, however, would only cost \$20,000. Can the town meeting transfer money to repair the boiler? Can the finance committee transfer \$20,000 to install a new boiler? What would be your answer if town meeting last spring had rejected the boiler purchase request from the school superintendent?
- B. Town meeting in the spring had adopted G.L. Ch. 41 §38A thereby making the tax collector a town collector who is responsible for collecting all accounts due the town. The new town collector had underestimated the number of bills which would have to be sent to residents. He has requested money from the finance committee to fund a new full-time position in the collector's office. Can the finance committee fund the new position?
- C. The assistant town accountant has retired. There is an unencumbered balance in the assistant accountant's salary line item. Can the accountant hire a new office worker who would be paid wages at an hourly rate and charge the wages to the assistant accountant's salary line item? Should the reserve fund be used?

G.L. Ch. 40 §6

CASE STUDY 13

MITIGATION PAYMENTS

A parcel on Main Street has been viewed as a good site for economic development. The property, however, was zoned for agricultural and suburban use. At an open town meeting in May 2010, a proposal to rezone the parcel was discussed. The Acme Corporation presented its plan to build a power plant and publicly promised to give eight million dollars to the town upon construction of the power plant. Town officials endorsed the rezoning and the article passed by more than two-thirds vote of the town meeting. Lengthy negotiations then took place between Acme Corporation and the town officials as to the size of the power plant. A final agreement was ultimately reached and Acme Corporation received special permits from the town's Zoning Board of Appeals.

- A. Ten taxpayers who owned property abutting the parcel filed a lawsuit in Land Court. They challenged the rezoning of the parcel and alleged the town meeting vote was invalid since the corporation had offered to give eight million dollars to the town in return for a change in zoning. Was the rezoning valid? If valid, how should the accountant list the eight million dollar payment in the ledger? As a gift or grant?
- B. In the course of negotiations with town officials, Acme Corporation agreed to convey for nominal consideration a three acre parcel which would be ideal for an elementary school. Could local officials require acquisition of real estate by the town without a town meeting vote?
- C. Can town officials require a developer to build a new fire station on town owned land?

Durand v. IDC Bellingham, LLC, 440 Mass. 45 (2003)

G.L. Ch. 40 §14

G.L. Ch. 149

Andrews v. City of Springfield, 75 Mass. App. Ct. 678 (2009)

CASE STUDY 14

PROPER ACCOUNTING ENTRIES

In a telephone conversation with a lawyer at the Division of Local Services, the town accountant inquired what accounting entries should be made in the following situations.

- A. In September 2011 the largest taxpayer in town received a favorable decision from the Appellate Tax Board which granted abatements for the last three fiscal years (fiscal years 2009, 2010 and 2011). The taxpayer is entitled to refunds since the taxes were fully paid. He also wants interest on the refunds. To what account should the abatements be charged? To what account should interest be charged? What would your answer be, if the town did not budget properly for this situation?
- B. The school department is considering the implementation of fees for non-mandatory school bus service, school parking fees, pre-school and after-school programs.
- C. The collector reported that a member of his staff had inadvertently failed to list outstanding fiscal year 2011 taxes on municipal lien certificates. The collector believes the taxes are now uncollectible and wants the accountant to make audit adjustments to reduce the outstanding fiscal year 2011 real estate tax balance in the ledger.

G.L. Ch. 58A §13

G.L. Ch. 59 §23

G.L. Ch. 59 §70A

G.L. Ch. 59 §69

G.L. Ch. 71 §47

G.L. Ch. 44 §53E½

G.L. Ch. 60 §23

CASE STUDY 15

APPROPRIATIONS

The board of selectmen met in September to discuss several issues.

- A. The town received a substantial settlement from a class action lawsuit. The selectmen wish to lock-up the money so that new town hall/police station can be constructed. Can you suggest how the selectmen could achieve this objective?
- B. A movie production crew has been filming scenes in the town. The film has been completed and the selectmen are considering hosting a "meet and greet" with members of the film crew and local residents. The selectmen decided to notify a catering business of the planned reception. Can the accountant approve this expenditure? Would your answer be the same, if the caterer were the "Ultra-Deluxe Catering Company"?
- C. The board of selectmen has a line item for community events. For the annual town picnic the selectmen believe entertainment should be provided and they made inquiries to various entertainment organizations. Noted jazz trumpeter Chris Botti has expressed a willingness to attend. His management agency, however, has requested a substantial advance payment for the concert. Can the selectmen pre-pay for the Chris Botti concert?

G.L. Ch. 40 §5B

G.L. Ch. 41 §56

REFERENCES

Article CIII. Article XLVI of the Articles of Amendment to the Constitution of the Commonwealth is hereby amended by striking out section 2 and inserting in place thereof the following section:-

Section 2. No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth or federal authority or both, except that appropriations may be made for the maintenance and support of the Soldiers' Home in Massachusetts and for free public libraries in any city or town and to carry out legal obligations, if any, already entered into; and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society. Nothing herein contained shall be construed to prevent the Commonwealth from making grants-in-aid to private higher educational institutions or to students or parents or guardians of students attending such institutions.

G.L. Ch. 60 §79 *...If the amount received from the sale is more than the taxes, interest and charges including the payment of fifty dollars to a city or town as the legal fee for proceedings under this section, and subsequent taxes and assessments, on all lands included in the sale, together with the expenses thereof, the balance shall be deposited with the town treasurer to be paid to the person entitled thereto if demanded within five years, otherwise it shall enure to the town. If such surplus results from the sale of several parcels for a lump sum, it shall be held as aforesaid for the several owners in proportion to the prices at which the several parcels were originally taken or purchased by the town.*

G.L. Ch. 44 §31 *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.*

G.L. Ch. 44 §20... If a balance remains after the completion of the project for which the loan was authorized, such balance may at any time be appropriated by a city, town or district for any purposes for which a loan may be incurred for an equal or longer period of time than that for which the original loan, including temporary debt, was issued.

G.L. Ch. 40 §6 To provide for extraordinary or unforeseen expenditures, a town may at an annual or special town meeting appropriate or transfer a sum or sums not exceeding in the aggregate five per cent of the levy of the fiscal year preceding the fiscal year for which the fund, to be known as the reserve fund, is established. No direct drafts against this fund shall be made, but transfers from the fund may from time to time be voted by the finance or appropriation committee of the town, in towns having such a committee, and in other towns by the selectmen; and the town accountant in towns having such an official, and in other towns the auditor or board of auditors, shall make such transfers accordingly.

G.L. Ch. 40 §14 The aldermen of any city, except Boston, or the selectmen of a town may purchase, or take by eminent domain under chapter seventy-nine, any land, easement or right therein within the city or town not already appropriated to public use,...but no land, easement or right therein shall be taken or purchased under this section unless the taking or purchase thereof has previously been authorized by the city council or by vote of the town, nor until an appropriation of money, to be raised by loan or otherwise, has been made for the purpose by a two thirds vote of the city council or by a two thirds vote of the town...

G.L. Ch. 41 §56 ... 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.