



2022 Municipal Law Seminar WORKSHOP C Accounting Issues

DISCUSSION SUMMARY (Prepared For Informational and Training Purposes Only)

This summary of the informal discussion presented at Workshop C is provided for educational and training purposes. It does not constitute legal advice or represent Department of Revenue opinion or policy, except to the extent it reflects statements contained in a public written statement of the Department of Revenue.

EXCEPTIONS TO THE GENERAL RULE AGAINST PREPAYMENT

1. Do the following expenses violate the rule against prepayment?

a. Attorney's retainer.

This is not a permitted expense because it violates the prepayment rule. [G.L. c. 41, § 56](#) states "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." An attorney's retainer is prepaying legal expenses before services are rendered and is therefore not permissible.

b. Attorney's invoice for services rendered.

This does not violate the rule against prepayment because services have been rendered.

c. A deposit to Referees R Us, which takes town money and pays officials who referee sports, games, and the like. Referees R Us acts as a clearinghouse requiring a minimum account balance on deposit from Town.

This is not a permitted expense since it violates the prepayment rule as it requires payment in advance of receiving services. [G.L. c. 41, § 56](#).

- d. Advance payment for a police officer to attend an FBI training on active shooter prevention and response in Pennsylvania.

Advance payments may be made for the necessary expenses of municipal officers and employees outside or within the Commonwealth in securing information upon matters in which the community is interested or may tend to improve the services in such department, which includes training programs. Any payment, however, must be made pursuant to a duly authorized warrant. [G.L. c. 44, § 66](#) allows employee advances for training programs with the Selectboard or Mayor approval, as the case may be, per [G.L. c. 40 § 5\(34\)](#). Though § 34 is no longer written in statute, to the general principle expressed therein are still valid. [August 4, 2022 City & Town](#), Ask DLS: Prepayment.

- e. Partytown, Massachusetts would like to prepay for event space for the town's anniversary celebration.

This expense violates the rule against prepayment. [G.L. c. 41, § 56](#).

- f. Town would like to purchase gift cards for purchasing supplies for two town activities.

Gift cards represent pre-payment for goods and services, which is not allowed. [G.L. c. 41, § 56](#). Additionally, there is no record of what supplies are purchased once the gift card is in hand. There is serious potential for abuse (i.e. spending without appropriation).

- g. Green Oak Town Park Division wants to pay upfront or prepay deposits and full payments to hold camp spots for camps that will be conducted in August, in the next fiscal year.

This expense violates the rule against prepayment. [G.L. c. 41, § 56](#). Additionally, [G.L. c. 44, § 31](#) requires that there be a certification of available funds before an appropriation can be committed. Since town has not yet adopted its budget, there is no way it can certify funds for next fiscal year's requested appropriations.

- h. Technology Town agreed in a written, signed contract with Apple to prepay for 100 computers to update town hall's technology. May the upfront payment be made?

Even if the pre-payment provision is in the contract with the town, it is unenforceable since it conflicts with the prepayment rule. [G.L. c. 41, § 56](#).

- i. Member of the town building committee requested payment from the accountant to the contractor as a "mobilization fee" so the contractor could move supplies and eventually install a roof on a municipal building as part of agreement with the town.

This expense violates the rule against prepayment. [G.L. c. 41, § 56](#).

- j. The school department needs to order tents to be delivered sometime in September. The vendor refuses to reserve the order unless he receives a check in advance for approximately \$8,000. The vendor does not accept purchase orders because many municipalities have cancelled at the last minute. Is this an acceptable charge due to unusual circumstances?

This is not a permitted expense because it violates the prepayment rule. [G.L. c. 41, § 56](#). There is no contingency in [G.L. c. 41, § 56](#) allowing prepayments to be incurred in “unusual circumstances.” Municipalities may not prepay or pay upfront or in advance; delivery is a condition of payment.

2. Bill Nye the science teacher at Rocky Road Elementary School has requested his salary payments be made during the summer. May the school oblige this request?

While the Department of Elementary and Secondary Education (DESE) has jurisdiction over teacher salary payment questions in Chapter 71, with respect to how payments are made to teachers over the summer, Massachusetts General Law [Chapter 71, § 40](#) provides that "The compensation paid to ... teachers shall be deemed to be fully earned at the end of the school year, and proportionately earned during the school year. Payment of such compensation may be deferred to the extent that equal payments may be established for a twelve-month period including amounts payable in July and August subsequent to the end of the school year."

3. Town would receive a more advantageous price if it prepaid for a new fire engine. May Town prepay for the fire engine?

The rule against pre-payment applies to preclude the town from taking up this deal. [G.L. c. 41, § 56](#). However, sometimes fire equipment may be contracted for in stages. Each component as completed could vest title to that component in the town, enabling payment to take place piecemeal as parts are finished successively. A progress payment may be made toward the manufacturing and customization of a fire truck as title to and delivery of what is being paid for are taken, as discrete segments of the process are completed. More specifically, DLS has advised that a partial payment may be made for the acquisition of title to the chassis of a fire truck before the fire truck is finished and final delivery is taken. [August 4, 2022 City & Town](#), Ask DLS: Prepayment.

4. A DEP grant of \$5,000 was awarded to the local DPW for the purchase of water kiosks for residents due to high levels of PFAS in the community's water. According to the grant terms, the funds must be spent by June 30, 2023, or the town loses the grant funds. Assume it is June 15, 2023 and DPW is wondering whether it can prepay for the water kiosks so the grant money does not expire.

Prepayment of goods and services is generally prohibited, per [G.L. c. 41, § 56](#). Prepayment for the spending purpose here would not be allowed. The municipality may consider whether an encumbrance would be feasible in these circumstances, whether the town can enter into a valid contract for the purpose prior to June 30, 2023.

5. Alexander Hamilton School would like to prepay for the costs of special education tuition for students for three months into the next fiscal year.

This is allowed as an exception to the rule against prepayment. [Chapter 71, § 71D](#) authorizes pre-payment of up to three months tuition from funds of the last fiscal year in order to cover special education instructional costs in the new fiscal year. [August 4, 2022 City & Town](#), Ask DLS: Prepayment.

6. School committee would like to prepay money for an education collaborative program.

This is allowed as an exception to the rule against prepayment. General Law [Chapter 40, § 4E](#). A school committee of a city, town or regional school district or charter school board may authorize the prepayment of money for an educational program or service of the education collaborative to the treasurer of an education collaborative. [August 4, 2022 City & Town](#), Ask DLS: Prepayment.

7. The town of Relaxville would like to prepay its employees up to two weeks of vacation pay each year.

This is allowed as an exception to the rule against prepayment. By local option, a town must first accept [G.L. c. 44, § 65](#) by vote of the city council, with the approval of the mayor, in a city and by a town meeting in a town. If duly adopted, a town may prepay salary for upcoming vacation. If accepted, the statute grants the treasurer discretion to make such payments pursuant to such regulations as the treasurer may make.

ENCUMBRANCES

8. One sunny January morning after a fresh powdery snowfall, three skiers load themselves into a gondola while traveling up the slopes of the Matterhorn in the Swiss Alps. They exchange pleasantries and discover that they are all accountants. The discussion becomes heated as they discuss the proper treatment related to year end closing of municipal books in Massachusetts. Which accountant's analysis is correct?
 - a. The smug Big Accounting Firm partner emphatically declares that municipal books in Massachusetts must close on December 31 as that is the last day of the year and that financials need to be dated as of December 31, but that amendments may be made thereto until January 31.
 - b. The Regional Accounting Firm associate claims that the appropriate date is June 30, explicating further that the Treasurer must encumber all items for the payment of bills incurred and salaries and wages earned during the previous fiscal year by June 30 and that all transfers need to be made by June 30 in order to avoid any year-ending appropriation deficits.
 - c. The newly hired Assistant Town Accountant in Scenictown Massachusetts states that the appropriate date to close the books is June 30. Further stating that July 15 is the deadline by which any obligations arising through June 30 are determined for purposes of charging or encumbering operating appropriations. It is also the date by which any transfers needed to avoid any year-ending appropriation

deficits must be made by (1) the legislative body, (2) the school committee from the line items it established within its annual appropriation, (3) the finance committee from the finance committee reserve fund or (4) the selectboard and finance committee under the alternative year-end transfer procedure.

Per [G.L. c. 44, § 56](#), Answer C is the correct response. June 30 is the last day of the fiscal year and July 15 is the deadline for encumbering appropriations.

9. May a department's current year appropriation be encumbered for the following expenses:

a. Office supplies ordered at the end of the year for use next year.

Purchases of goods, materials and supplies by a municipal department are charged to the appropriation of the year the liability is incurred, i.e., the year the order is placed, even if all or some of the supplies will be used next year. The school department, however, may charge such purchases made after next year's budget is approved to that year's appropriation, but cannot pay the bill until after July 1. [G.L. c. 71, § 49A](#). However, effective November 24, 2022, schools may make such a payment in this situation prior to the ensuing fiscal year for expenses described in [G.L. c. 71, § 49A](#). [St. 2022, c. 198, § 10](#).

b. Salt and sand for snow operations ordered at the end of the year for use next year.

Yes. Purchases of goods, materials and supplies by a municipal department are charged to the appropriation of the year the liability is incurred, i.e., the year the order is placed, even if all or some of the supplies will be used next year.

c. Services to be performed entirely next year.

No. Services that will be performed entirely next year must be charged to that year's appropriation.

d. Recurring expenses of subscriptions or leases spanning both the current fiscal year and into next fiscal year.

Yes, this year's budget may be charged or encumbered to pay bills for services or recurring expenses performed in both years, e.g., leases, membership dues or subscriptions. No more than 12 months of services or recurring expenses should be charged to any year's budget. [June 2, 2022 City & Town](#), Ask DLS: Encumbrances.

e. Prepayment of special education or educational collaborative tuitions.

The school department may also charge this year's budget for prepayment of special education or educational collaborative tuitions, even though the services will be performed next year, e.g., a bill for special education tuitions for July 1 to September 30 that is due June 30. [August 4, 2022 City & Town](#), Ask DLS: Prepayment.

10. If money was included in departmental salary appropriation items to cover expected raises from collective bargaining agreements during the year and the year ends without ratified agreements, may the funds be encumbered until the contracts are settled?

Not if negotiations are still ongoing as of June 30 as there is no contractual obligation to pay any additional amounts to employees. This applies to monies appropriated in salary line items or a collective bargaining reserve voted to fund amounts owed in that particular fiscal year after the contracts were settled.

If a contract is settled and ratified by union members by June 30, however, the money is available until July 15 for transfer to fund the first year cost items of contracts or appropriation or transfer by the legislative body to fund the first year cost items of other contracts. [June 7, 2018 City & Town](#), Ask DLS: End of Fiscal Year – Part 1.

11. Town has a special purpose appropriation to purchase a new ambulance. Does the full amount of the special purpose appropriation need to be encumbered?

Special purpose appropriations are not confined to a particular fiscal year, and therefore, remain open until the purpose is fulfilled or abandoned. There is usually no need for encumbrances against such an appropriation because the appropriation has no predetermined expiration date. [G.L. c. 44, § 56](#).

12. Town is planning to spend \$100,000 to upgrade a computer software system. Responses to the RFP from vendors are not due to be received until August 1 and a contract will be made at that time with the lowest responsive and responsible bidder. May the \$100,000 be encumbered?

Encumbrances should not be based merely on a department's planned or intended expenditures. No encumbrance is tenable unless another party had acquired enforceable rights to payment under a municipal contract. Thus, the amount of an outstanding purchase order that has been placed with a vendor by June 30 should be encumbered. However, the amount of a prospective purchase that has gone out to bid by June 30 but for which no contract exists cannot be encumbered. [G.L. c. 44, § 56](#).

13. May a town encumber funds to pay for utility services such as electricity bills?

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. However, 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 DLS' 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 DLS believes 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. [G.L. c. 44, § 56](#); [June 2, 2022 City & Town](#), Ask DLS: Encumbrances.

14. May a town encumber funds where no appropriation exists, but the town and vendor have entered into a contract for the services?

No, an encumbrance is the accounting device used to ensure annual operating appropriations are not closed when employees and vendors have outstanding and enforceable contractual claims against those appropriations. With limited exceptions, municipal officers cannot incur contractual liabilities without a sufficient appropriation. [G.L. c. 44, § 31](#); [G.L. c. 41, § 58](#).