



## 2023 Municipal Law Seminar MINI WORKSHOP C Special Funds and Legislation

### 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.

#### Gifts

1. Your town is being offered a gift of real estate – specifically, a single-family home in a remote part of town that sits on a 10 (ten) acre undeveloped lot. The donor intends that the real estate be for the general use of the town government and its agencies.

- a. How would this gift be accepted?

**A conservation commission may receive gifts, bequests or devises of personal property or interests in real property such as land or water rights, conservation restrictions, easements or other contractual rights as may be necessary to acquire, maintain, improve, protect, limit the future use of or otherwise conserve and properly utilize open spaces in land and water areas within its city or town in the name of the city or town, subject to the approval of the city council in a city or of the selectmen in a town.**

**Otherwise, acceptance of a gift of real property is by the legislative body.**

- b. What issues should be considered in deciding whether to accept this gift?

**The property will come off the tax rolls, likely permanently. There will be maintenance costs and the source of those funds should be known in advance of accepting. The planned use of the property should also be established before accepting, as the planned use must conform with the grantor's donative intent.**

- c. What if the donative intent is “for operation of a haunted house at Halloween time, no modifications or additional decoration required”?

**Municipalities should evaluate the condition of the property and any anticipated costs and problems in advance of deciding whether to accept.**

2. A citizen contacts the Town Accountant concerning a cash donation they had made, which the Town accepted through the Director of Parks and Recreation, for placement of a memorial bench and plaque for one of citizen's friends. After the accountant investigates, it does not appear the funds in the relevant account are adequate to cover the cost of constructing a bench.

- a. What do you do?

**The Town could always determine whether there are other Town funds available to supplement the gift in order to fund the bench, so long as the expenditure is for a public purpose. If your town has accepted the Community Preservation Act, revenues from the surcharge may be a potential source. The bench probably serves a public purpose so long as it is placed in a public space such as a park; whether a memorial plaque serves a public purpose is less clear.**

**The Town may investigate whether it can return the funds to the donor consistent with the terms and/or intent of the gift and its by-laws and charter. It may also be possible to modify the donative intent to match the scope of funds available.**

3. A citizen learns that new automated defibrillator device (AED device) is twice as safe as the equipment their fire department currently has. The citizen walks into the fire house and offers the Chief a check with the memo line reading "for donation of 5 new AEDs".

- a. What should the Chief do?

**Where the official expected to accept the gift is not specifically stated in the bequest, the appropriate acceptor is ascertained based on the nature of the gift itself and the donative intent, so the Chief is an appropriate official here. Acceptance by the Chief is subject to subsequent expenditure approval by the selectboard or city council.**

- b. What if the purpose of the gift was for purchase of a new set of golf clubs for the Chief out of appreciation for their service and to encourage their physical fitness and healthy state of mind?

**Gifts should be for a public purpose and to promote the goals and mission of the relevant department. The Chief should know not to accept, and the selectboard or city council should not approve an expenditure to this end if the Chief did accept. Because no public funds are expended, the public purpose doctrine does not strictly apply, but other ethical issues may be implicated.**

[G.L. c. 40, s. 8C](#)  
[G.L. c. 44, s. 53A](#)  
[G.L. c. 44, s. 53A1/2](#)  
[G.L. c. 44B, s. 7](#)

## Stabilization Funds

1. Your town decides that it's time to finally allow a local entrepreneur to go ahead with their big plan to build "The Commonwealth Resort & Casino & Cannabis Dispensary & Motion Picture Studio". The plan features hotel rooms, restaurants, retail space (cannabis and otherwise) and gambling. But there is some concern that this audacious plan could incur public safety, public health and public infrastructure impacts that are not easily anticipated.
  - a. What could your town do about the impacts and costs that may not be easily foreseen?

**Your town may consider dedicating at least some of the additional revenues from construction of this entertainment megaplex to one or more stabilization funds. Those additional sources of revenue may include community impact fees from Host Community Agreements, including both casino and cannabis agreements.**

**There are multiple local option statutes a town may adopt in order to raise additional revenue that may apply here. Acceptance of [G.L. c. 64G, § 3A](#) entitles a city or town to collect a hotel room excise tax. Acceptance of [G.L. c. 64L, § 2](#) entitles a city or town to collect a meals excise tax from restaurants. Acceptance of [G.L. c. 64N, § 3](#) allows a city or town to collect an excise tax on marijuana sales at dispensaries licensed in their jurisdiction.**

**Any of these revenues may be dedicated to one or more general or special purpose stabilization funds, so long as such funds are properly created and at least twenty-five percent (25%) of any given stream of revenue is dedicated to the fund. Stabilization funds could be set up and expended to abate impacts to the community, such as increased traffic, public safety enforcement, pollution or crime. Funds in a stabilization account may only be expended upon a two-thirds vote of the legislative body.**

[G.L. c. 23K, s. 15](#)  
[G.L. c. 40, s. 5B](#)  
[G.L. c. 64G, s. 3A](#)  
[G.L. c. 64L, s. 2](#)  
[G.L. c. 64N, s. 3](#)  
[G.L. c. 94G, s. 3](#)  
[LFO-2022-4](#)

## Special Education Stabilization Funds

1. A new therapeutic approach emerges that will enable a substantial proportion of special education students that typically spend significant parts of the school day in counselling services to be fully integrated into the general education program without interruption. The initial cost of providing these services is quite high, but they are so effective in enabling students to fully participate in the general education program your school district concludes they must be implemented immediately pursuant to the obligation to educate students in the least restrictive setting.
  - a. If this happened today, how could a school district account for the added cost of services?

**If the town has established a special education stabilization fund, it could use those funds to cover these additional costs. In fact, special education stabilization funds may be used only for unanticipated, unbudgeted costs relative to special education services and recovery high schools, transportation, and out-of-district placements. Special education stabilization funds are funded by appropriation or transfer, and the balance cannot exceed 2% of the district's net school spending.**

**Expenditures of special education stabilization funds are by a majority of the school committee and a majority of the selectboard or city council.**

[G.L. c. 40, s. 13E](#)