



2023 Municipal Law Seminar WORKSHOP E Treasurer and Collection Issues

DISCUSSION SUMMARY (Prepared For Informational and Training Purposes Only)

This summary of the informal discussion presented at Workshop E 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.

TRANSFERRING MUNICIPAL HEALTH INSURANCE SUBSCRIBERS TO COVERAGE THROUGH THE GROUP INSURANCE COMMISSION

1. With respect to Public Employee Committees (PEC) created pursuant to [G.L. c. 32B, s. 19](#) or [G.L. c. 32B](#), ss. [21](#), [22](#) and [23](#) for the purpose of joint bargaining among all unions and the town on terms and conditions under which changes may be made to health insurance plan design or the terms and conditions under which municipal subscribers shall be transferred to coverage through the Group Insurance Commission (GIC), decisions of the PEC are made by a weighted majority vote where each bargaining unit has a weighted vote according to the proportion of employees in its bargaining unit versus the entire body of town employees.
 - a. Where there are 500 employees total covered by a PEC, and 220 are in the teachers bargaining unit, 30 are in the paraprofessionals bargaining unit and 20 are in the school administrators unit, all of which are part of the same local teachers union, what is the probable result of any vote of the PEC?

Where a PEC covers an employee base that is composed of a majority of school employees all represented by the same union, it is likely those members will control the result of any PEC vote. Indeed, the majority of retired employees may be former school employees, as well, and the retired employees have a fixed ten-percent (10%) weighted vote in decisions of the PEC. That is consistent with the schemes created by [G.L. c. 32B, s. 19](#) and [G.L. c. 32B](#), ss. [21](#), [22](#) and [23](#) that require majority will of the PEC in decision-making, on a weighted, representative basis.

[G.L. c. 32B, s. 19](#)
[G.L. c. 32B, s. 21](#)

INVESTMENT OF MUNICIPAL FUNDS AND COLLECTIONS ISSUES

QUESTION 1:

In response to a desperate request from a local attorney she knows, who is trying to help a newly-married couple buy their first home before the end of the month, Holly O'Keefe, recently-hired treasurer-collector of the Town of Croninville, issued a Municipal Lien Certificate (MLC), pursuant to [G.L. c. 60, § 23](#), showing that the property they were purchasing had no outstanding taxes or other liens owed. She did not feel the need to contact other town officials to inquire about outstanding charges, as she felt that the property was not all that complicated. A week later, to her horror, she found that the assessors were about to commit a revised assessment to the property, pursuant to [G.L. c. 59, § 76](#), creating an additional \$7,500 tax bill for the property. The following week, she learned from the Selectboard's office that the prior owner of the house had outstanding permit and license fees totaling \$750 owed for the coffee shop he runs in town. She's now in a panic and is considering calling representatives of her performance bond agent, fearing that her issuance of the MLC without consulting the assessors or other departments will be determined to be a negligent action. How should she approach her concerns?

ANSWER 1:

One issue concerns whether the recording of the MLC eliminates the lien for the revised assessment, or for that matter, an omitted or supplemental assessment. Perhaps her first actions should be to look at the requirements of [G.L. c. 60, § 23](#). For example, the MLC is only valid if it has been recorded within a period of 150 days after issuance. Maybe she can get her attorney friend to withhold filing the MLC until she issues a corrected MLC. Also, as a practice, some collectors add a statement to MLC's issued before the regular commitment, noting that taxes for the current year are unascertainable or not yet ascertained, but while such language may be helpful to prospective lenders or purchasers, it is not necessary to preserve a lien for taxes committed later, either as part of the regular commitment or as an omitted, revised or supplemental assessment under [G.L. c. 59, § 75, § 76](#), or [§ 2D](#) respectively.

The idea that omission of taxes not yet committed from a lien certificate extinguishes the lien for those taxes is inconsistent with the statutory purpose of municipal lien certificates. That purpose is to convey information about taxes and charges "... which at the time constitute liens on the parcel of real estate ..." and to protect persons relying on the certificates against misstatements of the balance due of such taxes and charges. [G.L. c. 60, § 23](#). If a statement that taxes were unascertainable were necessary to preserve the lien for subsequently assessed taxes, every lien certificate issued before June 21st should contain a statement that the current fiscal year's taxes are unascertainable, because of the possibility of a revised assessment ([G.L. c. 59, § 76](#)); all lien certificates in communities that had not rejected [G.L. c. 59, § 2D](#) would have to contain a similar statement, because of the possibility of a supplemental assessment. Certificates issued between January 1st and July 1st should also, on that theory, contain a statement that the following fiscal year's taxes are

unascertainable, because the lien for the following fiscal year's taxes will have already arisen ([G.L. c. 60, § 37](#)).

Such statements would convey no information whatsoever about the particular parcel for which the certificate was requested; they would merely recapitulate the provisions of the General Laws. Their inclusion on lien certificates would therefore be pointless as a means of furthering the statutory purpose of informing taxpayers about the charges currently due that are secured by a lien on the particular parcel for which the lien certificate is issued. Indeed, such statements would be worse than pointless; they would be a source of confusion.

Another option available to Holly, prior to her calling the performance bond agent, is to explore other collections remedies, if it has been concluded that the town lost the lien due to the failure to post taxes and charges on the bill prior to the recording of the MLC. Under this worst case scenario, if the liens were lost for collecting taxes or outstanding charges, she could look to alternate collection remedies. For example, she could file an action in the local district court, under a contract theory to collect the outstanding charges. Pursuant to [G.L. c. 60, § 35](#), the local district court will have jurisdiction over the court action if she files the contract action within six years of the time they were imposed. Additionally, we heard that there were outstanding permit fees and charges owed by the prior owner of the property that concerned his operation of a successful coffee shop in town. Pursuant to [G.L. c. 40, § 57](#), she could ask the Selectboard to deny, suspend or revoke any business or health permits required to operate the coffee shop, in the hope that the owner will pay the outstanding sums he owes.

[G.L. c. 40, § 57](#)

[G.L. c. 59, § 2D](#)

[G.L. c. 59, § 76](#)

[G.L. c. 60, § 23](#)

[G.L. c. 60, § 35](#)

[G.L. c. 60, § 37](#)

QUESTION 2:

Southbury Treasurer Beth Horgan has come across an older account for which tax bills were sent out years ago, no one paid them, and there was no follow-up to create a tax title account. She is concerned that the statute of limitations for collection of the property tax bills might have expired. What would you advise her to do?

ANSWER 2:

No statute sets a time limit on the validity of the property tax itself. However, certain of the collection remedies available to enforce the tax have limitations. For example, the automatic lien may expire five years after the assessment date for the taxes if, before then, a conveyance of the real property is made and recorded. In addition, a suit in contract under [G.L. c. 60, § 35](#) must be commenced within six years in order to be effective. By contrast, collection by the revocation, denial or suspension of licenses or permits under [G.L. c. 40, § 57](#), or by set-off under [G.L. c. 60, § 93](#) has no time limitation. However, any set-off against the wages of an employee must be exercised in harmony with all other provisions of law, both state and federal, which relate to the garnishment of wages.

[G.L. c. 40, § 57](#)
[G.L. c. 60, § 35](#)
[G.L. c. 60, § 93](#)

QUESTION 3:

The Town of Pine Bluffs has been engaged in a decades-long battle with the Scorpion Water Company, a private company that supplies and distributes water to town residents, using water from Lake Prana, located in Pine Bluffs. The Selectboard of Pine Bluffs has charged Scorpion with deferring maintenance, which impacted water quality, and of raising water rates to the highest in Cheshire County. They subsequently filed litigation against Scorpion. As part of a settlement with Scorpion, the Town agreed to acquire all the assets of Scorpion. After doing so, Town Meeting authorized the creation of a Water Division within the Department of Public Works to manage water distribution and bill local residents for water used. Adam Overton, Pine Bluffs' Town Treasurer, is learning the accounting system for local water systems and setting up a billing system for residents.

QUESTION 3A:

Adam has arranged for the mailing out of water bills to local ratepayers. He noted that 135 residents failed to pay their water bills by their due dates. What can Adam do to collect the outstanding water bills?

ANSWER 3A:

Adam's options to collect are dependent on what options Pine Bluffs created for its collection of outstanding water bills. If the town had adopted [G.L. c. 40, § 42A](#), it would have also accepted [G.L. c. 40, §§ 42B-42F](#). [G.L. c. 40, § 42B](#) provides that a water bill becomes an automatic lien by operation of law upon the expiration of the due date for payment. Pursuant to [G.L. c. 40, § 42B](#), the lien may thereafter be "added to or committed as a tax." Of course, in addition to committing the lien to the tax bill, the outstanding water bills may also be collected through any other legal means, such as shut-off, in certain circumstances. The same procedure would apply to sewer liens, if the Town adopted [G.L. c. 83, §§ 16A-16C](#).

If Pine Bluffs had not adopted these statutes, it may follow the procedures under [G.L. c. 40, § 58](#), the municipal charges lien statute. Pursuant to [G.L. c. 40, § 58](#), a municipal charges lien authorized under the statute takes effect upon the recording of a list of unpaid municipal charges and fees by parcel of land and by name of the person assessed for the charge in the county registry of deeds.

If the water bill remains unpaid when the assessors are preparing a real estate tax list and warrant to be collected under [G.L. c. 59, § 53](#), Adam as Town Treasurer must certify the water bills to the assessors, who in turn shall add the outstanding water bill to the tax of the parcel owner who failed to pay the water bill and commit it with their warrant to the Tax Collector.

[G.L. c. 40, § 42A](#)
[G.L. c. 40, § 58](#)
[G.L. c. 83, § 16A](#)

QUESTION 3B:

When Pine Bluffs acquired the Scorpion water system, the Town became obligated to supply water to a neighborhood in the adjacent community of Oakville. Adam Overton noted that a number of the Oakville residents did not pay their water bills by the due date. What can Adam do to collect the overdue water bills from the residents of Oakville? He recalled that there was legislation passed a few years ago to allow a town to add an extraterritorial lien for overdue sewer charges. Can he do so for outstanding water charges?

ANSWER 3B:

There is no extraterritorial lien for water charges, as [G.L. c. 83, § 16A](#) provides for sewer charges. Adam would have to utilize other collection methods for collection of extraterritorial water bills, such as shut-off of water service, if authorized by a Pine Bluffs bylaw, or by contract action in Small Claims Court or other courts.

[G.L. c. 83, § 16A](#)

QUESTION 3C:

In addition to the ratepayers who have failed to pay their water bills in a timely manner, Adam has also been approached by residents who have paid their water bills, but for various reasons, they want to appeal their water bills. Adam is researching the answer. How should he advise the residents seeking to appeal their water bills?

ANSWER 3C:

An owner of property who wishes to dispute a water usage charge must first apply for an abatement with the city or town water department or district. If the water department or district denies the appeal, an owner may proceed in one of two ways.

1.) Paid water bills: If the owner has timely paid the disputed charge, the owner may file a civil action to recover excess water bill payments in either the District Court under [G.L. c. 218, § 19](#) (where the amount of expected recovery does not exceed \$2,500) or the Superior Court under [G.L. c. 212, § 4](#). See [Epstein v. Executive Secretary of Bd. of Selectmen of Sharon, 22 Mass. App. Ct. 135 \(1986\)](#).

2.) Unpaid water bills: If a water charge remains unpaid, it becomes a lien on the property, and the Appellate Tax Board will have jurisdiction over the unpaid charge. [G.L. c. 40, §§ 42A-42F](#). An owner whose appeal to the city or town's water department or district has been denied or deemed denied may file an appeal at the Appellate Tax Board upon the same terms and conditions as a person aggrieved by the refusal of the assessors to abate a tax.

[G.L. c. 40, §§ 42B-42F](#)

[G.L. c. 212, § 4](#)

[G.L. c. 218, § 19](#)

QUESTION 4:

On an otherwise sunny day in Woodland Village, Diego Montero was walking along the sidewalk of Larry Leisurely's home. Leisurely was known in the neighborhood as a hoarder, careless with keeping his yard clean, and trash from his property would fall onto the Woodland Village sidewalks in front of Leisurely's home. As Montero was walking, he tripped over trash spilling onto the sidewalk from Leisurely's home. The injured man used his cellphone to contact the police department. A town ambulance was sent to the scene and the victim was transported to the hospital.

QUESTION 4A:

The town has established fines for trash violations. If Leisurely refuses to pay the fine, can the town enforce the fine by placing a lien on the house?

ANSWER 4A

[G.L. c. 40U](#) is a local option statute which, if adopted, allows a city or town to enforce fines imposed for violations of municipal housing, sanitary or snow and ice removal requirements. After acceptance, the municipality must adopt procedures for the payment of fines and appoint a hearings officer to hear appeals of any fines imposed. A municipality may also use the non-criminal disposition procedures under [G.L. c. 40, § 21D](#) for the fines. [G.L. c. 40U](#) sets out certain standards for violation notices, fine amounts and appeals. If a fine remains unpaid after 21 days and the alleged violator has not requested a hearing, a nonpayment notice is to be issued with an additional \$10 fee. The notice advises the alleged violator that the fine must be paid within 30 days unless a hearing is requested within 14 days and the alleged violator swears that the original notice was not received. Under [G.L. c. 40U, § 12](#) a city or town may make an unpaid fine, together with interest and costs, a lien on the property based on the number or dollar amount of the violations on the property. The lien would arise by operation of law just like a water lien under [G.L. c. 40, § 42B](#).

[G.L. c. 40U](#)

QUESTION 4B:

The accident victim has failed to pay his ambulance bill. Can the town place a lien on Leisurely's house for the unpaid ambulance bill?

ANSWER 4B:

There must be nexus between the claim and the property. In this instance, Montero, the accident victim who failed to pay the town ambulance bill, is not the owner of the property. The parcel is owned by someone else.

[G.L. Ch. 40U](#)

[G.L. Ch. 40, § 58](#)

QUESTION 5:

Edward Angell, the Treasurer of Storyville, has been approached by a sympathetic owner of a property that is in tax title. Sam Lagrassa has lost his job, he failed to convince the assessors that he was entitled to a hardship exemption under [G.L. c. 59, § 5, Clause 18A](#). Due to his beloved collection of antique cars and, due to his job loss, he is having trouble making tax payments on his home. Despite a recent injury that limits his job prospects, he is driving an Uber car to make some money. He comes to the treasurer's office and wonders if it would be all right to make some payments on the sums he owes in real estate taxes. What can Angell do?

ANSWER 5:

May a treasurer accept partial payments when a parcel is in tax title?

Yes. Under [G.L. c. 60, § 62](#), a treasurer may accept installment payments of the amount in tax title. Upon accepting an installment payment, the treasurer may extend by written agreement for up to two years the treasurer's right to petition for foreclosure of the tax title. The written extension is important to the taxpayer. Absent a legally binding written "forbearance" agreement, the treasurer may file a foreclosure petition in Land Court as soon as six months after the tax taking. [G.L. c. 60, § 65](#). Any partial payment of the tax title must be applied first to the accrued interest, second to accrued collection charges and then to the tax or taxes in the chronological order of the year committed to the collector. [G.L. c. 60, § 3E](#). The taxpayer cannot direct that a partial payment be applied to the tax obligations first.

[G.L. c. 60, § 3E](#)

[G.L. c. 60, § 62](#)

[G.L. c. 60, § 65](#)

QUESTION 6A:

Edward LaFlamme, Fire Chief of the City of Haleyport, has raised certain concerns with the Selectboard. Chief LaFlamme is concerned about the number of false fire alarms received by his department each year. He would like to assess owners of commercial properties a fee for fire service where false fire alarms occur at least three times a year. Chief LaFlamme would also like to lien unpaid alarm fees to the tax bill. How would you advise the Chief LaFlamme?

ANSWER 6A:

The Haleyport City Council could adopt a municipal charges lien, pursuant to [G.L. c. 40, § 58](#) specifically for false fire alarms. There should be a bylaw pertaining to the calculation of the fee, the due date and the interest rate on unpaid bills. If unpaid, these municipal charges must appear on a list recorded at the Registry of Deeds with the amounts, assessed owners and locations. Also note the requirements of [Emerson College v. Boston](#). A false alarm fee is not a fee for generalized fire service, which *Emerson* would ordinarily prohibit.

[G.L. c. 40, § 58](#)

[Emerson College v. Boston, 391 Mass. 415 \(1984\)](#)

QUESTION 6B:

The Building Inspector of Haleyport, along with Chief LaFlamme, has ordered, pursuant to [G.L. c. 139, § 3A](#), a business owner to remove a fire-damaged mill building, declaring it to be dangerous and dilapidated and unsafe to life and limb. The owner has failed to comply. The City decided to demolish the building and sent a bill to the owner. The City paid \$79,000 to the demolition company and now seeks reimbursement from the owner. What can the Mayor do if the owner fails to pay for demolition?

ANSWER 6B:

Pursuant to [G.L. c. 139, § 3A](#), in order to establish a valid lien for the demolition charge, a statement of claim must be recorded at the Registry of Deeds within 90 days of the date the bill was issued. The statement must indicate the amount claimed for the demolition work, without interest, and be signed by the officer or board that ordered the work. If the demolition lien is promptly added to the ensuing fiscal year tax bill, the lien is coterminous with the real estate tax lien. If not timely added, the demolition lien will expire on October 1 of the third year unless the collector makes a tax taking prior to the date of expiration.

[G.L. c. 139, § 3A](#)

QUESTION 7:

The Town Administrator of Bradleyville asks whether a fine from the tree warden could be added to a list of outstanding municipal charges, pursuant to [G.L. c. 40, § 58](#), and if the Town could hold or pull an occupancy/building permit for violations of fines imposed by the tree warden. He stated that it is the Selectboard's opinion that any other municipal charges that could be added and that Town Meeting needs to vote to allow the charge to be committed to the collector. He asks Town Counsel for an opinion on whether the tree fines could be added to the municipal charges lien, pursuant to [G.L. c. 40, § 58](#). Also, he seeks advice on whether [G.L. c. 40, § 57](#) can be utilized to deny, suspend or revoke licenses and permits for violations the fines imposed by the tree warden.

ANSWER 7:

The [G.L. c. 40, § 58](#) municipal charges lien does not apply to fines and penalties. Also, denial of licenses and permits, pursuant to [G.L. c. 40, § 57](#), does not apply to fines and penalties. [G.L. c. 40, § 58](#) is limited to municipal charges and fees for services or products, not for fines that are penalties for violations of statutes or bylaws or ordinances. The Bradleyville City Council has the ability under [G.L. c. 40, § 58](#) to designate unpaid fees (not penalties or fines) as municipal charges which are lien to the real estate if left unpaid.

[G.L. c. 40, § 57](#)
[G.L. c. 40, § 58](#)

QUESTION 8:

Barbara Boynton, Town Collector of the seaside community of Oakford, is dealing with a frustrating property owner who owns multiple high-value rental properties. He has made it clear that he does not think he should pay personal property taxes on the furnishings and equipment used to support his rental properties. Barbara has sent multiple demands for the outstanding personal property taxes. What more can Barbara do to collect the outstanding personal property taxes?

ANSWER 8:

A municipality does not have a lien to secure payment of personal property taxes and therefore, cannot use the tax taking process. However, the assessed owner is personally liable for payment and the collector may enforce the personal liability by any of the other collection remedies available. The collector can bring a civil action against the assessed owner. [G.L. c. 60, § 35](#). The collector must bring a court action before the six-year statute of limitations on civil actions expires. [G.L. c. 260, § 2](#). Actions to collect personal property taxes may be brought in the small claims session of district court regardless of the amount owed. [G.L. c. 218, § 21](#). Alternatively, the collector can withhold any money owed by the municipality to the taxpayer and set it off against the obligations of the taxpayer under [G.L. c. 60, § 93](#). Thirdly, the municipality can deny, revoke or suspend certain municipal licenses and permits if the municipality has accepted [G.L. c. 40, § 57](#).

[G.L. c. 40, § 57](#)

[G.L. c. 60, § 35](#)

[G.L. c. 60, § 93](#)

[G.L. c. 218, § 21](#)

[G.L. c. 260, § 2](#)

QUESTION 9:

Sheila McCarthy, the Town Treasurer of Waterville seeks advice on whether the town may accept a substantial gift of trust funds from a private individual with the purpose of endowing a scholarship fund to be administered by the school department. The school department has stated that it can administer the scholarship.

QUESTION 9A:

Can Waterville accept the funds for such a purpose?

ANSWER 9A:

With respect to the gift of trust funds to establish a scholarship, such funds would have to be accepted by “[a]n officer or department of any ... town,” if pursuant to [G.L. c. 44, § 53A](#). It is wise to consider any possible detriments to accepting a gift of funds, if the conditions required in accepting the funds would be burdensome or require extra municipal costs. If the trust funds are accepted, the town must expend the funds in accordance with the intent of the donor. Once the town accepts the trust funds, however, the town assumes a fiduciary responsibility for the trust funds and may not incur expenses from the fund outside of the scope of the donor’s intent or make investments of the funds

outside the law. Additionally, we think expenditures by the trust should go through the warrant process under [G.L. c. 41 §§ 52 & 56](#).

[G.L. c. 41 §§ 52 & 56](#)
[G.L. c. 44, § 53A](#)

QUESTION 9B:

Sheila, who is new to municipal finance, has never managed trust funds previously. She is seeking guidance on how she can and cannot invest the funds. What would you advise?

ANSWER 9B:

[G.L. c. 44, § 54](#) governs the investment of trust funds. The statute requires that trust funds shall be deposited in:

- a trust company;
- co-operative bank or savings bank, if the trust company or bank is organized or exists under the laws of the commonwealth or any other state or may transact business in the commonwealth and has its main office or a branch office in the commonwealth; or
- a national bank, federal savings bank or federal savings and loan association, if the bank or association may transact business and has its main office or a branch office in the commonwealth (must be insured by the FDIC).

NEW this year is local option legislation that amends [G.L. c. 44, § 54](#), concerning the investment of trust funds in a city, town or district.

- The local option, if accepted by a city, town or district, would let its treasurer invest any trust funds in the treasurer's custody in accordance with the Prudent Investor Act, [G.L. c. 203C](#). That law authorizes a broader investment standard than ordinarily applies to municipal trust funds. Investment of municipal funds is otherwise limited to a narrow range of relatively safe investment options in order to protect funds and reduce risk to principal. See [G.L. c. 44, § 54](#) and [G.L. c. 44, §§ 55, 55A and 55B](#).
- If accepted, municipal or district treasurers would need to consider the investment of trust funds to maximize earnings while being cognizant of safety and liquidity. Even so, the funds will likely be diversified and invested in ways not previously permitted for such funds, which could bring somewhat higher risks. Under this law, the treasurer will only have authority to use this standard if the legislative body of the municipality or district accepts the local option and acceptance can be revoked after three years if the municipality or district decides investments should be more limited. Additionally, the treasurer will still be unable to invest any trust funds in a manner inconsistent with the gift or trust instrument.

[G.L. c. 44, § 54](#)

QUESTION 9C:

Sheila thought she had a basic understanding of allowable trust fund investments. Now, she just heard after speaking with a friend in the hallway of the DLS Municipal Law Update that there was a discussion in the morning session of new changes to the investment of trust funds. What are the changes concerning the investment of trust funds?

ANSWER 9C:

See ANSWER 9B above. In the September 7 edition of *City and Town*, the *Ask DLS* section, there is a discussion of new legislation that was an outside section in the FY24 state budget that was recently signed by the Governor. The legislation amends [G.L. c. 44, § 54](#), which concerns the investment of trust funds in a city, town or district, by providing the local option discussed previously.

[City and Town, September Edition](#)
[G.L. c. 44, § 54](#)

QUESTION 10:

Town of Richland Selectboard Member Renata Santos is trying to persuade her fellow Selectboard members that they should persuade Town Treasurer Todd Phelps that investing Town funds in the Easyville Credit Union would be beneficial to the Town, as the credit union gives back to the town in that it sponsors a local Little League team. May Treasurer Phelps deposit money in the Easyville Credit Union?

ANSWER 10:

DLS has traditionally advised municipal officials against making deposits into credit unions. We are not certain that [G.L. c. 44, § 55](#) allows deposits into “credit unions,” i.e. it is not clear that credit unions are within the scope of the phrase, “bank or trust company or banking company” as it appears in the statute. Yet, there was no question that credit unions were outside the limitation of liability for deposits into banking institutions found in [G.L. c. 44, § 55A](#). Accordingly, municipal and district treasurers assume risk if they deposit municipal funds into a credit union. Please see [G.L. c. 44, §§54, 55](#) and [55A](#), which list the financial institutions into which trust fund or general fund monies may be deposited by a municipal treasurer. They do not include credit unions. To invest in a manner other than specified in these statutes may expose the treasurer to liability for loss. Where the treasurer is the custodian of trust funds, the treasurer must invest those monies as provided by the statute, unless otherwise provided or directed by the donor.

[G.L. c. 44, § 55](#)
[G.L. c. 44, § 55A](#)

QUESTION 11:

The members of the Selectboard of Olneyville are now confident that they have a sufficient investment plan to fund down its underfunded pension liability and that they feel they are in a position to start addressing the town's underfunded Other Post Employment Benefit Liability, or OPEB. The town's audit firm has advised that creating an OPEB Trust Fund, pursuant to [G.L. c. 32B, § 20](#), and making annual payments to pay down the liability, would improve the town's credit rating. The members have asked Town Treasurer Kaavya Shiduri to explore creation of an OPEB Trust Fund. She has explored the creation of an OPEB Trust Fund, but she is uncertain about a number of issues, including investment practices for OPEB trust funds. She wants to know if they should be invested similar to other town funds, pursuant to [G.L. c. 44, §§ 55](#) and [55B](#). How can OPEB Trust Fund monies be invested?

ANSWER 11:

An OPEB Fund is a trust fund established by a governmental unit for the deposit of appropriations, gifts, grants and other funds for the benefit of retired employees and their dependents, payment of required contributions by the governmental unit for the group health insurance benefits provided to employees and their dependents after retirement, and reduction and elimination of the unfunded liability of the governmental unit for those benefits. The OPEB Fund is an expendable trust fund, subject to appropriation, that is managed by a trustee or board of trustees. The assets of the trust are held solely to meet the current and future liabilities of the governmental unit for group health insurance benefits for retirees and their dependents. All monies in the OPEB Fund must be accounted for separately from other funds of the governmental unit and are not subject to the claims of any general creditor of the governmental unit.

The trustee/board of trustees of the OPEB Fund acts in a fiduciary capacity for the primary purpose of enhancing the value of the OPEB Fund. The trustee acts with the care, skill, prudence and diligence that a prudent person acting in a similar capacity and familiar with such matters. The trustee is required to diversify the investments in the fund to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. The trustee/board of trustees is the investing authority and has general supervision of the management, investment and reinvestment of the OPEB Fund using the investment standard or investment vehicle that applies to the particular trustee/board of trustees.

The trustee/board of trustees may employ reputable and knowledgeable investment consultants to assist in determining appropriate investments and pay for those services from the OPEB Fund, if so authorized by majority vote of the governing body. Any other duties and obligations of the trustee or board of trustees must be set forth in a declaration of trust to be adopted by the trustee or board of trustees. All duties and obligations established by the declaration of trust must be consistent with the provisions of [G.L. c. 32B, § 20](#).

Monies in the OPEB Fund that are not needed for expenditures or anticipated expenditures within the investment period must be invested and reinvested by the treasurer as directed by the trustee or board of trustees from time to time. The treasurer may employ an outside custodial service to hold the monies in the OPEB Fund consistent with the procedures and standards described below.

(A) State Retiree Benefits Trust Fund - The trustee or board of trustees may, with the approval of the State Retiree Benefits Trust Fund board of trustees, direct the treasurer to invest the OPEB Fund in the State Retiree Benefits Trust Fund established under [G.L. c. 32A, § 24](#). In that case, fund monies are invested under [G.L. c. 32A, §§ 24 and 24A](#).

(B) Other Investments - Where the trustee or board of trustees does not direct the treasurer to invest the OPEB Fund in the State Retiree Benefits Trust Fund, investments must be made as follows:

1. Retirement Board as Board of Trustees - Where the retirement board is the board of trustees, investments are made under [G.L. c. 32, § 23](#).

2. Treasurer or OPEB Fund Board as Trustees - Where the treasurer is the trustee or an OPEB Fund board of trustees has been established by the governing body, investments are made in the same manner as municipal trust funds under [G.L. c. 44, § 54](#). However, the governing body may, by majority vote, authorize investments under the prudent investor standard for private trusts under [G.L. c. 203C](#).

For further information about OPEB trusts and investments, please see our DLS [IGR 2019-10](#).

QUESTION 12:

City Treasurer Christie Crypto has been imploring the Mayor and City Council of Greenhenge that the City is missing an amazing opportunity. She would like to invest public funds in cryptocurrency and explore ways to allow payment of taxes through blockchain and other similar technologies. She insists that the market for such alternative payment technologies would yield the City a hefty return on investment and position the City as an attractive haven for investors in such technologies. How would you advise the City Attorney to address City Treasurer Crypto's desired investments?

ANSWER 12:

This is not permissible. Simply put, neither [G.L. c. 44, § 55](#) nor [§ 55B](#) allow such an unconventional investment strategy. Municipal finance is geared toward protecting taxpayer funds, and related laws encourage more conservative investment strategies.