



## 2023 Municipal Law Seminar WORKSHOP F Accounting Issues

### DISCUSSION SUMMARY (Prepared For Informational and Training Purposes Only)

This summary of the informal discussion presented at Workshop F 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.

#### TOWN BUDGETS

1. The City Council is seeking to balance the budget.
  - a. The City years ago had voted to establish a receipts reserved account for ambulance revenues. There is a large balance in this account. Can the ambulance receipts reserved account be appropriated to hire additional staff for the City Finance Department?

DLS has opined that ambulance receipts under G.L. c. 40, § 5F may be appropriated for any lawful purpose by the municipality's legislative body. Nothing in the statute precludes such an appropriation. Yet, a strong argument can be made that receipts from the municipality's ambulance service are reserved for appropriation for ambulance related expenses. In fact, the fees are charged not to raise revenue but to compensate the government entity providing the service for its expenses as stated in the Emerson case. For example, the ambulance receipts could be appropriated to pay for the replacement of the ambulance.

- b. The Mayor noticed that the reserve account for boat excise also has a large balance. May that fund be appropriated to hire a Chief of Staff for the Mayor's office?

50 percent of boat excise receipts goes to estimated receipts and 50 percent of the boat excise receipts goes to the Waterways Improvement Fund. This Fund includes fees from temporary moorings, and money from the State and federal government. By statute, money in the Fund can be expended for the

**maintenance of harbors and inland waters, and upkeep of piers and wharves as well as for law enforcement and fire prevention. Money in the Fund can be appropriated, for example, for the salary of the harbormaster. It would be contrary to the express terms of G.L. c. 40, § 5G to appropriate the money for the Mayor's Chief of Staff.**

[G.L. c. 40, § 5F](#)

[G.L. c. 40, § 5G](#)

[G.L. c. 60B, § 2](#)

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

2. On a wintry evening a Special Town Meeting (STM) approved a \$10 million borrowing authorization to construct, equip and furnish an addition to the town hall. When the local newspaper notified its readers of this action, a group of irate taxpayers petitioned the select board to call a STM.

- a. Can a subsequent town meeting rescind a borrowing authorization?

**The borrowing authorization could be rescinded by a majority vote of a subsequent town meeting provided the bonds have not been issued, spent or committed through valid contracts, and that no third-party rights have vested. Such was the Supreme Judicial Court's decision in the Townsend case. Town officials should also consult the town's charter and bylaws to determine whether there is a different procedure in effect.**

- b. The borrowing authorization was rescinded. The select board has voted to place a debt exclusion question for the town hall addition on the ballot. What would be the effect if the debt exclusion question passed?

**There is no effect since the borrowing was rescinded.**

[Union Adams v. Townsend Schoolhouse Building Committee, 245 Mass. 543 \(1923\)](#)

3. For many years the town has operated a park and recreation revolving account for self – supporting recreation and park services under [G.L. c. 44, § 53D](#). There is an article on the town meeting warrant to establish a departmental revolving account for recreational programs.

- a. Can money in the § 53D account be transferred to the newly created departmental revolving account?

**The money in the § 53D account cannot be transferred to the newly created departmental revolving account since there is different language in the statutes. § 53D allows the payment of salaries for part-time temporary employees, and not full-time employees. § 53D does not allow the payment of related expenses. G.L. c. 44, § 53E½ allows for salaries and fringe benefits. Consequently, there are more restrictions on expenditures from the § 53D account.**

- b. Generally, people believe the recreation departmental revolving account is operating well. A considerable number of taxpayers believe that parks in certain sections of town receive more money than other parks in town. What action have some communities taken to improve the park department?

**Some communities establish a Board of Park Commissioners under [G.L. c. 45](#) or seek special legislation to establish a Park Commission.**

[G.L. c. 44, § 53E½](#)

- 4. The City and the union have not reached an agreement to settle a collective bargaining contract prior to the end of the fiscal year.
  - a. May the City encumber the funds to carry over to the next fiscal year?

**There must be a deal in place by the end of the fiscal year to encumber funds from the present fiscal year to be paid out in the subsequent fiscal year. As a general rule, unspent appropriations revert to the General Fund at the end of the fiscal year, and they are included when the Director of Accounts certifies free cash as of July 1.**

- b. Can you suggest a mechanism to make the funds available to pay the employees under the new contract?

**The City could transfer the money to a reserve fund under [G.L. c. 40, § 5A](#) or a stabilization fund under G.L. c. 40, § 5B.**

[G.L. c. 40, § 5B](#)

- 5. The City Council has approved a special purpose appropriation to make major improvements to a room in the City Library where rare books, manuscripts, and paintings are stored.
  - a. The Community Preservation Committee and the City Council approved the use of CPA money for this work. Is this a permissible use of CPA funds?

**Improvements that are an integral part of a project that qualifies as preservation, rehabilitation or restoration of an historic resource that can be funded with CPA money. It must be determined whether the CPA funds are being used merely to improve the library and not to preserve an historic resource. Ultimately, it is a question of fact whether CPA money can properly be used.**

- b. Due to the health crisis, work on this project has not commenced. A City Councilor inquired whether the Mayor and the City Council in the future could insert sunset provisions to limit the duration of these special purpose appropriations? What is your answer?

**A sunset provision in an ordinance or special purpose appropriation is permissible. For example, the unexpended appropriation would close out in three years unless extended by City Council vote.**

[G.L. c. 44B, § 5](#)

6. The City Council received the Mayor's budget and took the following actions:

- a. The City Council voted to reduce the entire budget by a certain percentage, and did not vote to reduce each amount in the budget. Is this vote effective?

**A vote to reduce the entire budget by a certain percentage is not effective. Under G.L. c. 44, § 32, the City Council upon receipt of the Mayor's budget has 45 days to approve, reduce or reject the budget. In the case at hand, a vote to reduce the entire budget or reduce categories of spending by a total amount or reduce by a percentage without actually voting to reduce each amount in the proposed budget by specific dollar amounts is ineffective. The City Council, however, could vote to reduce each and every applicable appropriation by specific dollar amounts.**

- b. The Mayor submitted the appropriation order together with supporting documentation containing detailed information about salaries for departmental positions. The police department's proposed appropriation was \$5 million and the back-up documents showed that \$80,000 was the police outreach officer's salary. The City Council voted to reduce the police department salary by \$80,000. What was the effect of the vote?

**The police budget was reduced from \$5 million to \$4,920,000. The City Council intended to cut funding for the outreach officer. Instead, the entire police budget is reduced by \$80,000 and the Mayor is not prevented from retaining the employment of the outreach officer.**

- c. The Mayor did not make any recommendation for the City Council clerk. The City Council wanted this position to be funded. What can the City Council do?

**Where the Mayor makes no recommendation for the City Council clerk, G.L. c. 44, § 33 provides that the City Council must vote to request the Mayor to make a recommendation for an appropriation for that purpose. The Mayor has 7 days from the vote to act. If the Mayor does not act, the City Council by a two-thirds vote can make an appropriation for that purpose. A similar situation was the subject of the Daly case referenced below.**

[G.L. c. 44, § 32](#)

[G.L. c. 44, § 33](#)

[Daly v. Mayor of Medford, 241 Mass. 336 \(1922\)](#)

7. An operating budget has not been approved. The Mayor submitted a continuing appropriation budget for July to the City Council.

- a. Does the continuing budget for July take effect without any action by the City Council? Can the City Council vote to reject or reduce any or all items within it?

**The Mayor's continuing budget for July goes into effect without any action by the City Council. The City Council cannot vote to reduce or reject the continuing budget. The rationale is that any rejection or reduction would put at risk the continuing operation of the government.**

- b. Can the Mayor veto any action on the continuing budget by the City Council?

**The continuing budget goes into effect. The City Council has no veto power over the continuing budget unlike the original budget. The Mayor is not required to take any further action.**

[G.L. c. 44, § 32](#)

[G.L. c. 39, § 14](#)

- 8. Town meeting appropriated \$50,000 from the Stabilization Fund for a new phone system for the town.

- a. When can the money for the communication system be spent?

**The appropriation from the Stabilization Fund can be spent immediately. If the appropriation were from the tax levy, expenditure could only be made beginning on July 1.**

- b. The new communication system was installed. A small appropriation balance remains. Can the appropriation be closed? What happens to the unexpended balance?

**The town accountant must confer with the department head. The appropriation can be closed out if the spending purpose has been accomplished. Alternatively, the town meeting could vote to close it out or transfer the balance to another appropriation pursuant to [G.L. c. 44, § 33B](#). Note that if the source is a restricted fund, like a Stabilization Fund, then the balance in the appropriation must be closed out to that restricted fund, which in this case is the Stabilization Fund.**

- c. If the source of the appropriation was borrowing, how can the appropriation be closed? What happens to the unexpended balance?

**Pursuant to [G.L. c. 44, § 20](#), the balance can be appropriated for any purpose for which a loan can be incurred for an equal or longer period of time than that of the original loan. Any balance not in excess of \$50,000 may be applied with the approval of the chief executive officer for the payment of indebtedness.**

[G.L. c. 40, § 5B](#)

[G.L. c. 44, § 20](#)

9. There are many avid concertgoers in town. They requested the school department to establish a band program in the schools. The school committee was not receptive to this idea.

- a. Pursuant to a warrant article for the annual town meeting, town meeting appropriated \$150,000 for a school band program. Is this vote binding on the school committee?

**The school committee has line item authority on instructional expenditures but not noninstructional outlays like transportation. School operating expenditures can be transferred by the school committee for other operating purposes. The school committee has the authority to allocate the operating budget into line items for purposes of instruction. Consequently, the school committee prevails over town meeting.**

[G.L. c. 71, § 34](#)

10. Under a town meeting warrant article to appropriate from available funds amounts necessary for the Conservation Commission, town meeting voted to transfer from free cash which will be certified as of July 1, a sum of money equal to 50% of free cash in excess of \$500,000 up to \$75,000. The town presently has no free cash.

- a. Is this contingent vote legal?

**No, it is not legal. An appropriation is a vote of a specific sum of money for a specified purpose from a particular funding source. In this instance, there is no specific sum of money being appropriated.**

- b. Can the warrant article be modified to achieve its intended purpose?

**No, it cannot be modified since there is no free cash at the time of the town meeting. If the language in the warrant article was more broadly worded to include available funds or the tax levy, then a specific amount could be appropriated.**

[G.L. c. 40, § 5](#)

11. The Mayor has submitted to the City Council a budget for the school department which is less than the amount requested by the school committee.

- a. Can the Mayor request a reduced budget for the school department?

**The Mayor in the proposed budget can recommend an amount less than that of the school committee, or the regional school committee, as long as that amount meets the minimum net school spending requirements of G.L. c. 70.**

- b. Can the approved city budget be in effect as of July 1 if the budget is not balanced within the limits of Proposition 2½?

**A budget can be in effect as of July 1 and may exceed the tax levy limits of Proposition 2½. A tax rate, however, cannot be set until there is a balanced budget.**

[G.L. c. 70](#)

[G.L. c. 59, 21C](#)

[Superintendent of Schools of Leominster v. Mayor of Leominster, 386 Mass. 114 \(1982\)](#)

12. A consultant was hired to review the town's financial records. There was an appropriation for \$9,000 which has been expended. The select board then requested the consultant to produce a procedures manual for the town's finance department. The select board promised the consultant payment of \$5,000 for his efforts. The procedures manual was provided to the select board in June 2023.

- a. There is an article in the STM warrant to pay \$5,000 to the consultant for his extra work. Can the town meeting authorize the payment? By what percentage of vote?

**A special town meeting by a nine-tenths vote can appropriate money to pay an unpaid bill of a prior fiscal year. An annual town meeting warrant article requires four fifths vote to approve payment.**

- b. Town meeting refused to approve payment to the consultant. What recourse does the consultant have?

**The only recourse for the consultant is to sue the selectboard members personally. It is unlikely, however, that a civil suit would be successful.**

[G.L. c. 44, § 64](#)

[G.L. c. 44, § 31](#)

[City of Marlborough v. Cybulski, Ohnemus & Associates, Inc., 370 Mass. 157 \(1976\)](#)

13. Town meeting has authorized the town to borrow \$48 million for a new school in the western part of town. The appropriation is contingent on passage of a debt exclusion. The debt exclusion passed.

- a. Cost estimates for the project have soared. The present estimate is that an additional \$10 million is needed to complete the project. Will it be necessary for the select board to schedule another town meeting? Will it be necessary to schedule another debt exclusion vote?

**Town meeting by a two-thirds vote could approve the \$10 million borrowing increase. Otherwise the scope of the debt exclusion vote must be determined and the procedure for seeking a decision from the Director of Accounts is set forth in [IGR 2022-14](#). After a publicly discussed meeting on this subject with a fixed dollar increase from the architect or project manager, there must be vote of the selectboard or the Mayor/City Council to seek a decision from the Director of Accounts on whether the additional borrowing is covered by the**



**exclusion. If the Director does not approve the municipality's application, the debt exclusion would not include any increased borrowing.**

- b. The town administrator and select board have decided to trim project costs by building a K-6 school rather than the K-8 school that had been approved by town meeting. It is believed that the K-6 school can be built for the \$48 million authorized. Does town meeting have to be consulted? Is it necessary to have a new debt exclusion vote?

**Town meeting should be consulted because the original borrowing authorization was for a K-8 school.**

[G.L. c. 44, § 7](#)

[G.L. c. 59, § 21C\(k\)](#)

- 14. The Mayor who is a subscriber to *City & Town* read an interesting article about the opioid settlement money to be distributed to municipalities.

- a. In accordance with this article what did the Mayor recommend to the City Council?

**The recommendation would be to dedicate the opioid settlement money to a special purpose Stabilization Fund. Otherwise, the money would be general fund revenue since the Legislature has not authorized a special revenue fund for this money.**

- b. What are your thoughts on the opioid settlement money?

**Hopefully, you agree with the published article on this subject.**

[City & Town July 7, 2022](#)

[IGR 17-20](#)

- 15. The Mayor is seeking to reward town workers for meritorious achievements and for taking part in training programs such as the Division of Local Services municipal law seminars.

- a. What would you recommend for the Mayor to include in the budget?

**There should be a merit or incentive program which is reasonable in scope. There must be a separate appropriation for the awards with specific guidelines for favorable action set forth in the vote or in an ordinance/bylaw.**

- b. Is there a history of such merit programs being authorized by cities and towns?

**G.L. c 40, § 5, before it was completely revised in 1989, had a specific provision for a bonus with the amount capped at \$1,000.**

[G.L. 40, § 5](#)



## MUNICIPAL FINANCE AND AFFORDABLE HOUSING

1. Can funds resulting from an inclusionary zoning ordinance or by-law be dedicated to a fund for affordable housing?

**The Municipal Affordable Housing Trust Fund provides a vehicle to reserve and restrict monies paid in connection with zoning by-laws or ordinances for affordable housing purposes, and that is found under G.L. c. 44, § 55C(d). Also, pursuant to G.L. c. 44, § 55C(c)(1), the Board of Trustees has the power to accept and receive funds tendered to the trust in connection with any ordinance or by-law.**

**An example of an inclusionary zoning ordinance or by-law that may generate funding that could be dedicated to the Municipal Affordable Housing Trust Fund is through designating a percentage of housing units to be affordable and applying it to the overall number of housing units in a new project. Where the percentage requirement yields a fractional amount, the ordinance or by-law could then require that the resulting fractional amount be monetized via a formula as set by the ordinance or by-law and paid to the Municipal Affordable Housing Trust Fund. Another example is where an ordinance or by-law allows for a payment in lieu of providing the required number of affordable housing units.**

**[G.L. c. 44, § 55C\(d\)](#)**

**[G.L. c. 44, § 55C\(c\)\(1\)](#)**

2. Does Municipal Affordable Housing Trust Fund interest stay with the fund, or is it general fund revenue?

**Interest stays with the Municipal Affordable Housing Trust Fund. Pursuant to G.L. c. 44, § 55C(d), “All moneys remaining in the trust at the end of any fiscal year, whether or not expended by the board within 1 year of the date they were appropriated into the trust, remain trust property.” It would appear that the phrase “all moneys remaining” applies to interest.**

**[G.L. c. 44, §55C\(d\)](#)**

3. If CPA funds are deposited into a Municipal Affordable Housing Trust Fund, how is interest on the CPA funds handled?

**It must be handled separately and interest on community preservation fund revenues stays with the community preservation fund.**

**[G.L. c. 44B, § 7](#)**

**[Informational Guideline Release 2019-14](#)**

4. May an accounting officer make the minimum set asides?

**In the first year of implementing the CPA, there are often timing issues involved with establishing the CPC and/or holding a meeting of the legislative body to make community preservation appropriations or reservations before the tax rate is set. As**

a result, if the 10 percent annual commitments for the first fiscal year of the CP Fund have not been made by the end of the fiscal year, the municipality's accounting officer must make the reservations.

**[Informational Guideline Release 2019-14](#)**

5. Can a CPC recommend, and a Legislative Body appropriate, more funding to a particular eligible CPA asset category above 10%?

**Yes. Under G.L. c. 44B, § 6, the language reads “not less than 10 per cent of the annual revenues in the Community Preservation Fund” when making reservations to the CP asset categories (open space, historic resources and community housing).**

**[G.L. c. 44B, § 6](#)**

6. Whether linkage fees can be dedicated to Housing (or other purposes such as jobs creation and retention or social service support for example)?

**Yes, under G.L. c. 44, § 55C(c)(1), the Board of Trustees has the power to accept and receive funds tendered to the trust in connection with any general or special law. Linkage fees are often permitted through special legislation and charged by a local government on certain developments to raise funds to offset the impacts of the development. Many communities have sought special legislation to reserve the fees in a special revenue fund to be expended for affordable housing related purposes and some have had the fees directed into an Affordable Housing Trust.**

**[G.L. c. 44, § 55C\(c\)\(1\)](#)  
[City and Town 05042023](#)**

7. Whether the prudent investor rule can be applied to the Affordable Housing Trust Fund?

**The law just changed and G.L. c. 44, § 54 was amended in Chapter 28 of the Acts of 2023. It seems as if funds could be invested in accordance with the Prudent Investor Act, G.L. c. 203C, where a municipality has accepted the local option.**

**[An Act for Making Appropriations for the Fiscal Year 2024 for the Maintenance of the Departments, Boards, Commissions, Institutions, And Certain Activities of the Commonwealth, For Interest, Sinking Fund, and Serial Bond Requirements, and for Certain Permanent Improvements.](#)**

**[G.L. c. 44, § 54](#)**

8. Is property owned by the Trust exempt from taxes?

**Yes. Under G.L. c. 44, § 55C(g), property owned by the Trust is exempt from taxes.**

**[G.L. c. 44, § 55C\(g\)](#)**

9. May a municipality accept a surcharge of .5% pursuant to G.L. c. 44B, § 3(b)?

Yes, G.L. c. 44B, § 3(b) reads “of not more than 3%”, meaning the surcharge could be .5%.

**G.L. c. 44B, § 3(b)**

10. Where do the proceeds go when a municipality decides to dispose of a real estate interest acquired with money from the CP Fund?

**The proceeds obtained from the disposal of any real estate interest acquired with monies from the CP Fund must be credited to the Fund pursuant to G.L. c. 44B, § 7(iv). If the original financing source for the acquisition was restricted, i.e., from the community housing special purpose restricted reserve, then the disposition proceeds should be credited to that special purpose restricted reserve.**

**G.L. c. 44B, § 7(iv)**

**Informational Guideline Release 2019-14**

11. A Board of Trustees would like to use its Section 55C Trust Funds (non-CPA) for rental housing assistance. Is this permissible?

**The Municipal Modernization Act amended the Trust statute such that the Trust purposes match the CPA allowable community housing purposes. Rental assistance is eligible as support so long as it makes housing affordable, i.e., adds the housing unit to the community’s affordable housing stock during the period of the restriction or contract.**

**Trust non-CPA and CPA funding is allowable for the following rental assistance program. A municipality enters into an agreement with a nonprofit or local housing authority (LHA) to manage a rental assistance program where the nonprofit/LHA finds landlords with suitable units to participate in the program and income-eligible tenants seeking affordable housing. The program documents include two co-terminus contracts: (1) a housing assistance payment contract (contract) between the landlord and the nonprofit/LHA and (2) a lease between the landlord and the income eligible individual (tenant). The lease requires that the tenant pay the landlord an “affordable” or “reduced” rent for the lease term. The contract requires the nonprofit/LHA to pay the landlord a rental assistance payment while the tenant occupies the unit. When added together, the total amount of the lease payment and rental assistance payment to the landlord will be equal to a fair market rent for the unit. The allowable costs of the program include the management fee to the nonprofit or LHA and the housing assistance payments to the landlords that participate in the program. In this example, the housing unit is made affordable by the expenditure during the term of the contract with the landlord and the lease for the unit. In addition, funding would also be allowable for a last month’s rent and/or security deposit paid to a landlord pursuant to a contract and lease under the above program, both of which are returnable to the CP Fund at the end of the lease/contract term. The payments by the municipality to the nonprofit or LHA to manage the rental assistance program would not be a violation**

**of the Anti-Aid Amendment because the payments are in exchange for management services provided by the nonprofit or LHA under the agreement.**

**G.L. c. 44, § 55C(a)**  
**Informational Guideline Release 2019-14**

12a. Is real and tangible personal property owned by a Housing Authority exempt from taxes?

**Yes. Pursuant to the first paragraph of G.L. c. 121B, § 16, the real estate and tangible personal property of an operating agency shall be deemed to be public property used for essential public and governmental purposes and shall be exempt from taxation and from betterments and special assessments. Note G.L. c. 121B, § 1 defines an operating agency under the Chapter as a housing authority or redevelopment authority.**

**G.L. c. 121B, §§ 1 & 16**

12b. Can a Housing Authority and a municipality enter into a PILOT (Payment In Lieu of Taxes) agreement?

**Yes. Pursuant to the first paragraph of G.L. c. 121B, § 16, this is possible.**

**G.L. c. 121B, § 16.**

13. Neverland Housing Authority has acquired land and is operating under G.L. c. 121B. Neverland Housing Authority would like to lease some portions of the land to businesses that will occupy the property for other than public purposes. Where Neverland Housing Authority still owns the land, are the businesses exempt from taxes?

**The businesses are not exempt. G.L. c. 59, § 2B provides that: “Real estate owned in fee or otherwise or held in trust for the benefit of . . . a county, city or town, or any instrumentality thereof, . . . if used in connection with a business conducted for profit or leased or occupied for other than public purposes, shall . . . be . . . taxed annually as of January first to the user, lessee or occupant in the same manner and to the same extent as if such user, lessee or occupant were the owner thereof in fee.”**

**G.L. c. 59, § 2B**

13b. Neverland Housing Authority also plans to lease some portions of the land to a non-profit development corporation for a nominal amount and will build additional housing units on the site and lease them to tenants who qualify for affordable housing under state and federal programs. Will the development corporation be subject to taxation?

**The non-profit development corporation is not taxable under G.L. c. 59, §2B because the non-profit is using the land for a public purpose. The occupancy is a public purpose.**

**G.L. c. 59, § 2B**

13c. Neverland Housing Authority and the City of Neverland wish to enter into a PILOT agreement. Can the agreement include the tax liabilities of lessees, and satisfy their tax obligation to the City of Neverland?

**It is uncertain but appears the language of G.L. c. 121B, § 16 can be read this way. The pertinent language reads at the very end of Section 16 “...and provided, further, that nothing in this chapter or in chapter fifty-nine shall be construed to require a city or town to impose a tax on the leasehold of real estate owned by an operating agency and leased by it beyond any amount which the city or town and the operating agency have agreed to be the payment in lieu of taxes hereunder.”**

**[G.L. c. 121B, § 16](#)**