



2024 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.

1. The Mayor of Everytown wants to use funds to buy department celebratory drinks after successful project?. The Mayor then tells the Everytown Police Department they can't use funds to buy alcohol for underage stings. Is Alcohol purchased by a Municipal Police Department for compliance testing an allowable expenditure by a Town Department?

There general rule prohibition on alcohol. The language of G.L. c. 44, § 58 is prohibitive. It reflects an explicit Legislative disapproval of spending municipal resources for alcoholic beverages and cigarettes. However, there is an exception to this, and DLS has advised, that alcohol and tobacco products can be purchased for the limited purpose of "compliance testing" for law enforcement or public health purposes. For example, local officials may "stage" purchases of alcohol or cigarettes by minors from local stores using money for anti-smoking or under-age drinking campaigns. Those expenditures would not be prohibited because they are not for consumption but to ensure compliance with local regulations and state statutes. However, G.L. c. 44, § 58 prohibits a city or town from paying a bill incurred by any official for wines, liquors or cigars. So here, the Mayor cannot use funds to buy celebratory drinks for a department, but the police department can use the funds to buy alcohol and tobacco products for underage compliance testing and stings.

[G.L. c. 44, § 58](#)

2. As we all know, there have been a great amount of retirements in recent years from municipal positions. The Mayor of Everytown wants to know if plaques and gifts awarded to persons retiring from municipal government or to current employees for outstanding performance during the year are allowed? Along with the plaque, he would like to hold a pizza party for their division. Is this allowed?

Retirement gifts, plaques, merit payments and other similar awards given to retirees or employees may be considered a proper purpose for the expenditure of municipal funds if they are not excessive and are used to (i) encourage continuity of service or

to (ii) enhance efficiency and loyalty or to (iii) promote productive performance. The expense of holding a retirement party should be covered from private donations because it is mostly an expression of support and appreciation from colleagues. However, paying for the cost of dinner for the retiree would be appropriate. By contrast, paying for the dinners, gifts or party expenses for any attendees other than the retiree would generally be considered a mere gratuity and not for a proper municipal purpose. So here, if the gifts or plaques are not excessive and promote performance, then that would be allowed, as would paying for the cost of dinner for the retiree. A pizza party would also likely be allowed as this would be a relatively modest expense. However, holding an entire retirement party, and covering the cost of every other attendee's fancy dinner from the Everytown budget would not be allowed.

Also please keep in mind, that the ultimate decision lies with the municipality.

3. Everytown has recently constructed a new High School. It took several years to complete, but finally it is open. To show this off to the residents of Everytown, the Mayor would like to host a ribbon cutting ceremony for the public to attend. Would it be appropriate to have Everytown's budget cover the costs of refreshments such as cookies, and waters for the event?

Refreshments and meals may be served at legitimate public functions such as ribbon-cutting ceremonies, opening day events, receptions or banquets, presentations, and the like so long as they are modest and served to provide a benefit for the city or town by helping to keep the participants alert and receptive. The public function must be a department sponsored public event for authorized persons and related to the public purpose of the department sponsoring it. If the function is open only to select groups or individuals, or spouses are in attendance, it is more likely to be considered a private celebration of primarily a social character. So here, the cookies and waters may be considered an appropriate expense, but if the mayor wanted steak dinners served for the school committee members and their families for a private tour, then that may not be allowed.

4. Everytown employees often have to attend training programs or meetings. Is the Everytown municipal budget able to cover any refreshments like coffee for these trainings. What about light refreshments provided to election workers or lunch served at an all-day training program or planning meeting?

Refreshments and meals may be served to officers or employees of the city or town or persons doing business with the municipality at official meetings or official events so long as they are modest and benefit the city or town by helping to keep the participants alert and receptive or by enhancing efficiency by avoiding loss of time and disruption if participants leave the premises. The official meeting or event must be a department or municipal sponsored meeting or event for authorized persons and related to the public purpose of the sponsor. Many attendees have had town halls that have a coffee room with free coffee, and DLS has advised in the past that seems fine.

5. Often times department heads in Everytown have to attend events such as trainings not sponsored by the municipality. Are reimbursements of a department-head for attending retirement or department dinners or parties or for attending other events not sponsored by the department or municipality allowable expenditures?

Employees and officials may be reimbursed for the expenses of attending functions that relate to their public duties. The function must relate to and further the public purpose of the department sponsoring it. If a department head incurs an expense in the performance of official duties in the representation of his or her department, the expense is reimbursable. Thus, the cost of a department head's attendance at a retirement dinner or department party at which he or she is the official presenter of token gifts or awards, as a representative of his or her department, would be a legitimate municipal expense. If the event is arranged and funded by department employees or others, and attendance is optional, then the event would seem to be social and for private purposes rather than for public ones. In addition, if the event is outside of municipality, and not related to the department or the community, the use of municipal funds would not be appropriate.

6. What about reimbursements of purchases or expenses incurred during authorized travel or while engaged in authorized business?

Employees who are out of town or working late on business or attending training programs or conferences on behalf of a city or town may be reimbursed for out-of-pocket costs of travel, meals, and other purchases incurred in furtherance of that objective and as a term or condition of employment. These types of expenses are permissible municipal expenses, provided that attendance is authorized by the municipal official or board with the authority to expend department funds. Included within the realm of reimbursable expenses are: (i) registration charges, including late fees; (ii) local surcharges and taxes on car rentals; (iii) taxes and tips on meals, and (iv) taxes on petty cash purchases, so long as these expenses are reasonable and not in conflict with the reimbursement policies of the city or town. Late registration fees are considered to be part of the contract price for the training program or conference. Similarly, surcharges, taxes and tips are a necessary and customary part of legitimate expenses incurred by employees in the course of their employment.

DLS strongly recommends that municipalities develop clear written policies or guidelines, preferably by bylaw or ordinance, about allowable expenditures. For example, to ensure the municipality receives the maximum benefit from its sales tax exemption, there should be clear standards about when department employees can purchase necessary supplies or materials and be reimbursed. Travel expenses are often set out in collective bargaining agreements, but the municipality should also adopt a policy to cover travel expenses for non-union employees. DLS also recommends that standards be established for merit awards, food or fundraising expenses. DLS also recommends that accounting officers advise managers and employees at the beginning of each fiscal year of the municipality's policies. This will help to avoid uncertainty or disagreements about whether certain expenditures are permissible and payable.

7. What about expenses related to a global pandemic?

There are provisions in the general laws authorizing cities and towns to spend – and even to borrow – money to aid people in need, but only in quite narrow circumstances. G.L. c. 40, §§ 19-20 specifically authorize municipal expenditures "for the purpose of maintaining, distributing and providing at reasonable rates during time of war, public exigency, emergency or distress a sufficient supply of food, other common necessities of life and temporary shelter for their inhabitants...", even beyond any legal limit upon the tax rate or debt. These provisions generally call for the supply of such services or articles at cost and reimbursement from the recipients where practicable. These provisions co-existed with the authority to generally appropriate for the relief of the needy that we discussed and were contained in G.L. c. 40, § 5 before it was amended and before such appropriations were potentially pre-empted. Where usually a strong argument could be made that such an expenditure is pre-empted by state and federal laws related to aid to the needy, here we have explicit statutory authority. Additionally, this not assistance in the general sense that it is being provided free of charge whenever the need occurs. This is in specific times of a declared emergency with reimbursement of the expenses expected.

[G.L. c. 40 §§19-20](#)

[G.L. c. 40, § 5](#)

8. Can cities and towns appropriate funds to their local housing authorities?

There is statutory authority for cities and towns to appropriate money for the support of their local housing authority under G.L. c.121B, § 19. The fact that legislative authority was passed to allow such appropriations supports our general belief that statutory authority is required to enable a city or town to make appropriations for grants to other public entities.

[G.L. c.121B, §19](#)

9. Everytown would like to create an economic development funding program and special revenue fund to fund loans and grants to private individuals and businesses for use on private property. The purpose of the program would be to encourage and facilitate economic growth, including the creation of jobs, improvement of buildings and increasing the real estate and general tax base in Everytown. Is this type of program permissible?

A municipality would not be allowed to establish this on their own, through a bylaw or ordinance, but they could through special legislation. Article 88 of the Amendments to the Massachusetts Constitution provides that the legislature could authorize a program for a community to give loans /grants to businesses for economic development. Similar special acts have allowed municipalities to create an economic development funding program and a special revenue fund to fund loans and grants to private individuals and businesses for use on private property. Those Acts have allowed the appropriation of town funds into the special fund for those purposes. But a special act is required to (1) create the special fund and (2) satisfy Amendment Article 88 of the Mass Constitution. The Supreme Judicial Court has

indicated that “industrial development” (in Article 88) should be broadly construed to include businesses other than manufacturing companies. So, Article 88 could be viewed as an exception to the generally prohibited use of public funds to aid private business but only when authorized by the legislature for economic development purposes.

[Article 88 of the Amendments to the Massachusetts Constitution](#)

10. A family in Everytown has recently lost their home in a flood and the family is now permanently displaced for the foreseeable future. Is the town able to start a go-fund-me page for the family to provide aid?

Since public money can only be expended for public purposes, cities and towns have no power to appropriate money for gifts or gratuities to persons whose situations may appeal to public sympathy. DLS often advises to allow a private party or vendor to establish and run this type of fund.

11. What about to aid victims who have been displaced by a fire? Can Everytown allow them to reside rent free in a municipal owned building?

In *Lowell v. Boston*, special legislation was authorized for the City of Boston to loan money secured by mortgages to individuals and businesses whose property had been destroyed or damaged in the great fire of 1872. However, the special legislation was later found unconstitutional and overturned by the Court. The court held, in that case, that the primary object of such loans was to further the private interests of the property owners and not for a public purpose. However, the court also recognized limited circumstances under which businesses may be provided with financial assistance, such as where the enterprises are in the nature of public utilities or where the funds are to alleviate conditions in the nature of public nuisances. In such instances, the primary purpose of the expenditure would be to advance public safety, health and welfare and any benefit to the recipient of the aid would be merely incidental to the accomplishment of that primary purpose.

[Lowell v. City of Boston](#), 322 Mass. 709 (1948)

12. A beloved teacher passes away suddenly. The teacher has worked for Everytown for 35 years, and was loved by all. Is the town able to spend town funds on a floral arrangement for the funeral?

Funeral flowers, sympathy cards and other expenses for the customary expression of sentiments that are incidental to the social relationships that employees develop during work are not expenses made for public purposes. Those expenses are not within a municipal department’s budget simply because the relationships developed in conjunction with the conduct of departmental business. Therefore, it is not appropriate to pay for funeral flowers or sympathy cards out of municipal funds. They should be covered from private donations.

13. Can the Everytown School Department pay to print and mail a flyer by the Everytown Parent-Teachers Organization to promote a car wash it is holding to raise monies for the schools?

This is an example of private group fundraising. The Anti-Aid Amendment prohibits use of municipal resources to assist a private group's fundraising activities even if the activities will benefit the municipality. Public funds may not be used to assist a private organization's fundraising activities, no matter how worthy or related the cause. Sharing the expenses of a community event co-sponsored by a municipal department and a private organization also raises Anti-Aid Amendment issues because the event is not under the exclusive control of public officers.

Anti Aid Amendment

14. Can Everytown expend public funds to donate to a homeless shelter?

In the case of expenditures for assistance to the poor and needy, the Commonwealth has undertaken a comprehensive scheme at least since Chapter 117 of the General Laws was rewritten in 1971, taking primary responsibility for public welfare assistance out of the hands of cities and towns and providing for state liability. Currently Chapters 117A (Support by the Commonwealth), 118 (Aid to Families with Dependent Children) and 118A (Assistance to Aged and Disabled) provide a comprehensive scheme of general public assistance, in partnership with the federal government under several grant programs. One such program is the Low Income Home Energy Assistance Program (LIHEAP). LIHEAP is a federal grant program with the Commonwealth as grantee, which is administered by the state Division of Community Services under the Department of Housing and Community Development in the Health and Human Services Agency of the Commonwealth. These programs are the result of years of legislative and agency consideration, establishing comprehensive eligibility requirements and targeting the persons most in need, given limited resources. Given all of this, an appropriation of municipal funds to provide additional or alternative assistance could be considered counter to the specific intentions of state and federal law.

Chapters 117A

Chapter 118

Chapter 118A

15. Everytown Middle School has submitted a food reimbursement for Teacher's Appreciation Week. It includes breakfast, snacks and lunch for the entire staff during that week. It is not for the public. Some of it is to be charged to the School Lunch account and some is to be charged to the school operating expense. Would this be considered a public purpose expense?

DLS has opined that refreshments and meals may be served to employees of the town so long as they are modest and benefit the town by helping to keep participants alert and receptive or by enhancing efficiency by avoiding loss of time or disruption if participants leave the premises or used to encourage continuity of service, enhance loyalty or to promote productive performance. This would ultimately be a local determination and again there are strong arguments to be made that this

would decrease disruptions during the training and increase productivity, but again the determination lies with cities and towns.

16. A resident donates \$2000 to the Everytown to spend on sending the Chief of Police to a golf retreat and spa for a relaxing weekend. Is this permissible?

The issue is, could a municipality use a gift or grant for a purpose that would otherwise be impermissible under the anti-aid or public purpose doctrines? And the answer is, in short, yes. And the short answer to why, is because it is not publicly raised money.

Under G.L. c. 44, § 53A, which controls the treatment of gifts and grants, a city, town or district officer or department head may accept a gift or grant of money for the purposes or functions the office or department carries out. The funds are credited to a separate gift or grant account that the officer or department may spend without appropriation for those purposes, with certain approvals (school committee for gifts for educational purposes, otherwise, the selectboard, mayor or manager and city council or prudential committee). Interest belongs to the general fund unless the donor or grantor has expressly specified in writing that it remains with the gift or grant. A separate bank account is not needed for each gift. Cash may be pooled by the treasurer for investment purposes.

But where there is no public money and the funds are coming from a gift or grant account, it has been the interpretation of DOR that these issues would not necessarily be a barrier. What makes these funds different is that this is not the city or town's money. The municipality is instead acting in the capacity of a custodian of the money seeing that it be spent as intended by the donor or grantor of those funds. These funds are being held in a fiduciary capacity.

A Municipality should always exercise caution when accepting such gifts or grants that are not for public purposes and DOR has advised many times in the past that a local non-profit may be better situated to receive and expend funds for purposes that may otherwise be questionable if made by the Town with public funds. The municipality is under no obligation to accept gifts or grants.

The terms of the gift or grant control the use of the funds in accordance with donor instruction and intent. But almost as important, a gift or grant to a town department should be designed to enable that department to carry out some aspect of the public mission it was established to pursue. A municipality does not have to accept gifts, and would be cautioned against doing so for things not within the scope of the department that would be the recipient of the same.

[G.L. c. 44, § 53A](#)

17. In Everytown, Joey Tribiani is a famous actor and is on a soap opera called "days of our lives." The film crew would like to shoot a scene on a wetland area in Everytown. How would Everytown account for the wetlands fee the Days of our Lives crew would be paying to Everytown?

Persons filing notices of intent to conduct various activities on wetlands pay a fee based on the type of project being proposed. This sliding scale fee structure is established by the Secretary of Administration and Finance. There was legislation passed in 1997 that allows wetlands protections filing fees received by a city or town to be spent by the conservation commission without the necessity of an appropriation by the local appropriating body. Under G.L. c. 131, § 40, the Wetlands Protection Act, persons filing notices of intent to conduct certain activities on wetlands must pay a filing fee, a portion of which is paid to the city or town and the balance to the state Department of Environmental Protection (DEP). The fees are intended to help defray state and local administrative costs in connection with the Act, i.e., to provide DEP and local conservation commissions with resources to complete project reviews and issue regulatory decisions within the Act's required time periods. Before this legislation, an appropriation by the municipality's appropriating body was required before the conservation commission could spend any wetlands filing fees. The commission may now spend these fees without appropriation, but only with the written approval of the mayor, city manager in Plan E cities, the selectmen or town manager in towns adopting a town manager form of government. Expenditures are still restricted to those related to the administration and enforcement of the Wetlands Protection Act. The first \$25 of the applicable fee belongs to the city or town and the balance is split equally between the community and the state. The applicant makes payment of the state portion of the fee directly to the Department of Environmental Protection (DEP) and pays the balance to the city or town. The town accountant or city auditor must credit all wetlands filing fees received by the conservation commission and paid to the treasurer to the Wetlands Protection Fund. No other revenue, including regulatory fines and penalties imposed by the conservation commission, is to be credited to the fund. Any interest earned on the fund belongs to the general fund.

G.L. c. 131, §40

18. The Police Chief of Everytown is Chandler Bing. He is wondering whether he is able to spend from the town's state law enforcement trust fund, pursuant to G.L. c. 94C, §. 47, a drug undercover vehicle?

The funds for the law enforcement trust are derived from civil asset forfeiture proceedings relative to monetary or other assets seized in accordance with narcotics arrests. Each police department involved in investigations that lead to civil asset forfeiture actions are allocated a certain portion of the proceeds depending upon their level of participation in the drug busts. Such proceeds are deposited in the Law Enforcement Trust Fund revolving fund established by G.L. c. 94C, § 47. The revenue source is money from illegal drug seizures. The police chief can spend from the fund without appropriation to defray costs of protracted investigation, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or to accomplish such other law enforcement purposes as the chief deems appropriate. The funds cannot be used to supplement the regular police operating budget. DLS has advised that police should be cautious as to whether the police operating budget would already fund undercover vehicles, which could be construed as using the funds to supplement the regular police operating budget. To the extent, however, that the drug undercover vehicle would be different from other vehicles purchased by the police department budget, could obviate that prohibition. For example, if the vehicle were in such as condition as to look like a non-police

vehicle for the purpose of going undercover, the position would be strengthened. Also, advised that such purchases would have to go through the warrant purchase like any other purpose. Further advised that the chief check with the town purchasing agent or chief procurement officer relative to compliance procedures with the state Uniform Procurement Act. G.L. c. 30B.

[G.L. c. 94C, §47](#)

[G.L. c. 30B](#)

19. Everytown has applied for several state and federal grants. Some of these grants include the Bullet Proof Vest reimbursement as well as the Commonwealth's Municipal Road Safety (MRS). How would these grant reimbursements be treated?

In general, all departmental receipts must be turned over to the Treasurer for deposit into the general fund under G.L. c. 44, § 53. Such funds would be appropriated for use. Municipal departments may receive monies from federal, state, or other grant programs or private gifts or donations for specific purposes. While these funds must also be turned over to the Treasurer, G.L. c. 44, § 53A provides for segregation of those funds in a separate account and may be expended for the purpose of the grant by the officer or department receiving the grant without appropriation, however, the expenditure does require approval by the Selectboard. Reimbursements, unless the funds are restricted, go to the general fund.

[G.L. c. 44, §53](#)

[G.L. c. 44, §53A](#)

20. Everytown is considering a new cannabis Dispensary called "central perks" to open in the community. Central Perks has agreed to a community impact fee, but also, to build a new playground for the neighborhood. How would the funds for the playground be categorized?

G.L. c. 44, § 53K allows a municipality's chief executive officer, so here, the Everytown Mayor, to establish a special revenue fund into which payments for mitigation of impacts of development, including impact fees from marijuana establishments and medical marijuana treatment centers, may be deposited and expended at the discretion of the chief executive officer without further appropriation for the purpose for which the mitigation payment was made.

Local finance officials should consider that while G.L. c. 44, § 53K is well-adapted to accounting for money from, for example, developers to mitigate anticipated impacts of their projects, impact fees from marijuana establishments and medical marijuana treatment centers are more accurately characterized as reimbursement of charges already incurred against the general fund.

However, there is no general law that establishes different accounting treatment for (1) revenues generated by the local sales excise on retail sales of marijuana for adult use or (2) social equity retail business distributions pursuant to G.L. c. 64N, § 2. Therefore, the general rule is that those revenues belong to the general fund and can only be spent by appropriation.

Notwithstanding the above, a municipality may use a local acceptance option to dedicate all, or a portion of at least 25%, of the collections of the local excise on retail sales of marijuana, the social equity retail business distributions pursuant to G.L. c. 64N, § 2 or community impacts fees to a general or special purpose stabilization fund established under G.L. c. 40, § 5B. IGR-2024-12 explains the procedure that must be followed to accept and use this local option.

So while under the playground funding may not be allowed, if Central Perks decided to go through with it anyway in order to make their permit more attractive to Everytown, it could go through the mitigation fund and not the host community agreement.

[G.L. c. 64N, § 2](#)

[G.L. c. 40, § 5B](#)

[IGR-2024-12](#)

21. Everytown is anticipating an opioid settlement payment. How would they account for this receipt?

The general rule of municipal finance occasionally presents communities with accounting and procedural difficulties in situations where an unexpected, conditional receipt is received. Such receipts, by law, would become part of the general fund, eventually close and become part of the next year's free cash certification. When it becomes part of free cash, the original restrictions on the funds become muddled, as under current law they must sit in an available fund that can be appropriated for any lawful purpose. Additionally, this process can take several months and many times these onetime monies are intended for immediate expenditure for their specific purpose.

A recent change in law has added Clauses 4 and 5 to G.L. c. 44, § 53 and created exceptions to this general rule. With the approval of the Director of Accounts, in certain circumstances, both clauses allow certain one-time monies to be reserved in a special revenue fund, thereby not closing to fund balance at the end of the fiscal year and not becoming part of the free cash certification. Clause 4 does so for monies received for one specific purpose and can be spent without further appropriation, while Clause 5 does so for monies received for multiple purposes and requires appropriation.

In both scenarios, there must an authorization from the Director of Accounts and is limited to onetime, unanticipated receipts that affect multiple communities. BUL-2023-8 explains how this recent change applies to opioid settlement receipts.

[BUL-2023-8](#)

22. Everytown is anticipating receiving an opioid settlement that only Everytown will be receiving. This receipt is so unique, they are the only community receiving such a receipt. What procedure should they follow?

If your city or town will be receiving this type of unique receipt then please contact DLS. With the approval of the director of accounts it is possible to have the receipt treated it as an available fund until the end of the fiscal year. As such, the community could appropriate it by the end of that fiscal year and, if they do, it will not go through the free cash process. If one of these unique situations arise then you need approval of the director of accounts to appropriate by the end of the fiscal year, otherwise it will go to free cash.

23. Everytown's new High school we mentioned earlier is a Net Zero project. As a result, Everytown has receive monetized credits under the federal Inflation Reduction Act (IRA) for this green energy project. How do they categorize this receipt?

The Director of Accounts has determined that cities and towns that receive monetized credits under the federal Inflation Reduction Act (IRA) for certain green energy projects may treat these receipts as follows: 1. The monetized credits may be used, without further appropriation, to pay down a bond anticipation note (BAN) issued in anticipation of receipt of these funds. 2. The same may be used as a capital project funding source to cover a deficit related to the project for which the credits were received. 3. The monetized credits may be placed in a special revenue fund and used to pay debt service on the project for which the credits were received, in the event the project was permanently financed prior to their receipt. Otherwise, the monetized credits must be used to reimburse a municipality for appropriations made locally in anticipation of these funds in the following ways: a. The credits are to be recorded as general fund revenue of a city or town, where an appropriation from free cash or line item appropriation was made for such project, b. However, the credits must close to stabilization if stabilization funds were used in anticipation of receipt of the monetized credit, or c. The credits must reimburse the community preservation or enterprise fund if appropriations were made from those funds in anticipation of the monetized credits. This is part of the new clause 4 and 5 in chapter 44, section 53.

[BUL-2024-1](#)