

**Division of Local Services
2025 Municipal Law Seminar
WORKSHOP C
Accounting Issues**

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

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

Energy Rebates

1. The Town of Debbville voted to spend \$500,000 of free cash for HVAC improvements in Debbville Town Hall. Subsequently, the Town received \$10,000 of rebates.
 - a. Can the town of Debbville be allowed to spend \$510,000 on the HVAC improvements, as the cost to the Town is still only \$500,000?

In short, no. [G.L. c. 44, § 53](#)

- b. Can the Town put the \$10,000 of rebates in a revolving account to use for green initiatives?

The answer is also no. [G.L. c. 44, § 53](#)

2. The Town of Debbville is building a \$100M school building. The Town received \$100,000 of rebates for qualifying expenditures originally charged to the school capital project fund.
 - a. How should these rebates be treated?

The rebates must be recorded as general fund revenue.

“All moneys received by any city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury. Any sums so paid into the city, town or district treasury shall not later be used by such officer or department without specific appropriation thereof...”

[G.L. c. 44, § 53](#)

Monetized Credits – Inflation Reduction Act

3. Being a green-energy-conscious community, the Town of Debbville appropriated \$200,000 from Free Cash to install EV Charging Stations in the Town Center. This project was approved under the Inflation Reduction Act Monetized Credits Program.
 - a. When the Town receives the monetized credits, how may they be treated?

On December 4, 2023, Governor Healey signed [Chapter 77 of the Acts of 2023](#), Section 9 of which provides, in part, for the following exception to the general rule that all receipts are to be recorded as general fund revenue per [G.L. c. 44, § 53](#):

*“(4) non-recurring, unanticipated sums received by multiple cities, towns or districts and not otherwise provided for by general or special law, may, upon the approval of the director of accounts, be expended at the direction of the chief executive officer without further appropriation only for the singular purpose for which the monies were received”
(emphasis added)*

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.

Employee Reimbursements

4. Brad, the DPW Superintendent of the Town of Debbville, noticed that there was no more paper for the photocopier. Being a conscientious employee, Brad went to staples and bought four cases of paper. The total of the purchase came to \$200.71, including \$11.81 in tax. Having completed his good deed, Brad happily returned to Debbville town hall with his receipt dated February 14, 2025. Upon arrival there, Brad completed his employee reimbursement form to which he stapled the receipt. The total of his request was \$200.71.

- a. Can Brad be reimbursed the amount of the sales tax on the paper purchase?

Yes, there is no law that prevents the town from reimbursing town employees for sales tax on goods or services purchased for town purposes. However, the Town may have a written policy or guideline, preferably a 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.

- b. The town accountant informed Brad that there were insufficient funds in the town hall office supplies line item. Can Brad still be reimbursed for his purchase?

No, Brad may not be reimbursed. Per G.L. c. 44 § 31, liabilities in excess of appropriations are forbidden.

- c. May the town reimburse Brad and provide for the ensuing deficit with an end-of-year budget transfer?

No, G.L. c. 44 § 33B is limited to end of the year budget transfers for the last two months of the fiscal year (May and June) or the first 15 days of July of the new fiscal year and this is not a solution here.

- d. Desperate for a solution to reimburse Brad, the town accountant goes to the Finance Committee to request a reserve fund transfer. Can Brad be reimbursed using this remedy?

It depends. G.L. c. 40 § 6, reserve funds may only be tapped to fund appropriations for extraordinary or unforeseen expenditures that could not be anticipated before setting the tax rate or could not be determined when the budget was approved. Generally, if a diligent budget process could have anticipated the cost, it does not qualify as unforeseen. However, the definition of an emergency falls to local officials and can include circumstances where delays to act would be prohibitively costly or when the requested amount is too small to justify the expense of calling a special town meeting. Common sense should prevail. Ultimately, reserve transfers cannot be used to bypass or render invalid legitimate town meeting decisions or the budget review approval process in cities and districts. In this case, the dollar amount of the purchase might justify not calling a town meeting to make the appropriation. However, multiple such instances may become a material

amount in the aggregate. Again, a policy regarding such purchases would be a best practice.

[G.L. c. 44 § 31](#)
[G.L. c. 44 § 33B](#)
[G.L. c. 40 § 6](#)

5. The Town Manager of Debbville approves Brad's trip to the annual DPW Superintendent's conference in Boston at the Boston Convention and Exhibition Center. This conference will provide education on all of the latest waste disposal and snow removal technology which could save the town money in years to come. Brad will be there from Thursday through Saturday morning. Brad has carefully accounted for the cost of this trip and, after the paper purchase incident, has ensured there are sufficient funds in his DPW Travel budget line item. The registration fee for the conference is \$800 and the deadline to register is two weeks prior to the conference. Brad stays in the hotel across the street from the convention center for two nights, costing a total of \$850, including taxes. He has meals while in town which meet the Debbville policy on travel meal reimbursement of a \$100 per diem allowance, spending \$200 in total for meals. Further, Brad and some of the other DPW Superintendents, excited to discuss what they have learned, go to the local cigar bar after a long day at the conference on Friday. Brad spends \$150 on a nice cigar and a couple of glasses of bourbon while networking with his colleagues.
 - a. Can Brad be reimbursed for the cost of his registration, meals (including tax and tip), and his hotel (including state and local taxes)?

Yes, Brad can be reimbursed for the above-mentioned costs.

"It is a fundamental principle of constitutional law frequently declared that money raised by taxation can be used only for public purposes and not for the advantage of private individuals" [Opinion of the Justices, 313 Mass. 779, 784 \(1943\).](#)

The authority for cities and towns to spend money arises under G.L. c. 40, § 5. That section provides that:

"[a] town may at any town meeting appropriate money for the exercise of any of its corporate powers; provided, however, that a town shall not appropriate or expend money for any purpose, on any terms, or under any conditions inconsistent with any applicable provision of any general or special law."

Cities and towns are free to exercise any power or function, except those denied to them by their own charters or reserved to the state, that the Legislature has the power to confer on them, as long as the exercise of these powers is not inconsistent with the Constitution or laws enacted by the Legislature. In general, the properties and purposes for which cities and

towns are authorized to spend are not specified but rather include any necessary expenditures arising from the exercise of their powers or functions.

However, there is a limit on this spending authority. Cities and towns can spend only for public purposes. Public funds cannot be used for private purposes. Thus, cities and towns have the right to spend money for any purpose where the public good will be served, but not where the expenditure of money is directly for the private benefit of certain individuals. This principle is expressed in the Massachusetts constitution and in numerous cases. In some situations, however, the expenditure of public funds advances both public and private interests. In those situations, if the dominant motive for the expenditure is a public one, incidental private benefits will not invalidate the expenditure. If, however, the dominant motive is to promote a private purpose, the expenditure will be invalid even if incidentally some public purpose also is served.

In addition to the general prohibitions against spending money for any purpose or under any conditions inconsistent with any general or special law, there are two other prohibitions on municipal spending.

1. **Anti-Aid Amendment-** The first is a prohibition against the giving of money or property by a city or town to or in aid of any individual, association or corporation embarking upon any private enterprise. This prohibition is referred to as the Anti-Aid Amendment. It provides in pertinent part:

“No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmity, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth.”

This amendment prohibits the use of public money or property by cities and towns for the purpose of maintaining or aiding any institution or charitable or religious undertaking that is not publicly owned. The kinds of expenditures barred by the amendment are those that directly and substantially benefit or “aid” private organizations in a way that is unfair, economically or politically. The prohibition against using public funds for private organizations includes any grants, contributions or donations made by a city or town to an organization for the specific purpose of directly supporting or assisting its operations. However, the Anti-Aid Amendment does not preclude a city or town from purchasing specific services from private organizations in order to carry out a public purpose. Further, as with the public purpose limitation discussed above, if an expenditure is for a

public purpose, but also incidentally benefits a private organization, the expenditure generally will not violate the Anti-Aid Amendment.

A three-factor test to determine the constitutionality of grants challenged under the first clause of the Anti-aid Amendment was developed by the court in Commonwealth v. School Comm. Of Springfield, 382 Mass. 665, 675 (1981). That three-part test was applied by the court in Caplan v. Town of Acton, 479 Mass. 69 (2018) when evaluating the constitutionality of a grant of CPA funds under the second clause of the Anti-Aid Amendment. The three factors are: (i) whether the proposed grant is for the purpose of founding, maintaining or aiding [the institution, private organization, nonprofit, church, etc.]; (ii) whether the effect of the grant is to substantially aid [the institution, private organization, nonprofit, church, etc.]; and (iii) whether the grant avoids the political and economic abuses which prompted the passage of the Anti-aid Amendment. Although the Anti-aid Amendment applies to grants to private entities and religious and charitable organizations, the principle that public funds may not be granted for private purposes and can be used only for public purposes also applies to grants of public funds to individuals.

The question of what constitutes a permissible “public purpose” has been discussed in many cases. The cases do not, however, establish any universal test. Instead, they generally stress the certainty of benefits to the community. Thus, the basic test is whether the expenditure is required for the general good of the inhabitants of the city or town.

One such expenditure that is considered to be of “benefit to the community” is reimbursement 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.

- b. Can Brad be reimbursed \$150 for his cigar and bourbon at the cigar bar?

No, Brad cannot be reimbursed for his cigar and bourbon. The second specific prohibition on municipal spending in addition to the anti-aid amendment is:

- 2. Wines, Liquors, Cigars-** In addition to the prohibition against the use of public funds for private organizations, there is also a prohibition against the use of public funds to purchase alcohol and tobacco under G.L. c. 44, § 58, which reads as follows:

“No city or town shall pay a bill incurred by any official thereof for wines, liquors or cigars.”

- c. Can the Town of Deville pre-pay Brads’s conference registration fee?

Yes. The Town of Deville can pre-pay Brad’s conference registration fee. Pursuant to G.L. c. 44, § 66 advanced payments for training programs can be made provided that the department has an appropriation for such purposes and has the proper authorization. Accordingly, advanced payments can be made for the necessary expenses of municipal officers and employees outside or within the Commonwealth in securing information upon matters in which the community is interested or may tend to improve the services in such department which includes training programs. Any payment, however, must be made pursuant to a duly authorized warrant.

Proper authorization under the law would be:

“In any city having a plan E or plan D charter with the approval of the city manager, in any other city with the approval of the mayor, and in towns with the approval of the selectmen...”

[G.L. c. 40, § 5](#)
[G.L. c. 44, § 58](#)
[G.L. c. 44, § 66](#)

Digital Currency

6. Jennifer is the Town Collector in Deville. A resident came into the collector’s office to pay their first half tax bill of \$2,500. The resident wanted to pay using crypto currency.

- a. May Jennifer accept the payment of crypto currency to pay the tax bill?

No, the town collector may not accept any form of digital currency for the payment of the tax bill. Although Massachusetts does not currently have specific laws that prevent its municipalities from accepting digital currency, there is also no legal framework that allows for it. Additionally, Massachusetts municipal finance laws are strictly regulated and there are a number of provisions concerning the deposit of public monies in banks that are conservatively regulated by Massachusetts statutes.

Also of concern is the fluctuating value of digital currencies, which can create significant financial risk for a municipality.

Additionally, digital currencies are not issued or backed by the U.S. Government or a central bank and are not considered legal tender.

CASE STUDY 1: BIKE SHARING PROGRAM:

Joe Curtalongo, the Mayor of Oaksville, has been studying how to adopt a city-run bike share program similar to the ones operated in the metro-Boston area. The mayor is an environmental advocate and seeks to reduce car traffic in the city, whose residents have been plagued by lung cancers and other environmental health effects. Studies by the city planning staff recognized that residents living more than a half mile away from local bus and subway stations are more likely to utilize public transportation options if they could ride a bike from a bike share system to local bus stops and subway stations.

Due to a generous gift to the City from a donor, the City is now able to acquire a fleet of bikes and the infrastructure needed to provide bike docking stations across the city. The city is now seeking to contract with a private vendor to manage the bike share system and to operate, manage and maintain bicycle stations, rentals and bike share memberships. All the bikes and equipment in the city ride share program will be owned by the City. The City has no interest in deriving general fund revenue from the programs and hopes that any profits raised could be utilized to acquire more bikes and bike docking locations. The City solicited bids in the hopes of having several vendors respond.

The City, unfortunately, received only one response, from a company named Maroon Bikes, which runs similar bike share programs in eastern Canadian cities. In its bid response, Maroon Bikes stated that its arrangement would provide that:

1. Maroon Bikes would collect revenue from memberships in the bike share program, as well as sponsorship revenue, and deposit the revenues in a bank account opened by Maroon Bikes, with Oaksville listed as a signatory.
2. At the end of the operating year, Maroon Bikes would turn over to the City 50% of the net profit.
3. Maroon Bikes would establish a “bike replacement account,” which would be a vendor account, but would also list Oaksville as a signatory. During the year, the City would provide funds to this account, and the vendor would expend such funds to purchase new bikes and docking stations to be used in the system. The bikes and docking systems would likewise be owned by the city.

Question:

Should the Oaksville City Auditor approve of this proposed contract?

Answer:

In short, no.

There is no basis from the information provided to conclude that this proposed contract constitutes a true lease of the system’s bikes, equipment and other property to the vendor, such that all the fees generated by the program’s activities might be considered vendor’s income and not municipal program revenue.

Accordingly, we would conclude that the Maroon Bikes bike share program receipts would be municipal revenue and fully subject to the requirements of the municipal finance laws, including G.L. c. 41 and c.

44. In our view, this is the case even in the context of management contracts of this sort.

The following municipal finance statutes are relevant to the issues involved in this matter.

1. G.L. c. 44, § 53 provides in pertinent part, as follows:

All moneys received by any city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury. Any sums so paid into the city, town or district treasury shall not later be used by such officer or department without specific appropriation thereof.

We believe these provisions would apply to the described bike program revenues, whether initially collected by a regular municipal officer or by a contractual vendor like Maroon Bikes, and would require the prompt turnover of all program receipts, at regular intervals as specified in the contract, to the City. In addition, specific appropriations in purpose and amount should be used to pay at prescribed intervals for services rendered by the vendor operating the program for the City.

2. G.L. c. 41, § 56 provides in pertinent part, as follows:

The selectmen and all boards, committees, heads of departments and officers authorized to expend money shall approve and transmit to the town accountant as often as once each month all bills, drafts, orders and pay rolls chargeable to the respective appropriations of which they have the expenditure. Such approval shall be given only after an examination to determine that the charges are correct and that the goods, materials or services charged for were ordered and that such goods and materials were delivered and that the services were actually rendered to or for the town as the case may be ... The town accountant shall examine all such bills, drafts, orders and pay rolls, and, if found correct and approved as herein provided, shall draw a warrant upon the treasury for the payment of the same, and the treasurer shall pay no money from the treasury except upon such warrant approved by the selectmen.

These provisions provide fundamental controls regarding the financing and conduct of city programs and activities, the most basic of these being that municipalities make payments for goods or services after performance, and then only after careful review and confirmation of the performance of the contractual obligation. Expressly, for services provided, that is only after "...the services were actually rendered...." In this instance, it seems that all program funds are from the outset in the possession of Maroon Bikes in a Maroon Bikes account, albeit an account with the City as a "signatory". We cannot conclude that such possession, even with a co-signature release by the City, is consistent with the payment controls and procedures of G.L. c. 41, § 56 requiring review, approval and payments after the services are rendered. In this proposal, all municipal funds are in a vendor's bank account before the performance obligations are satisfied.

3. G.L. c 41, § 52 provides in pertinent part, as follows:

The auditor or officer having similar duties in cities, and the selectmen in towns, shall approve the payment of all bills or pay rolls of all departments before they are paid by the treasurer, and may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive; and in that case the auditor or officer having similar duties, or the selectmen, shall file with the city or town treasurer a written statement of the reasons for the refusal; and the treasurer shall not pay any claim or bill so disallowed.

With respect to the Maroon Bikes proposal, this statutory provision requires that the City Auditor approve all expenditures by the prescribed warrant process prior to disbursements being made by the City Treasurer. We would therefore conclude that the proposed financial procedures are not consistent with this statutory provision.

4. G.L. c. 41, § 35 provides in pertinent part, as follows:

Every town treasurer shall give bond annually....He shall receive and take charge of all money belonging to the town, and pay over and account for the same according to the order of the town or of its authorized officers. No other person shall pay any bill of any department ...

Under the municipal finance laws, the municipal treasurer is charged with the custody, management and safekeeping of all municipal funds. To ensure the safety of all public monies in his possession, the treasurer is statutorily required to be adequately bonded. In this instance, municipal funds will accumulate in a vendor's bank account throughout the duration of the year and not be held by the bonded City Treasurer. Under Maroon Bikes' proposal, Maroon Bikes would be contractually responsible for any loss of funds due to acts or omissions of the vendor. To the extent that the Maroon Bikes bike share program revenues constitute municipal funds, we believe all receipts must be immediately paid over to the City Treasurer in order to comport with the fundamental and important cash management, investment and safety purposes of G.L. c. 44, § 35 and the other referenced municipal finance statutes. Otherwise, should Maroon Bikes cease operations or declare bankruptcy, Oaksville city funds would be placed in peril.

5. G.L. c. 30B, the state Uniform Procurement Act provides in pertinent part, as follows:

§ 1 Section 1: Application of chapter

Section 1. (a) This chapter shall apply to every contract for the procurement of supplies, services or real property and for disposing of supplies or real property by a governmental body as defined herein.

The state Uniform Procurement Act requires that a municipality's acquisition of goods must comply with specified bidding procedures and requires that the city initiate the procurement process for goods acquired through city funds. Under the Maroon Bikes proposal, it is Maroon Bikes, and not Oaksville, that is charged with acquiring additional bikes using city funds deposited in the "bike replacement account." The Maroon Bikes proposal is therefore violative of the Uniform Procurement Act.

In closing, we would emphasize that the purpose of these fundamental municipal finance provisions is to provide consistent and adequate controls regarding the financing and conduct of city programs and activities. If there is to be any deviation from these rules, it must be by statutory authorization. For example, G.L. c. 44, § 70 authorizes contracts for certain services to identify and pursue federal government reimbursements or other third-party sources of revenue in connection with municipal programs or activities and pay for such "finder" services from the recovered funds without an appropriation. We know of no such exceptions to the regular municipal finance provisions in the context of the Maroon Bikes proposal.

CASE STUDY 2: DISRUPTIVE TECHNOLOGIES

Disrupto Tech Solutions, Inc. ("Disrupto") is a new private company that is seeking to become a leading vendor of municipal services by utilizing computer applications to fast-track what it claims to be outmoded local government financial transaction structures. So far, it has launched two new ventures that it claims to achieve efficiencies by serving as a middleman between local governments and the private vendors who serve them.

A. The first venture is called Sports Efficiencies, LLC ("Sports Efficiencies"). Sports Efficiencies has contracted with a large number of sports referees, track and field officials and gymnastics competition judges. Such sports officials must earn their respective credentials to officiate at such events through training, testing and certification with their respective sports' governing boards. Sports Efficiencies has assured such officials that they would be paid faster and at a higher wage if they contract with Sports Efficiencies exclusively to handle the payment and contracting procedures. Local governments have traditionally contracted with such sporting officials directly and have paid them after the rendering of the services.

Sports Efficiencies claims that it now has a monopoly on the provision of such sporting officials to serve the Massachusetts interscholastic athletic community, as well as local recreation department programs. Because of its claimed monopoly, Sports Efficiencies has tripled the dollar amount required for school and recreation departments to utilize its officials. Also, in order for local governments to contract for such sporting officials, they must sign contracts for memberships in Sports Efficiencies and provide monthly funds up-front, from which payments to sporting officials will be made. Sports Efficiencies requires that such funds shall be deposited into a jointly-owned bank account for which Sports Efficiencies has exclusive control.

Question: Would you advise that your municipality enter into a contract with Sports Efficiencies?

Answer: No. The Sports Efficiencies requirement that municipalities pre-pay for the services of sporting officials is violative of G.L. c. 41, § 56, among other issues. Under G.L. c. 41, § 56, all boards, committees, department heads and officers authorized to expend money must, at least monthly, approve and transmit to the accounting officer all bills and payrolls that are chargeable to the appropriations over which they have spending authority. Approval for such expenditures is given **only after** a determination that the charges are correct and the goods, materials or services were ordered and actually received. G.L. c. 41, § 56 provides that payment can be made only after goods have been delivered or services rendered.

Also, as with the Maroon Bikes example discussed above, the requirement that local government funds be paid into an account managed by Sports Efficiencies is violative of G.L. c. 41, § 35, which provides, in pertinent part, as follows:

Every town treasurer shall give bond annually....He shall receive and take charge of all money belonging to the town, and pay over and account for the same according to the order of the town or of its authorized officers. No other person shall pay any bill of any department ...

Therefore, entering into a contract with Sports Efficiencies contravenes Massachusetts municipal finance laws.

B. Disrupto has also created a venture called Insurance Efficiencies, LLC ("Insurance Efficiencies"). The business plan for Insurance Efficiencies states that it contracts directly with construction vendors that perform services for municipal public works departments to repair municipal infrastructure damaged by motor vehicle accidents and other mishaps. Insurance Efficiencies works with local DPW officials to determine when such damage to municipal infrastructure has occurred as a result of a damage claim that is to be reimbursed through insurance proceeds. Insurance Efficiencies also monitors the records of local police departments to obtain information on the motorist or other persons covered by insurance who damage municipal property. For example, should damage to municipal trees occur, or a motor vehicle damages a traffic signal, Insurance Efficiencies will repair the damage and make a claim against the insurance company of the individual that caused the damage. Insurance Efficiencies find that local DPW directors are so pleased that damage to municipal infrastructure is repaired so promptly, and without diverting existing staff from other projects, that they sometimes fail to report the damage to the municipal chief administrative officer. In addition, sometimes Insurance Efficiencies does not receive all of the costs it paid to make the repairs, but by charging higher hourly rates for its labor and a high mark-up on materials used to make the repairs, such reimbursements have been so lucrative that the operation is successful for Insurance Efficiencies.

Question: Should you as the local accountant or auditor condone the involvement of Insurance Efficiencies in repairing municipal infrastructure and seeking cost recovery reimbursement directly from insurance companies?

Answer: No.

The Insurance Efficiencies scheme is problematic on many levels.

1. G.L. c. 44, § 53 provides in pertinent part as follows:

(2) sums not in excess of \$150,000 recovered under the terms of a fire or physical damage insurance policy or received in restitution for damage done to such city, town or district property may, with the approval of the chief executive officer, be used by the officer or department having control of the city, town or district property for the restoration or replacement of such property without specific appropriation during the fiscal year in which they are received or 120 days after receipt, whichever is later.

Presently, a municipal or district department in charge of property that was damaged and for which the municipality or district receives insurance proceeds or restitution payments of \$150,000 or less could spend the monies, without appropriation and with the approval of the chief executive officer, to replace or repair the property. In many cases, however, that replacement or repair must be made immediately. A recent change to G.L. c. 44, § 53 allows spending for this purpose in advance of the monies being received, for amounts of \$150,000 or less. However, if the monies are not received by the close of the fiscal year after the fiscal year in which the damage occurred, the municipality must report the same in the determination of the applicable annual tax rate or otherwise make provision therefor.

While the DPW directors enjoy Insurance Efficiencies' prompt repairs to damaged municipal infrastructure, with no interruption to their personnel, the Insurance Efficiencies scheme completely bypasses the requirement in G.L. c. 44, § 53 that the chief executive officer of the city or town is the official or board that must approve whether or not to replace or repair damaged property. There are often situations where the chief executive officer may determine that the insurance proceeds from municipal infrastructure damage may be better used elsewhere.

2. G.L. c. 30B, the state Uniform Procurement Act provides in pertinent part, as follows:

§ 1 Section 1: Application of chapter

Section 1. (a) This chapter shall apply to every contract for the procurement of supplies, services or real property and for disposing of supplies or real property by a governmental body as defined herein.

The state Uniform Procurement Act requires that a municipality's engaging contractors for road and other infrastructure repairs must comply with specified bidding procedures and requires that the municipality initiate a procurement process for such repairs, depending upon the amount. The Uniform Procurement Act's goal is to ensure fair competition in the provision of government services to ensure that contractors with the requisite competence are contracted after a competitive bidding process for municipal projects. While Insurance Efficiencies may be a competent contractor, an open, fair and transparent process would provide the municipality with a contractor for the lowest responsible price for such services. While insurance damage may be a usual part of a busy municipality, rather than utilizing Insurance Efficiencies, an annual bidding process for a competent contractor to provide on-call services may yield the best contractor.

3. G.L. c. 149, § 26, the state Prevailing Wage Law, provides in pertinent part as follows:

The rate per hour of the wages paid to said mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works shall not be less than the rate or rates of wages to be determined by the commissioner [of labor and industries] as hereinafter provided; provided, that the wages paid to laborers employed on said works shall not be less than those paid to laborers in the municipal service of the town or towns where said works are being constructed.

If it is determined that the municipal infrastructure work performed by Insurance Efficiencies is defined to be a "public work," as defined by G.L. c.149, and it is further determined that Insurance Efficiencies is not paying the required wage scale for its employees performing the work, a municipality utilizing Insurance Efficiencies, may be subject to state fines and other penalties. Having a contract with a

contractor providing repairs to municipal infrastructure would ensure that such a contractor is in compliance with the state Prevailing Wage Laws and is following other municipal contract requirements, such as attestations of no bid collusion and certificates of tax payment compliance, and the like.

4. G.L. c. 41, § 35 provides in pertinent part, as follows:

Every town treasurer shall give bond annually....He shall receive and take charge of all money belonging to the town, and pay over and account for the same according to the order of the town or of its authorized officers. No other person shall pay any bill of any department ...

Under the municipal finance laws, the municipal treasurer is charged with the custody, management and safekeeping of all municipal funds. To ensure the safety of all public monies in his possession, the treasurer is statutorily required to be adequately bonded. With respect to Insurance Efficiencies' scheme, its direct solicitation of insurance payments from insurance companies and using the proceeds to pay for the services it performed to fix damaged municipal infrastructure is likewise violative of G.L. c. 41, § 35.

CASE STUDY 3: CROWDSOURCING, FUNDRAISING:

Mary Adams is the Planning Director for the Town of Pomona. A local biking advocacy group that she has worked with, the Friends of the Rail Trail, has approached Mary about the group's proposal to initiate a fundraising campaign for a preliminary feasibility study of a plan to convert an abandoned railroad line into a multi-use path on a rail trail that would connect with a larger rail trail. The Friends group is hoping to fund the feasibility study in the hopes of obtaining Community Preservation Act funds, state grants and a town meeting appropriation to eventually construct the rail trail connection. Mary, an ardent biker herself, is not convinced that the Friends group has the organizational capacity to raise the \$50,000 required to fund the preliminary design study. She is seeking guidance from Terry Gonzalez, the Pomona Town Accountant, on the best approaches to organizing a fundraising campaign for the rail trail preliminary design costs.

A. Fundraising Dinner:

Mary has come up with two different fundraising approaches. First, believing that the rail trail would benefit the larger community, she questions Terry whether the town can sponsor a large fundraising dinner event at the Pomona Hotel. She envisions that the fundraising event could feature raffles, a silent auction and a live auction with such prizes as tickets to the local minor league baseball team, vacation packages and artwork. She would like to solicit donations of prizes from local businesses that have contracts with the town contract for goods and services. In particular, she's pretty sure that she can raise money from the ACE Real Estate Investment Trust ("ACE"), which has a large development project that is seeking development approval from the Planning Board, which she oversees. The ACE development, if approved, would abut the rail trail; therefore, the construction of the rail trail would provide an amenity to the future residents of ACE's development project. She is hoping that Town employees can sell tickets to the event in various offices at Town Hall. She would like permission to use the Town's tax-exempt certificate to purchase prizes and supplies for the fundraising dinner.

B. Crowdsourcing Application:

The second fundraising idea that Mary raised with Terry was to utilize crowd sourcing fundraising, using an online entity called GoFundPomona, a computer platform application ("app") where users may make online donations for various charitable causes. The crowdfunding application enables the aggregation of donations of money or tangible personal property for particular private, charitable or governmental purposes. Mary had recalled that a county planner had won an award from a regional planning association for using the app to raise a substantial sum to fund new playground equipment. She would

like to promote the use of the app through posting messages on the Town's official website and posting bumper stickers on all vehicles owned by the Town.

Question:

How should Terry Gonzalez advise Mary Adams relative to her fundraising proposals?

Answer: Fundraising Dinner

Mary's suggested fundraising approaches illustrates how town-sponsored fundraising may run afoul of state municipal finance laws, as well as state ethics laws. First, Terry should review her files to determine whether her predecessor left any town policies about (1) allowable or prohibited fundraising sponsored by the Town's departments or employees and (2) acceptance of gifts raised by private individuals or groups.

An ideal policy should:

- be disseminated to employees and made available to the public;
- state that all money or tangible personal property solicited, donated or accepted belongs to the governmental entity;
- prohibit access to the governmental entity's bank accounts or use its tax ID by anyone other than the treasurer;
- state that checks/payments must be made out to the governmental entity, and not to a department, board, or officer of the entity;
- address the purposes for which the governmental entity will accept donations of money or personal property;
- address use of the governmental entity's name, sponsorship or resources in fundraising;
- outline appropriate fundraising activities and events;
- contain approval procedures to ensure (1) compliance with the entity's policy objectives, (2) compatibility with procurement, safety, IT and other standards, and (3) compliance with gift policy; and
- contain record-keeping procedures to ensure transparency and prevent misappropriation or improper use.

Absent a policy in place, looking at Mary's fundraising ideas brings up a number of legal issues.

The state Anti-Aid Amendment. Article 58 of the Massachusetts Constitution prohibits the use of public funds for non-public purposes. Also, G.L. c. 40, § 5 provides that public funds must be used in accordance with public objectives. Certain appropriations required by Mary's fundraising ideas would require that Pomona purchase a number of items that may not be in accordance with public objectives, such as prizes, alcohol and supplies for the fundraising dinner. Additionally, proposed fundraising expenditures must be analyzed to determine whether the expenditures for that purpose are within the scope of a municipal department's appropriation purposes. The scope of a municipal appropriation is analyzed by looking to the legislative intent when making the appropriation and reviewing the scope of the warrant article. Factors in determining legislative intent may include past practice, as well as whether there is a policy allowing, prohibiting or otherwise regulating departmental fundraising activities.

Other laws invoked in Mary's proposed fundraising activities include G.L. c. 268A, the State Ethics Law. Although the State Ethics Commission is the state entity charged with analyzing and enforcement of the State Ethics Law, one does not have to look too far to have concerns that Mary's proposed fundraising solicitations aimed at contractors doing business with the town, and to ACE, the real estate developer that has a development proposal under review by Mary's board could constitute coercive situations for the contractors and the developer. Also, the Town and employees making such solicitations must apply objective standards in all dealings with persons and entities solicited and do not favor those who gave or disfavor those who did not.

Another body of law pertaining to the fundraising activities include laws governing the fundraising events or soliciting donations that are under the domain of the State Attorney General's Office, through its Public Charities Division. Additional regulation pertains to Mary's proposal for holding a raffle. The State Lottery Commission collects taxes on the receipts of charitable lotteries, so financial recordkeeping and the filing of a lottery tax return would be required.

Also, hosting a fundraising dinner at a local hotel, especially if liquor is being served, is not a typical municipal government operation. Therefore, there may be liability issues raised for the town for which G.L. c. 258, the Massachusetts Tort Claims Act, may be invoked. Municipal counsel should be consulted on the applicability of such issues, as well as all other related issues.

Answer: Crowdsourcing Application

Mary's proposal to fundraise using the GoFundPomona app also raises municipal finance concerns. The legal considerations are mostly similar to the "traditional" fundraising methods. In addition, any policy pertaining to the use of social media to fundraise should address:

- approvals required before posting to a site seeking donations for a particular municipal department or purposes; and
- limitations on the sites that may be used; for example, does the site retain a portion of the donation as an administrative fee? This could be a violation of G.L. c. 41, § 35. Also, is there a fee disclosed to the donor? Does GoFundPomona send the funds raised directly to the Town of Pomona?

Municipalities should also contact the State Ethics Commission regarding the applicability of state ethics laws relating to this type of fundraising solicitations by municipal employees.

Conclusion:

Due to the multiple complications pertaining to direct municipal government participation in fundraising activities, the Division of Local Services has long recommended that fundraising activities be conducted by "Friends Of" groups. Such groups operate privately and are, therefore, not as regulated by state municipal finance laws, the State Ethics laws and other regulations pertaining to municipal governments. When the private fundraising groups have completed their fundraising activities, they simply turn over the funds to the Town Treasurer, who must set up a gift account, pursuant to G.L. c. 44, § 53A. The Town would then assume a fiduciary responsibility to the private fundraising group to safeguard the funds and to utilize the funds in the manner specified by the private fundraising group. The approval of the applicable board or officer into whose department the gift account is deposited must be obtained before the proceeds can be expended.

CASE STUDY 4: PFAS FUNDS:

The City of Amberburg joined a multi-district lawsuit alleging contamination of its public water supply resulting from an intrusion of a group of man-made chemicals known as per- or polyfluoroalkyl substances, or PFAS. The chemicals are found in a wide range of consumer products and industrial applications, including non-stick cookware, firefighting foam and food packaging. Due to their persistence in the environment and potential health effects, PFAS are often referred to as "forever chemicals." Recently, Mayor Rob Nolan announced that the City had received a check for \$137,000 as a legal settlement from one of the chemical company defendants. Mayor Nolan noted that the City had in prior fiscal years spent substantial funding from its water enterprise fund to remediate the contamination resulting from PFAS products. Accordingly, he is hoping to utilize the funding as a stop gap for the city's budget, given declining city building permit revenue that had been expected. He would like to utilize the funding now for FY26. What are his options?

Answer:

On December 4, 2023, Governor Healey signed into law Chapter 77 of the Acts of 2023, Section 9 of which provides, in part, for an exception to the general rule that all receipts are to be recorded as general fund revenue per G.L. c. 44, § 53, creating a new Clause 5.

Pursuant to the new Clause 5 of G.L. c. 44, § 53, the Director of Accounts has determined that cities and towns that receive PFAS settlement proceeds may place these proceeds in a dedicated special revenue fund and may expended with appropriation. This policy was announced in the recently-released DLS Bulletin 2025-4.

The Director of Accounts has determined that cities and towns that receive PFAS settlement proceeds may treat these receipts as follows:

1. The proceeds may be placed in a special revenue fund and used, with appropriation, for any purpose required pursuant to the settlement agreement or, if no restriction exists, **any legal purpose allowed under Massachusetts General Law.**
2. The proceeds may otherwise be closed to the general fund at year end and certified as free cash during the free cash during the free cash certification process. If you have any further questions, please contact your BOA field representative

In accordance with Section 1, Mayor Nolan may place the funds in a special revenue account for FY26 and may spend the funds for any purpose through a City Council appropriation.

CASE STUDY 5: CREDIT CARDS/ REWARDS POINTS:

Alicia Stern, the Human Resources Director for the Town of Malahide has been speaking with Town Treasurer Eduardo Roland about the Town's credit card containing an accrued rewards points balance entitling the Town to receive \$157.00 in retail goods at two local department stores. Alicia has been seeking to boost employee morale through small expenditures and feels that purchasing goods at the department stores with the small balance in retail credits would make for nice raffle prizes to be raffled off at the annual summer employee barbeque. May the Town expend the credit card rewards points for such a purpose?

ANSWER:

Municipal expenditures are governed by G.L. c. 40, § 5. It is probably a better idea for Treasurer Roland to seek to request that the credit card company convert the retail goods points to cash, so that the funds could be deposited into the town treasury. If there is no cashback option available for converting the credit card points rewards balance, then the town should seek to obtain a credit card that does offer cash back after accruing such rewards points. In the meantime, town meeting approval may be needed to appropriate the remaining funds pursuant to G.L. c. 44, § 53 for an employee gift for the purpose of boosting employee morale. If a town meeting appropriation may not be made in time, then awarding a small gift at the barbeque through redeeming the credit card points would not involve an excessive expenditure.