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# City and Town

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## The Advantages of Online Bill Payments

by Lydia Hill

Communities statewide have been taking advantage of technology to streamline operations in the collector's office. Now, with the increase in city and town websites, one area worth exploring is online bill payments. Similar to purchasing products via the Internet, there are services available for municipalities to offer online payment options to their taxpayers via a website.

These third-party service providers give taxpayers the ability to pay by electronic check transfers or credit card payments 24 hours a day. The community typically sets up a link on its website called "online payment," or something similar, which redirects the taxpayer to the third-party website. If the community does not have a website, then taxpayers can be directed to the service provider's website via advertisements or bill inserts. At that point, the taxpayer has the ability to pay for their tax, excise or fee (depending upon which online payments the municipality has available) using either an electronic checking transfer or a credit card. The e-check option is usually free, while the credit card fee is passed on to the taxpayer. The "customer" will receive an e-mail confirming payment.

Ideally, once the system is in place, the collector sends the tax, excise or utility commitment to its service provider, who would upload it into their system. Depending on the software in place in the collector's office, the outside vendor may or may not have compatibility issues. This is something that the collector should discuss with the vendor before an agreement is reached. Once the commitment is on the service provider's system, payments, either through elec-

tronic check or credit card, become possible. The service provider can then wire the money to the municipality, or deposit it directly into a deposit-only bank account in the municipality's name. The third-party service provider should also provide the municipality with an electronic and hardcopy register of payments received. If the municipality and the vendor have compatible software, the collector can download a record of payments received and post them immediately. If not, then payments would have to be manually posted.

Maureen Dwinnell, treasurer/collector in Hopkinton, uses software in her office that is incompatible with her online vendor. However, she has made the process of manually posting her online payments, and reconciling at the end of the month, easier by putting them in one batch. She knows that the online system still has customer service advantages even though her office has to manually post the receipts. "After all, until technology came along, we were using manual ledgers."

There are a number of advantages to offering online payments:

- It sends a progressive message to taxpayers about customer service and the use of technology.
- It reduces foot and mail traffic to the collector's office (and reduces lock-box fees, if applicable).
- It can result in faster deposits and postings of payments.
- It can reduce delinquencies by offering greater payment convenience to the taxpayers.

- It reduces the number of over- and under-payments in a few ways. The collector does not receive a mailed check after the due date, and the online information is in real-time, therefore the taxpayer can determine the exact amount due, plus interest if applicable.

- It can reduce telephone inquiries.
- Mortgage companies tend to take advantage of this feature, reducing collector hours spent managing those accounts.

Some advantages to the taxpayer include:

- Credit card payments are possible, with a fee.
- Bill payment is possible 24 hours a day, seven days a week.
- Most electronic checking transfers are free transactions.
- Immediate confirmation of payment is sent via e-mail.

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### From the Deputy Commissioner

The state budget process for FY07 began when the governor submitted his budget proposals in the form of a bill (known as "House 2") to the House of Representatives on January 25, 2006.

As this bill moves through the budget process, it is considered and voted upon by the House and Senate Ways & Means Committees, the full House and Senate, and a conference committee appointed by House and Senate leadership. Eventually, it winds up back on the governor's desk. He may veto or approve the entire budget, or veto or approve certain line items, but may not add anything. The House and Senate may vote to override the governor's vetoes. If all goes according to schedule, the final version of the state budget should be approved in June 2006.

To keep local officials up-to-date, the Division of Local Services (DLS) publishes full local aid estimates by city, town and regional school district at each juncture of the state budget process ([www.mass.gov/dls/CHERRY/index.htm](http://www.mass.gov/dls/CHERRY/index.htm)). We also provide links to House 2, the House and Senate Ways and Means budgets and also the conference committee budget ([www.mass.gov/dls/budget/budgetsource.htm](http://www.mass.gov/dls/budget/budgetsource.htm)).

These sites are valuable planning tools for city and town officials as they participate in preparing budgets for FY07.

**Gerard D. Perry**  
Deputy Commissioner

# Legal

## in Our Opinion

### Residential Requirement for Veterans Exemption Upheld

by James Crowley, Esq.

The Supreme Judicial Court unanimously ruled in November that the residency requirement for veterans to qualify for a Massachusetts personal exemption on real estate was constitutional. The decision is *Sylvester v. Commissioner of Revenue*, Mass. (2005). The plaintiff, Zoel Sylvester, unsuccessfully argued that the Massachusetts five-year residency requirement interfered with his fundamental right to travel and thereby violated the 14th Amendment of the U.S. Constitution and the Declaration of Rights of the Massachusetts Constitution.

Sylvester, a World War II veteran and a Purple Heart recipient, entered military service from another state. After his military discharge, he lived for a time in Massachusetts, and later moved to New Hampshire. In 2000, he returned to Danvers where he bought a house. Sylvester filed veterans exemption applications for fiscal years 2001 and 2002 that were denied. The Danvers assessors based their denial on M.G.L. Ch. 59 Sec. 5 Cl. 22, which affords exemptions to veterans "who were domiciled in Massachusetts for at least six months prior to entering such service, or who have resided in the Commonwealth for five consecutive years next prior to date of filing for exemptions under this Clause." In November 2002 the Danvers town meeting adopted a local option statute that reduced the five-year waiting period to one year. Consequently, Sylvester received a veterans exemption for fiscal year 2003 since he satisfied the one-year residency requirement. Having received an

exemption for FY03, Sylvester brought suit in Superior Court challenging the constitutionality of the state's five-year residency requirement that led to the denial of his fiscal year 2001 and 2002 exemption applications. The Superior Court judge rejected Sylvester's claim that the residency requirement impermissibly infringed on his right to travel, and determined that the residency requirement was supported by a rational basis. On direct appeal, the case was heard by the Supreme Judicial Court.

Relying on prior decisions, the Supreme Judicial Court initially held there was a strong presumption that the state statute establishing the five-year residency requirement was constitutional. Sylvester contended, however, that the Massachusetts durational residency requirement burdened his right to travel that was protected under the federal and state constitutions. He argued that the U.S. Supreme Court decision of *Saenz v. Roe*, 526 U.S. 489 (1999) supported his position. In *Saenz*, this country's highest court struck down a California law that limited its Aid to Families with Dependent Children (AFDC) benefits to new residents of the state, for the first year of their residency, to the benefits they would have received in the state of their prior residence, if lower than California's. According to the U.S. Supreme Court, California placed a penalty on the right to travel that was unlawful since the state classification based on the length of residence did not advance a compelling governmental interest. In the opinion of the Supreme Judicial Court, the *Saenz* decision did not require courts to use a strict scrutiny analysis in all instances where a state legislature has placed a durational residency requirement as a condition for receiving a benefit. According to the Supreme Judicial Court, the extent of judicial review depended on the nature

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# Focus

## on Municipal Finance

### Municipal Expenditures: Proper Public Purposes

by Mary Mitchell, Esq.

Increasingly over the past few years, the Division of Local Services' (DLS) legal and accounting staffs are asked if certain expenditures made by cities and towns are allowable. Many of these issues arise as the municipal accounting officer reviews departmental bills for payment. This article discusses the rules regarding the expenditure of public funds and makes recommendations for ensuring proper payment.

#### Authority to Spend

The authority for cities and towns to spend money arises under Section 5 of M.G.L. Ch. 40. 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.<sup>1</sup>

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.<sup>2</sup> 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.

#### Public Purpose Limitation

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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

#### Prohibitions Against Certain Expenditures

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.<sup>6</sup> 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 infirmary, hospital, institution, primary or second-

dary 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

##### 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 Section 58 of M.G.L. Ch. 44.

#### What Constitutes a Public Purpose?

The question of what constitutes a permissible "public purpose" has been discussed in many cases.<sup>10</sup> The cases "do not, however, establish any univer-

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sal test."<sup>11</sup> Instead, they generally stress the certainty of benefits to the community.<sup>12</sup> Thus, the basic test is whether the expenditure is required for the general good of the inhabitants of the city or town.<sup>13</sup>

Generally speaking, local government spending for the following purposes satisfies the public purpose test:

**Wages and Benefits.** Cities and towns have the right to spend reasonable amounts to execute their powers and duties.<sup>14</sup> This right includes the right to compensate people for services rendered.<sup>15</sup> Compensation for services may include sick leave and vacations.<sup>16</sup> Cities and towns also have the right to settle employment and other claims that may be made upon them arising out of their administration of their municipal affairs.<sup>17</sup>

**Merit Awards.** Cities and towns may spend reasonable amounts on awards for students.<sup>18</sup> Cities and towns may also spend reasonable amounts on retirement gifts, plaques, merit service payments and other similar awards for municipal employees and officials. The expenditure of public money in recognition of services rendered, even though such expenditure of money is directly for the private benefit of certain individuals, is a public purpose where the benefit is conferred as an appropriate recognition of distinguished and exceptional service, such that the public welfare will be enhanced or the loyalty and productivity of the other employees will be promoted.<sup>19</sup>

By contrast, local government spending for these purposes does not satisfy the public purpose test:

**Gifts and Gratuities.** 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.<sup>20</sup>

**Lobbying.** Cities and towns cannot spend money to influence elections.<sup>21</sup>

**Frequently Asked Questions**

DLS is asked frequently whether the following expenditures are for public purposes and may be paid:

**Alcohol purchased by a department to be served at a fundraiser or for compliance testing.** The language of M.G.L. Ch. 44 Sec. 58 is prohibitive. It reflects an explicit Legislative disapproval of spending municipal resources for alcoholic beverages and cigarettes. DLS has advised, however, that they 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.

**Floral arrangements for funerals of municipal employees.** 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.

**Plaques and gifts awarded to persons retiring from municipal government or to current employees for outstanding performance during the year.** 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.

**Refreshments at public functions, such as a ribbon-cutting ceremony, an opening day, a reception or banquet, or a presentation.** 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.

**Refreshments served to employees, such as coffee made available at a staff meeting or 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

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pal sponsored meeting or event for authorized persons and related to the public purpose of the sponsor.

**Reimbursement of a department head for attending retirement or department dinners or parties or for attending other events not sponsored by the department or municipality.**

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.

**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.

**Payment of expenses associated with fundraising for departments, e.g., mailings seeking donations or door prizes and refreshments at a fundraising event.**

Municipal departments like the Parks and Recreation Department, the Library, the Historic Commission, or the schools may want to raise money for a particular project. There is no law that prohibits seeking financial donations or some other kind of support. Fundraising activities that go beyond applying for grants or soliciting donations and involve raising and disbursing significant monies are problematic, however, because they are more in the nature of a profit on the business or transaction. DLS believes better practice may be to have a private entity sponsor and conduct fundraising events and turn over the net proceeds to the municipal department as a grant or gift.

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. For example, the school department cannot pay to print and mail a flyer by the Parent-Teachers Organization to promote a car wash it is holding to raise monies for the schools.

Sharing the expenses of a community event co-sponsored by a municipal department and a private organization also raises Anti-Aid Amendment issues

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because the event is not under the exclusive control of public officers. However, the municipal department could enter into a contract with the private organization to run the event on its behalf.

**Conclusion**

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. ■

1. M.G.L. c. 40, § 5 applies to cities under M.G.L. c. 40, § 1.

2. See art. 2 of the Amendments to the Massachusetts Constitution, as appearing in art. 89, §§ 6, 7 and 8.

3. Mass. Const., Art. XI, c. 2, § 1 and Art. IV, c. 1, § 1; *Lowell*, 111 Mass. at 461, 471; *Matthews v. Inhabitants of Westborough*, 131 Mass. 521 (1881); *Mead v. Acton*, 139 Mass. 341 (1885); *In re Opinion of Justices*, 190 Mass. 611 (1906); *Whittaker v. Salem*, 216 Mass. 483 (1914); *Duffy*, 232 Mass. at 50; *In re Opinion of Justices*, 240 Mass. 616 (1922); *Jones v. Inhabitants of Town of Natick*, 267 Mass. 567 (1929); *D.N. Kelley & Son, Inc. v. Selectmen of Fairhaven*, 294 Mass. 570 (1936); *Quinlan v. City of Cambridge*, 320 Mass. 124 (1946); *Eisenstadt v. County of Suffolk*, 331 Mass. 570 (1954).

4. See e.g., *Opinion of the Justices*, 313 Mass. 779 (1943) ("The fact that the owner of a way may profit by expenditures 'for the removal of snow and ice' ... does not invalidate expenditures ... where the primary purpose of such removal is the benefit of the public to whose use the way is open.")

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5. See e.g., *Salisbury Land & Improvement, Co. v. Commonwealth*, 215 Mass. 371 (1913) (act was unconstitutional where it authorized the condemnation of lands for a public beach and the sale or leasing to private parties of any portion not needed for the public beach).

6. The Anti-Aid Amendment is contained in Section 2 of Article 46 of the Amendments to the Massachusetts Constitution (as amended in 1974 by Art. 103 of the Amendments).

7. See *Commonwealth v. School Committee of Springfield*, 382 Mass. 665 (1981); *Helmes v. Commonwealth*, 406 Mass. 873 (1990).

8. See e.g., *Commonwealth v. School Committee of Springfield*, 382 Mass. 665 (1981) (court held that the purchase of services by the school committee from private schools to meet the needs of special education students did not run counter to the anti-aid amendment because the purpose was to fulfill the obligation of the public school system which had chosen not to provide the services in its own schools).

9. See e.g., *Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Board of Lawrence*, 403 Mass. 531 (1988) (the taking of property for urban renewal project did not violate the Anti-Aid Amendment because the taking had a public purpose to eliminate a blighted open area and any benefit to college was incidental to that purpose).

10. See *Eisenstadt v. Suffolk County*, 331 Mass. 570, 573 (1954) and cases cited.

11. *Allydorn Realty Corp.*, 304 Mass. at 292.

12. See e.g., *Opinion of the Justices*, 313 Mass. at 784–85 (expenditures for snow removal from private ways that were open to public were for the public purpose of accommodating the public as to means of travel and transportation); *McLean v. Boston*, 327 Mass. 118 (1951) (expenditure of money for the development of housing for residents made homeless by tunnel expansion was for the public purpose of addressing a local emergency caused by a public improvement); *Opinion of the Justices*, 349 Mass. 794 (1965) (payments by city for retirement of certain alcoholic beverage licenses was for the public purpose of cleaning up of the city).

13. See *Opinion of the Justices*, 337 Mass. 777, 781 (1958).

14. See e.g., M.G.L. c. 40, § 4 (“A city or town may make contracts for the exercise of its corporate powers. ...”); *Leonard v. Middleborough*, 198 Mass. 221 (1906).

15. See e.g., *Curran v. Holliston*, 130 Mass. 272 (1881); *Attorney General v. Woburn*, 317 Mass. 465 (1945).

16. See e.g., *Quinlan v. City of Cambridge*, 320 Mass. 124 (1946); *Wood v. Haverill*, 174 Mass. 578 (1899).

17. See *Matthews v. Westborough*, 131 Mass. 521 (1881); *Jones v. Natick*, 267 Mass. 576 (1929); *George A. Fuller Co. v. Commonwealth*, 303 Mass. 216 (1939).

18. See e.g., M.G.L. Ch. 71, § 47 (specifically authorizes the expenditure of municipal funds for student prizes).

19. See e.g., *Eisenstadt v. County of Suffolk*, 331 Mass. 570 (1954); *In re Opinion of Justices*, 190 Mass. 611 (1906); see also *In re Opinion of Justices*, 240 Mass. 616 (1922).

20. See e.g., *Matthews v. Westborough*, 131 Mass. 521, 522 (1881); *Whittaker v. Salem*, 216 Mass. 483 (1914); *Jones v. Inhabitants of Town of Natick*, 267 Mass. 567 (1929).

21. See e.g., *Anderson v. Boston*, 376 Mass. 178 (1978), *appeal dismissed*, 439 U.S. 1060, 99 S.Ct. 822 (1979).

**Joint Tax Revenue Figure Reached**

On December 12, 2005, Commissioner Alan LeBovidge presented the Department of Revenue’s economic and revenue forecast to members of the House Ways and Means Committees and the Secretary of Administration and Finance at their annual Consensus Revenue Hearing at the State House.

In addition to FY06 and FY07 revenue projections for the Commonwealth, this report provided information on recent revenue trends for the state and predictions regarding the US economy for FY06 and FY07.

Testimony was also provided by Michael Widmer of the Massachusetts Taxpayers Foundation, Dr. Yolanda

Kodrzynecki of the Boston Federal Reserve Bank, Professor David G. Tuerck of the Beacon Hill Institute and Professor Adam Clayton-Matthews of UMass Boston.

To access the full text of the materials presented at this hearing, click on [www.mass.gov/eoaf/revenue\\_hearing\\_materials.html](http://www.mass.gov/eoaf/revenue_hearing_materials.html).

On January 13, Administration and Finance Secretary Thomas Trimarco; Senator Therese Murray, Chairwoman of the Senate Committee on Ways and Means; and Representative Robert DeLeo, Chairman of the House Committee on Ways and Means, issued a statement indicating that they agreed on a joint tax revenue figure of \$18.975 billion for FY07.

They also agreed upon the following off-budget transfers that are mandated in law:

- \$734 million for the MBTA.
- \$572.52 million for School Building Assistance (SBA).
- \$1.335 billion for the state pension system, consistent with the three-year schedule currently in effect.

The secretary and the chairs of the two budget committees agreed that \$16.333 billion will be the maximum amount of tax revenue available for the general appropriations act (GAA) in FY07. ■

**Online Bill Payments**

Some city or town halls, like Brookline, have a town-owned computer near the collector's office to allow a taxpayer to pay with a credit card from inside town hall. Having the computer there introduces taxpayers to the online service and helps reduce wait-time during heavy collection periods at the collector's window.

Various cities and towns have tried to run credit card programs of their own with little success. Because credit card companies impose a fee on transactions, there is an unknown cost to the municipality, which creates uncertainty while setting the annual budget. At least one town that appropriated for the fee soon discovered that the total cost was too expensive. A municipality considering accepting credit cards without the "buffer" of a third-party provider should consider the potential public relations fall-out of passing the fee onto the taxpayer and the difficulty in managing the fee structure.

In general, collectors have had good luck with online payment companies. Additional vendors specialize in software designed for more complicated

collections, such as recreation, school lunch and parking tickets. No matter what company is engaged or method is chosen, the collector should be certain that the vendor is familiar with and obeys Massachusetts' collection laws.

Most municipalities that offer the service only receive payments from a small percentage of their taxpayers. However, as Nancy Holt, treasurer/collector in Marshfield, notes, the service "offers a significant avenue for taxpayers to pay at their convenience, at no cost to the municipality. We are slowly but surely seeing an increase in usage from a new generation of taxpayers."

A separate form of "online bill payment" is available to the taxpayer who chooses to utilize the electronic bill payment service through their own bank. In this situation, taxpayers direct their bank, through its website, to pay a certain amount to a vendor, in this case, the municipality. The bank then mails out a check. This method can be misleading. The average consumer is often under the impression that their bank wires the money to the vendor, thus decreasing

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the "float" time between payment and receipt. This is not the case. Their bank simply writes and sends the vendor a paper check, which takes the same amount of time to get to the municipality. Additionally, collectors frequently have a problem when they receive payments through this method, because there is nothing on the check that states the purpose of the payment or identifies the account. The collector's office then has to spend time researching in order to post the payment correctly, and sometimes returns the check if additional information is required. Therefore we suggest that municipalities facing this problem ask their taxpayers to indicate as payee: "Town of Anywhere, Real Estate, bill number" or "City of Anywhere, Sewer, account number," in order to alleviate this particular concern.

This article, along with other best practices, appears on the Division of Local Services' Financial Management Assistance website at [www.mass.gov/dls/MDMSTUF/Technical\\_Assistance/tech\\_assistance.htm](http://www.mass.gov/dls/MDMSTUF/Technical_Assistance/tech_assistance.htm). ■

**Residential Requirement**

of the particular benefit and the specific impact on the right to travel. In the case at hand, the Massachusetts statute did not concern a necessity of life or a fundamental political right. The statute concerned a tax exemption and the Supreme Judicial Court noted that federal courts have traditionally given great deference to states in matters concerning taxation.

In the court's view, a rational basis test was the appropriate standard when reviewing the Commonwealth's statutory exemption provision. According to the court, this state's five-year residency requirement had a rational basis since the purpose was to provide property tax exemptions in varying amounts to disabled veterans who were faced with rising local tax obligations due, in part, to

escalating real estate values. The situation was similar to the one presented in *Lee v. Commissioner of Revenue*, 395 Mass. 527 (1985). In *Lee*, the Supreme Judicial Court held that the durational 10-year residency requirement for an elderly exemption under M.G.L. Ch. 59 Sec. 5 Cl. 17C was constitutional since the requirements were supported by a rational basis. The rationale for the court's decision was that Clause 17C was enacted to respond to the inflationary increases in property tax assessments. The Supreme Judicial Court wrote that the Legislature probably reasoned that persons over 70 years of age who were on fixed incomes would have difficulty in paying rising real estate taxes. Elderly persons who sold their homes and bought smaller ones

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would receive a monetary benefit from the sale while those taxpayers who preferred to remain in their present homes would be subject to higher taxes, which would not be offset by capital gains on the sale of appreciated property. The Legislature probably determined that some elderly persons, perhaps many, would prefer to remain in their present homes.

In *Sylvester*, the court reasoned that the veterans exemption provision did not place an impermissible penalty on the right to travel or prevent the plaintiff from buying property in Massachusetts. Accordingly, the durational residency requirement for a veterans exemption did not violate the federal and state constitutions. ■

# DLS Update

## Romney Proposes a Nearly \$200 Million Increase in Local Aid

At the annual meeting of the Massachusetts Municipal Association last month Governor Mitt Romney revealed that his FY07 budget will boost state aid to cities and towns by \$197.9 million, or 17 percent, over last year's spending plan, increasing funding above the pre-fiscal crisis level of 2001.

The budget filed by the governor on January 25, 2006 (House 2), proposed an increase in the aid distribution to localities from \$1.155 billion in the current year to \$1.353 billion, partly by immediately uncapping lottery revenues. During the fiscal crisis, the lottery revenue distribution to cities and towns was capped in order to help the state balance its budget, and was due to be phased out over a period of years.

In 2001, local aid totaled \$1.276 billion, the high point in the state's history, but that number shrank as state revenues collapsed and the Commonwealth struggled to balance its own budget. The FY07 figures announced by Romney are \$77 million higher than the pre-fiscal crisis level of 2001.

The budget also proposes that Chapter 70 education aid to communities would increase by \$164 million, with nearly half of this amount dedicated to increases in inflation and enrollment. The rest of the funds would be tied to reforms to the Chapter 70 formula itself, which has not seen a major revision since its inception in 1993.

The new formula links a city or town's required local funding contribution more closely to property values and its residents' income levels, helping towns that are overpaying relative to their wealth and income. The current formula does not include these factors and al-

lows communities of similar wealth to contribute widely different amounts toward their schools.

Specifically, the governor announced that:

- The immediate, 100 percent uncapping of the lottery would yield an additional \$158.7 million for cities and towns.
- The category of local aid known as Payment in Lieu of Taxes, or PILOT, which compensates cities and towns where tax-exempt state properties are located, would increase by \$9.2 million to \$25.3 million.

- An additional \$30 million would be available to cities and towns through a new Housing Incentive Program to be distributed via the lottery formula. Municipalities that demonstrate improvement in the creation of new housing will be eligible to receive these funds. Nearly two-thirds of all communities have already submitted municipal scorecards to the Office of Commonwealth Development demonstrating progress in this area. ■

Program	FY06 final budget	FY07 House 2	Difference
Chapter 70	\$3,288,931,062	\$3,452,591,608	\$163,660,546
Retired teachers pensions	76,520,673	85,164,059	8,643,386
Racial imbalance	17,615,313	17,615,313	0
School lunch	5,426,986	5,426,986	0
Regional school transportation	45,000,000	50,000,000	5,000,000
Lottery	761,378,162	920,028,283	158,650,121
Additional assistance	379,767,936	379,767,936	0
Local share of racing taxes	2,500,000	2,500,000	0
Regional public library	15,230,361	15,480,361	250,000
Police career incentive	46,092,122	46,092,122	0
Urban revitalization	4,339,806	4,339,806	0
Veterans benefits	13,805,284	14,412,585	607,301
Vet, surviving spouses and blind exemptions	8,400,000	8,400,000	0
Elderly exemptions	9,890,345	9,890,345	0
State owned land	16,100,000	25,300,000	9,200,000
Public libraries	9,039,844	9,189,844	150,000
Charter school reimbursement	50,100,000	50,100,000	0
Charter school capital facility	14,776,000	16,900,000	2,124,000
<b>Total of appropriated items</b>	<b>\$4,764,913,894</b>	<b>\$5,113,199,248</b>	<b>\$348,285,354</b>

Table 1

# DLS Update

## Joe Markarian Participates in Katrina Relief Effort



Hearing a Red Cross sponsored radio advertisement calling for volunteers to aid Hurricane Katrina victims in New Orleans was all it took for **Joe Markarian** of the Division of

Local Services to offer his services. Actually, ever since Katrina struck, Joe felt he should do something to help out in the hurricane's aftermath.

Soon after hearing the ad, Joe contacted the Red Cross and began preparing for his journey to New Orleans. This entailed successfully completing Red Cross training courses in disaster relief efforts such as damage assessment and managing shelters for disaster victims. Upon notifying the Department of Revenue's human resources department of his intent to become actively involved in the Katrina relief effort, Joe was informed that all state employees who are certified by the Red Cross to be Disaster Service Volunteers may be entitled to up to 15 days of paid leave. Soon after making the necessary arrangements in accordance with this program, Joe was on his way to New Orleans.

Joe arrived in Baton Rouge on November 29, and by December 1, he was actively participating in the relief effort. Joe said he was assigned to work in the area of bulk distribution of supplies. For the first three days of his assignment, Joe and a team of about 8 or 10 volunteers worked at a fixed location in the Lakeside section of the city distributing "water and coolers, blankets, mops, brooms, bleach, gloves, rakes, face masks and other supplies people

would need to safely clean mold from their homes." Joe noted that this section was near one of the three major levee breaches.

For the remainder of his time in New Orleans, Joe worked with another team of volunteers distributing supplies from three large box trucks that rode through the neighborhoods devastated by the storm. Joe remarked, "I have never seen people so appreciative of receiving a bucket or a pair of gloves."

"Most people," said Joe, "were living elsewhere and not staying in their own houses, but would come back to their neighborhoods to clean out their homes." He said the trucks traveled through designated neighborhoods in the vicinity of the 17th Street breach and in the city's Lakeside section. "The Lower Ninth Ward, however, was off limits because of the extent of the damage wrought by the hurricane and the threat of contaminants."

Joe recalled, "In many of the neighborhoods where homes were still standing and not reduced to rubble, residents literally gutted their homes. Damaged furniture, appliances and many other personal possessions were piled along the sides of the roads."

Joe and about 70 other volunteers were lodged at a church located in La Place, about 20 miles north of New Orleans. They slept on cots and used the church's kitchen and bathroom facilities. "We made our own breakfast and evening meals were provided by church members."

On Friday, December 16, Joe returned from New Orleans. Looking back on his service, he observed that the situation in New Orleans and surrounding areas is "bleak." "If I didn't know any better," said Joe, "it would appear that the storm ended four or five days ago,

even though it was about 90. Progress is slow. It will literally be years before any meaningful rebuilding occurs."

On a more positive note, Joe commended the Boston Chapter of the Red Cross as well as the Red Cross' "grass roots efforts" in New Orleans. "They handle the relief effort extremely well despite the fact that they have to deal with turnovers in volunteers every two to three weeks."

Joe is a resident of Swampscott and is a senior project manager in the Division's Municipal Data Management and Technical Assistance Bureau. ■

## Spring Course 101 Offered

The Department of Revenue's basic course for assessors, Course 101, *Assessment Administration: Law, Procedures, Valuation*, will be offered during the daytime in Boston at the Saltonstall Building, 100 Cambridge Street. This three-day course will be held on April 20, 27 and May 4. Participants must attend five out of six sessions or 2½ days to meet the attendance requirements for the examination.

Attendance at Course 101 and successful completion of the examination satisfies minimum qualification requirements for assessors that were established by 830 Code of Massachusetts Regulation (CMR) 58.3.1. Assessors, and assistant assessors with valuation responsibilities, must fulfill minimum qualifications within two years of the date of their original election or appointment. All participants who successfully complete this course will receive a certificate.

Click on [www.mass.gov/dls/publ/bull/2006/2006\\_1b.pdf](http://www.mass.gov/dls/publ/bull/2006/2006_1b.pdf) to receive more information and to register. ■

## ***DLS Profile***

### **Thomas Sweeney**

The Division of Local Services (DLS) will soon bid farewell to a 26-year veteran of the Bureau of Local Assessment (BLA). **Thomas Sweeney**, one of BLA's first field appraisers, will retire on February 28.

Prior to coming to work for the Division in October 1981, Tom was both a real estate broker and appraiser. He also worked as a consultant for the assessing department in the Town of Brookline, where he heard that DLS was in the process of hiring staff for the Bureau of Local Assessment. Soon afterward, Tom interviewed for the position and was hired by former Deputy Commissioner Edward Collins and former Local Assessment Chief, Jane Malme.

Early in his career, Tom and two other field appraisers were working in cities and towns across the Commonwealth to implement full and fair cash value. This entailed a great deal of travel statewide, and Tom said that while he may not have visited every city and town in the Commonwealth, he certainly has worked with assessing departments "in each and every community east of the Quabbin." Currently, Tom works with 33 communities in Norfolk, Middlesex, Worcester, Plymouth and Bristol counties.

"Probably the biggest change I have experienced while working for the bureau is the transition from pencil to computer." Tom said that he has met "a lot of very nice people" during his career and that he feels that he was "constantly learning from his coworkers and the local assessors and their staff." According to Paul Cibelli, assessor in Southborough, "When I started working for the town in 2000, Tom was instrumental in helping me with the revaluation process. Since then, he has helped me develop professionally in the appraisal field. We're really going to miss him."

A lifelong resident of Medfield, Tom is active in the Lions Club, where he assists in coordinating blood drives, pancake breakfasts and eye screenings for pre-school-aged children. Tom has achieved the Lions Club designation of "Melvin Jones Fellow" for performing humanitarian services in his community. At the Department of Revenue, he received the Commonwealth Citation for Outstanding Performance in 2001. Local Assessment chief Marilyn H. Browne noted that, "In addition to Tom's hard work and dedication in servicing his communities, he is also held in high esteem as the good-will ambassador for the Bureau."

"On behalf of the Division of Local Services," said Deputy Commissioner Gerard D. Perry, "I would like to thank Tom for his many years of service. While we wish him well in his retirement, it will be difficult to lose a dedicated staff member like Tom." ■



**Thomas Sweeney**

## **Data Bank Features**

The Division of Local Services' Municipal Data Bank has updated the online At A Glance Reports for all 351 cities and towns in Massachusetts. At A Glance Reports are summaries of key socioeconomic, financial and property tax data by community. To access these reports, click on [www.mass.gov/dls/mdmstuf/aag/aagindex.htm](http://www.mass.gov/dls/mdmstuf/aag/aagindex.htm).

The Municipal Data Bank also provides a listing of local option acceptances, available at [www.mass.gov/dls/mdmstuf/LocalOptions.htm](http://www.mass.gov/dls/mdmstuf/LocalOptions.htm). The term local option refers to the power granted to a municipality to decide whether to apply a law within its jurisdiction. Included with this listing are brief explanations of the each local option, such as the small commercial exemption, the Hopkinton Bill, the room occupancy excise and many others. Helpful links to Informational Guideline Releases and Bulletins that relate to local options are also provided.

Local option acceptances are also listed for the communities that have adopted the laws relating to property tax exemptions for blind persons (Clauses 37 and 37A), elderly persons (Clauses 41, 41B, 41C and 41D), and surviving spouses, minor children and elderly persons (Clauses 17, 17C, 17C½, 17D and 17E). Data by community on the number of property tax exemptions granted and tax dollars abated for each year from FY03 through FY05 is available at [www.mass.gov/dls/mdmstuf/PropertyTaxExemption.htm](http://www.mass.gov/dls/mdmstuf/PropertyTaxExemption.htm). ■

#### **City & Town**

City & Town is published by the Massachusetts Department of Revenue's Division of Local Services (DLS) and is designed to address matters of interest to local officials.

**Joan E. Gourke**, Editor

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