



The Commonwealth of Massachusetts
Office of the Inspector General

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November 13, 2009

John R. Hitt, Esquire
Cosgrove, Eisenberg and Kiley, P.C.
One International Place
Suite 1820
Boston, Massachusetts 02110

Re: An Investigation of the Use of Certain Bond Funds by the North Attleborough Electric Department (12/05)

Dear Mr. Hitt:

Reference is made to your letter dated December 12, 2008, in which you requested that I withdraw a report, entitled *An Investigation of the Use of Certain Bond Funds by the North Attleborough Electric Department* ("OIG Report"), from my Office's website. You asserted that the OIG Report "contains materially false or misleading statements" regarding your client, David I. Sweetland, former General Manager of the North Attleborough Electric Department (NAED). You requested a second time that this Office remove the OIG Report by letter dated January 7, 2009, with which you sent a December 29, 2008 Memorandum and Opinion On Defendant's Motion to Dismiss on the Grounds of Prosecutorial Misconduct issued by Associate Justice Christopher Donnelly Welch ("Memorandum and Opinion") in *Commonwealth v. Sweetland et al.*, Fall River Dist. Ct. Nos. 0732-CR-004193, 4214, 4192, 4211.

This Office requested that you identify the false or misleading statements in order for us to evaluate your request. You declined to do so by letter dated January 6, 2009,

writing that "information you requested . . . should be fully available . . . though the Bristol County District Attorney's Office." Accordingly, this Office undertook an evaluation of the December 29, 2008 Memorandum and Opinion, evidentiary materials from files at the Fall River District Court and the Bristol County District Attorney's Office, and related materials from other sources identified in this correspondence.

This Office's evaluation was undertaken in consideration of Article 19 of a 1988 town meeting vote authorizing \$12 million for NAED capital improvements ("Article 19") and applicable municipal finance laws, particularly of M.G.L. c. 44, §8(8), which allows towns to incur indebtedness for improvements to an electric plant, of M.G.L. c. 44, §20, which requires that "proceeds of any sale of bonds or notes . . . be used only for the purposes specified in the authorization of the loan;" and of M.G.L. c. 44, §62, which imposes criminal sanctions for the violation of any provision of general laws relating to incurring liability or expenditure of public funds on account of any town. Questions of non-compliance with these statutes constituted the basis of the OIG Report.

The Memorandum and Opinion of Associate Justice Welch enclosed with your January 7, 2009 letter contains a finding (p. 4) that a videotape of a November 5, 1998 meeting between the North Attleborough Board of Selectmen, Mr. Sweetland, and NAED Commissioners "would later be found so exculpatory that the prosecution would terminate the prosecution of Mr. Sweetland." According to the Memorandum and Opinion (p. 5), Judge Welch made a further finding of fact that the video tape showed that:

Mr. Sweetland set forth to the Board of Selectmen the purposes for which the bond funds were being used. Specifically, Mr. Sweetland indicated that he had consulted with the new bond counsel, Ropes and Gray, and had been informed that the expenditures were appropriate for use under the terms of the bond appropriations. Therefore, the North Attleborough Electric department went ahead and began construction of an internet service provider and other related services.

This Office concurs with Associate Justice Welch's finding of credible facts, that Mr. Sweetland indicated to the Board of Selectmen at the November 5, 1998 meeting that the town's bond counsel had given an opinion that the expenditures for creation of a dial-up internet business were appropriate for use under the terms of the town meeting bond appropriation.

This Office further concurs that had Mr. Sweetland's representation to the selectmen as shown on that videotape been truthful, i.e., that bond counsel had in fact given an opinion that expenditures for construction of a dial-up internet service provider (ISP) were appropriate for use under the terms of the town meeting bond appropriation, this fact would have been so exculpatory that no reasonable basis would have existed for prosecuting Mr. Sweetland on the grounds of unauthorized use of bond proceeds.

Pursuant to your aforementioned request, investigators of my Office conducted a subsequent investigation to determine whether or not bond counsel had in fact given such an opinion, as Mr. Sweetland had indicated in the videotape described in Associate Justice Welch's findings of fact.

The findings of this Office's investigation are as follows:

1. According to the attorney who was bond counsel at Ropes & Gray in 1998, the firm was never asked to render an opinion and never rendered an opinion about whether expenditures for construction of a dial-up ISP were appropriate for use under the terms of the town meeting bond appropriation. A May 8, 2009 Letter of Bond Counsel (Attachment A) attests to these facts.
2. According to bond counsel, had such an opinion been solicited from him, he would have advised "the use of bond funds authorized to be borrowed under Article 19 for expenses related to an internet services business by NAED would have required an express town meeting vote to that effect." (Attachment A).
3. On July 6, 1998 Mr. Sweetland sent a memo (Attachment B) to Robert McGuire, town treasurer, stating that NAED was "now ready to undertake the final phase of the Article 19 projects," adding, "to do that, we will need to borrow another \$4 million." He described the "final phase" of the Article 19 projects, without any reference to construction of a dial-up ISP, as follows:

The specifics of the final phase of our distribution system improvements are to build an 18 mile fiber optic SONET ring [SONET stands for "synchronous optical networking] consisting of 144 fibers that would provide [NAED] with the ability to read customers' electric meters remotely; control customers' electrical equipment and appliances; develop demand side management strategies that will control electrical loads; provide a wide area network (WAN) for town and municipal facilities; and provide a communications link that will allow [NAED] to monitor and control its 15 kilovolt distribution equipment throughout North Attleborough.

4. Under Massachusetts law, towns may by a two thirds vote of town meeting incur debt for certain enumerated purposes, including "establishing, purchasing, extending, or enlarging a gas or electric lighting plant, a community antenna television system, whether or not operated by a gas or electric lighting plant, or a telecommunications system operated by a municipal lighting plant." M.G.L. C. 44. §§2 & 8(8). Once authorized by town meeting, a town may "issue bonds or notes . . . properly denominated on the face thereof, signed by its treasurer, and . . . by a majority of its selectmen"

M.G.L. C. 44. §16. The Board of Selectmen cannot itself incur indebtedness; it may only approve indebtedness previously authorized by town meeting. In order to obtain the monies he requested, Mr. Sweetland therefore needed the consent and the signatures of the Treasurer and the Board of Selectmen.

5. Mr. McGuire appeared before the Board of Selectmen on September 16, 1998 to request bond anticipation notes (BANs) for approximately \$9 million, \$4 million of which represented the amount requested in Mr. Sweetland's July 6, 1998 memo. Explaining NAED's requested use, Mr. McGuire read verbatim from Mr. Sweetland's memo as follows:

The specifics of the final phase of our distribution system improvements are to build an 18 mile fiber optic SONET ring consisting of 144 fibers that would provide North Attleborough Electric with the ability to read customers' electric meters remotely; control customers' electrical equipment and appliances; develop demand side management strategies that will control electrical loads; provide a wide area network (WAN) for town and municipal facilities; and provide a communications link that will allow North Attleborough Electric to monitor and control its 15 kilovolt distribution equipment throughout North Attleborough.

6. When asked by a member of the Board of Selectmen if the 1988 town meeting vote included authorization for "broad spectrum fiber optics," Mr. McGuire said:

Yes. It's already been reviewed by legal. I had to get an updated legal opinion because the original legal opinion had been issued in 1988 and my fear was that well before, at least three years before my time. I know the Department of Revenue has moved locations at least three times in the seven years I have been in office. So I had a fear that there would be a mad scramble at the last minute saying well, gee, we can't find that authorization. So I had Ropes & Gray reissue the opinion and the statements that I read to you tonight, that memo was sent up to Ropes & Gray as the backup of this particular issue. So it was reviewed by legal counsel to make sure that it fit within the scope of the authorization.

(Transcription of a videotape of the 9/16/98 meeting (Attachment C)).¹

¹ This Office viewed and transcribed a video recording of the September 16, 1998 North Attleborough Board of Selectmen meeting. The transcription was made for purposes of responding to your request and is not official or certified. A copy of the video recording is available at the Fall River District Court.

7. However, in his letter to this Office dated May 8, 2009 (Attachment A), bond counsel stated as follows:

I have no recollection of any discussions about the use of bond funds borrowed under Article 19 with officials of the Town prior to the use of such funds for the development of NAED's dial-up internet business. I recall being surprised to learn that proceeds of this borrowing were used to start NAED's dial-up internet business It is my opinion that use of funds to be borrowed under Article 19 for expenses related to an internet services business by NAED would have required an express town meeting vote to that effect.

8. Following the conclusion of Mr. Maguire's presentation on September 16, 1998, the Board of Selectmen voted to authorize the BAN.
9. Pursuant to this vote, the BAN (Attachment D) was fully executed on September 25, 1998 by Mr. McGuire and all the selectmen, who represented therein that "[a]ll acts, formalities and conditions essential to the validity hereof have been performed and complied with" Mr. McGuire and the Selectmen further certified therein that the BAN had been duly authorized under M.G.L. C. 44. §8(8) "by votes of the Town, duly adopted."
10. According to an Affidavit on file with the Fall River District Court signed by him under pains and penalties of perjury in September 2007 (Attachment E), Mr. Sweetland knew that NAED's use of the bond funds for construction of dial-up ISP was inappropriate. He stated:

The NAED considered how it could fund its ISP project. One possible source of start-up capital considered was the 1988 bond fund, but the idea was scrapped when NAED's legal counsel concluded that the bond funds could be used only for the projects stated in the bond article absent a vote of the Town expanding the list of authorized projects. As repeatedly noted by me, the ISP project was not covered by the 1988 bond article.

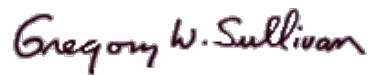
11. According to M.G.L. c. 44, absent authorization by town meeting, a Board of Selectmen has no independent authority to incur debt.

CONCLUSION

Based upon the above-cited findings, it is this Office's conclusion that the videotapes that have been described by some as exculpatory in fact provide further evidence of the findings cited in the OIG Report, i.e. that "NAED management knowingly misled Town officials in requesting issuance of these funds" and that NAED violated M.G.L. c. 44, §20, which requires that "proceeds of any sale of bonds or notes . . . be used only for the purposes specified in the authorization of the loan [by town meeting]."

Accordingly, I deny your request and append this correspondence as a supplement to the prior OIG Report.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan". The signature is written in a cursive style with a prominent "G" and "S".

Gregory W. Sullivan
Inspector General

ATTACHMENT A

EDWARDS ANGELL PALMER & DODGE LLP

111 Huntington Avenue Boston, MA 02199 617.239.0100 fax 617.227.4420 eapdlaw.com

Richard A. Manley, Jr.
617.239.0384
rmanley@eapdlaw.com

May 8, 2009

Nicholas Read, Deputy General Counsel
Office of the Inspector General
One Ashburton Place, Room 1311
Boston, Massachusetts 02108

Re: Town of North Attleborough Electric Department Matter . . .

Dear Nick:

As you requested, I have prepared a series of responses to the questions posed to me in your email dated April 15, 2009 regarding my recollection of the circumstances surrounding the issuance of bond anticipation notes by the Town of North Attleborough, Massachusetts in September, 1998, which were later permanently financed with the issuance of long term bonds by the Town in March, 1999. A portion of these bond and note issues was authorized to be borrowed pursuant to a vote of the Town adopted under Article 19 of the Warrant at the 1988 Annual Town Meeting ("Article 19"). Article 19 approved the borrowing of \$12 million to be used by the North Attleborough Electric Department ("NAED") for the purpose of making distribution improvements.

My responses to your questions are set forth below:

1. Between 1997 and 1999, I was a lawyer in Ropes & Gray LLP's public finance practice group, and during this period, I served as bond counsel for the Town of North Attleborough, Massachusetts (the "Town").
2. As bond counsel to the Town, I was familiar with a vote taken by the Town of North Attleborough under Article 19 of the Warrant at the Town Meeting held on October 17, 1988. This vote authorized a \$12 million borrowing to pay costs of the following:
 - a. Increase distribution capacity at the Sherman Substation and make modifications thereto;
 - b. Construct electrical facilities to serve Emerald Square Mall and Route 1;
 - c. Increase distribution capacity by construction of a substation and related transmission lines, and

- d. Construct an Operations Center at Landry Avenue.

I have attached a copy of Article 19 as approved by the Town for your information.

3. In the ordinary course of work as bond counsel, it would not have been my responsibility to ascertain whether the expenditures actually made under a given authorization were within the scope of that authorization. Our obligation is to determine whether a particular borrowing has been properly authorized, and whether the purpose for which the borrowing was authorized was lawful. The governmental entity borrowing the money is required by law to expend the borrowed funds for the purpose or purposes for which it was approved. We would not typically pass on whether a particular expenditure is within the scope of its authorizing vote unless specifically asked to do so by a client. To the best of my knowledge, we were not asked by the Town to pass on whether the use of funds authorized to be borrowed under Article 19 could be used to pay costs of the NAED's dial-up internet business, prior to any borrowing for that purpose under Article 19.

4. I am not aware that the 1988 NAED Capital Improvements Plan submitted to the 1988 Annual Town Meeting in conjunction with its vote under Article 19, included a proposed expenditure for the establishment and operation of an internet services business by NAED.

5. I have no recollection of any discussions about the use of funds borrowed under Article 19 with officials of the Town prior to the use of such funds for the development of NAED's dial-up internet business. I recall being surprised to learn that proceeds of this borrowing were used to start the NAED's dial-up internet business.

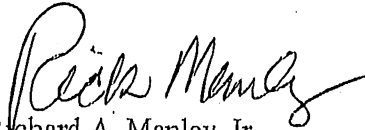
6. It is my opinion that the use of funds authorized to be borrowed under Article 19 for expenses related to an internet services business by NAED would have required an express town meeting vote to that effect.

7. To the best of my recollection, Ropes & Gray LLP never rendered an opinion on the permissibility of NAED creating an internet services business prior to the undertaking of this activity by the NAED. I am aware of preliminary discussions with NAED officials, the Town's financial advisor and the Town Manager about a proposal to Town Meeting that would have established a broadband services division at NAED, but I do not think that proposal was ultimately approved by the Town Meeting, and at the time of that proposal, I recall that NAED was already in the dial-up internet business.

EDWARDS ANGELL PALMER & DODGE LLP

Copies of the documents provided by the Town in response to a September 15, 1998 letter from Diane M. Pagliuca of Ropes & Gray LLP to Robert McGuire, the Town Treasurer, for a September 25, 1998 \$9,552,000 Bond Anticipation Note issue are attached.

Sincerely,

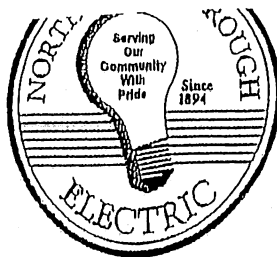
A handwritten signature in cursive script that reads "Rick Manley". The signature is written in dark ink and is positioned above the printed name.

Richard A. Manley, Jr.

BOS111 12376665.1

ATTACHMENT B

699-7542



A Consumer Owned Utility

Received 8/27/98

July 6, 1998

11

To: Robert McGuire, Treasurer
Town of North Attleborough
Town Hall
43 South Washington Street
North Attleborough, MA 02760

From: David Sweetland

Re: North Attleborough Electric Distribution System Improvements

At the 1988 Annual Town Meeting, Article 19, "Electric Department Distribution Improvements" was approved. This Article provided \$12 million for funding several projects for the electric department. Projects, which have been completed are; (1) the rebuilding of Sherman Substation and, (2) the construction of the Operations Center. To accomplish this, we have used \$4 million of the \$12 million that was authorized.

We are now ready to undertake the final phase of the Article 19 projects and to do that, we will need to borrow another \$4 million. We understand that you do all permanent financing during the first half of the year and since our project is now underway, there will be a need for interim financing.

I will leave to you and Robert Gauvin, our Controller, to work out the details of the temporary and permanent financing.

The specifics of the final phase of our Distribution System Improvements are to build an 18-mile fiber optic SONET ring consisting of 144 fibers that will provide North Attleborough Electric with the ability to: (1) read customers' electric meters remotely, (2) control customers' electrical equipment and appliances, (3) develop demand side management strategies that will control electrical loads, (4) provide a Wide Area Network (WAN) for the town's municipal facilities and, (5) provide a communications link that will allow North Attleborough Electric to monitor and control its 15kV and 4kV distribution equipment located throughout North Attleborough.

R. McGuire

- 2 -

August 21, 1998

Reference #7

I have stated earlier in this letter we will need to borrow construction funds soon, as our scheduled completion is late December 1998. If you need additional information about our final distribution project, please call at your convenience.

cc: R. Gauvin

ATTACHMENT C

Board of Selectmen Meeting 9/16/1998¹

Board of Selectmen Member (BOS Member): Because of some blank spots in our agenda we will be rather flexible tonight. So, we will start off with Mr. McGuire.

Robert McGuire: Glad to fill in the blanks. Makes it an earlier meeting. Good evening. I am here before you tonight that we have just recently went out to bid for a bond participating note for a number of our projects, uh, capital projects that are on going at this point in time. It is various in nature, so I'll read off to you what these projects are: it's for \$100,000 for sidewalks; \$100,000 for sewer replacements; \$414,000 for the High Street West Street bay barrier road sewer line; \$29,000 the finishing of the Oak street sewer line; \$1.8 million for the second half closure of the land fill; \$250,000 for waste water treatment facility equipment; \$617,000 for the school remodeling and extraordinary repairs to the former junior high school and Woodcock School on School Street; \$4 million for the electric light department as the final phase of their expansion plan. And I have a letter here from David Sweetland and I'll read an excerpt so you get an idea of what they're doing at present:

The specifics of the final phase of our distribution system improvements are to build an 18 mile fiber optic SONET ring consisting of 144 fibers that would provide North Attleboro Electric with the ability to read customers electric meters remotely; control customers' electrical equipment and appliances; develop demand side management strategies that will control electrical loads; provide a wide area network (WAN) for the towns municipal facilities; and provide a communications link that will allow North Attleboro Electric to monitor and control its 15 kilovolt and 4 kilovolt distribution equipment located throughout North Attleboro.

I understand that they are already started this project just recently and ongoing and they are ready to move. So that, uh, brought up their need for funds. So tonight what we have is a renewing a bond participation note that we took out last May for \$2,242,000 for ongoing projects and new money issue of \$7,310,000 the note will go until May 1st we hope to finish up the audit. The auditors are coming in October 5th so we hope to have the audit rapped up by December and do our normal annual disclosure statement to the SEC and do our bond issue at the same time probably mid-March, and then we will retire all these BANs that we have outstanding and go out with a full 20 year bond financing. So if you would I

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pass over to the vice chairman a motion for the vote, if you could make that vote and then we could go on with the signing of the paperwork.

BOS Member: Mr. Chairman, I make a motion that the Board of Selectmen vote to approve the award of a \$9,552,000 bond anticipation note to CED&E Company to State Street Bank and Trust Company for the period Sep. 25th 1998 to May 1st 1999. Said bond anticipation note shall carry an interest rate of 4%, premium of \$14,261.67 and a net interest cost of 3.75%.

BOS Member: Is there a second?

BOS Member: Second it.

BOS Member: Is there any other discussion? Mr. Fisher.

Mark Fisher: Mr. Chairman I know I'm gonna ask a couple questions and unfortunately for Bob there really isn't, he can't really answer these things, but there are a couple of issues that I'm confused about and they are in relation to the North Attleboro Electric Department. First of all, we met with them several months ago. We have met with them on two occasions specifically to talk about their fiber optics network and their plans. At the first meeting which was held a year ago or since you were on the Board, they told us of their overview of what they were looking at, and then at their last meeting they told us that they decided to take this route and I very specifically asked them how much this project was going to cost and their answer was \$2 million. I think that everybody recalls that number because my follow up questions were, well, where are we going to get the \$2 million and their answer was that they had it in reserve. And I further went on to ask questions as to expected rate of return when they expected to be able to break even on this and their answer was 2.5 years. Now we have gotten in front of us a \$4 million bond anticipation note, which is twice the sum they told us this project was going to be. Now again I'm not the electric commission; that's their authority they're elected to do that and they most definitely can act autonomously and do those things. I'm just really disappointed last conversation we had at a meeting they asked us to attend told us it was going to be \$2.5 million investment at a 2.5 year turnaround and they were going to get it out of their reserves because, if you remember, I had a further question that said how can you defend your rates if you are able to accumulate a \$2 million reserve to put into this? I'm at a loss as to why we have to borrow \$4 million for this project.

In line with that--now that my memory is getting real fuzzy--we were talking I believe in our last meeting there was some discussion about a work session we had or something about the town's liability with the nuclear power plant Seabrook nuclear power plant. And I can vividly remember the town meeting and unfortunately it was during the open town meeting days when the town approved \$9 million bond issue for their share of the investment at the, going into the nuclear power plant The reason why it was so vivid in my mind it happened the same town meeting we had the town leash law enforced. The director of the electric department Harold Pain at the time passed out a nice thick packet of paper to everyone in attendance. There was not one question asked about the \$9 million dollar bond but we then went on to a two hour discussion about the

leash law. Probably for that reason it sticks in my head. And so now my next question is that if it took a town meeting vote to authorize that, why doesn't it take a town meeting vote to authorize other bonding in reference to the electric department? Has state law changed Bob?

Robert McGuire: No, they had an authorization if you remember at the last town meeting. They have an authorization that dates back to October 21st 1988 for \$12 million to do expansion of their facility and expansion of their power plants and so forth down the line.

Mark Fisher: And this is part of it?

Robert McGuire: Yes and this part of that authorization. They issued \$4 million of that in 1989 which did the Sherman Substation, the new facility that they have on Kelly Boulevard. and there were a series of other projects that were involved in that. And if you recall I have been going through for quite some time trying to determine, well, you had this \$8 million authorization sitting on the books for quite some time and we just lowered that at the last town meeting for \$4 million. So there was \$12 million authorized, \$4 million has been rescinded, \$4 million has been issued. And then there is this \$4 million for this particular work which will close out the entire authorization.

Mark Fisher: Now when we issue a bond or when the town meeting votes on a bond for the electric department or the water department or even the I don't know if the land fill maybe a different situation are those revenue bonds I mean is there a difference?

Robert McGuire: No, that is a government obligation bond. A revenue bond would be in the old days as you recall when the, uh, we were always late with getting out the first half of the semiannual tax bill and what would happen is the money was due Nov. 1st and we would have \$10 million sitting out there and generally what would happen is the bill would be due anywhere between Dec. 25th to Jan. 9th if my memory recalls. So to cover the period because we had obligations from Nov. 1st in there and we were short that \$10 million we would have to borrow for 30 to 60 days and anywhere from \$2.5 to \$4 million in anticipation of that revenue. That would be called revenue or sometimes called a tax anticipation note. But since they come under our umbrella they cannot issue a bond without the town of North Attleboro's name on it.

Mark Fisher: And the town meeting has to approve?

Robert McGuire: The town meeting has to approve it.

Mark Fisher: Mr. Chairman I would just as a matter of information I would like to ask I know that the Town Administrator has been making several contacts with them. I would like to see us invite the electric commissions here for our meeting so they can be on TV and we can get a more detailed explanation of what is going on in relation to this because there is, the numbers are different than what they explained to us previously. Again I thank you allowing me to discuss what I

know it isn't part of signing the BAN but I think it is something that should be noted.

BOS Member (Chairman): I think you have been trying to set up a meeting for several weeks now, without much success.

Secretary: I have scheduled them on the agenda.

BOS Member: Different question if I could. And Bob when you read the original \$12 million issue in 1988, is the broad spectrum fiber optics allowed under that?

Robert McGuire: Yes. It's already been reviewed by legal. I had to get an updated legal opinion because the original legal opinion had been issued in 1988 and my fear was that well before, at least three years before my time. I know the Department of Revenue has moved locations at least three times in the seven years I have been in office. So I had a fear that there would be a mad scramble at the last minute saying well, gee, we can't find that authorization. So I had Ropes & Gray reissue the opinion and the statements that I read to you tonight, that memo was sent up to Ropes & Gray as the backup of this particular issue. So it was reviewed by legal counsel to make sure that it fit within the scope of the authorization.

BOS Member: Bob, were there any other long standing issuances voted by town meeting of great sums of money that go back 5 or more years that could be bonded?

Robert McGuire: The only one that is out there of any length and that will be bonded shortly is the Land Fill Closure because that was originally authorized in what 1992. Everything else is '96 on. We have got a lot of projects that were authorized. See, this is one of things we authorize the projects but we don't necessarily bond them right away because there is a significant--most of these are construction projects--there tends to be a long delay in the engineering, the design, and then approval process for the, especially water and sewer projects. They go through the same gyrations that you have to go with the land fill: go into State DPW or some other groups, or DEP, or what have you. And they have their groups that they have to go through to get approval to get their level of approvals on the design and generally it takes a long long time...And since when you bond, once you go out and issue a bond or you issue a bond anticipation note you only have 2 years under IRS rules to finish the project. That's why a lot of times we do bond anticipation notes and what I'll do is borrow and as a typical situation sit down generally with, when he was around before he retired Ray Payson, we would sit down and say, well, okay what projects are starting up and how much seed money do you need to get the projected started? We would take a bond anticipation note for 1/3 of the project or 50% of the project depending on how fast you would think that project would go along. And then we would leave the rest of the authorization out there and till we knew that we would be further along because we would have 2 years. Let's say it was a million dollar authorization and we borrowed \$500,000. Well, if we got 2 years to spend that \$500,000 then that is very likely. But the 2 years doesn't start on the remaining \$500,000 until we go out to borrow for it. So if he runs into some kind of delay or whatever some

problem we come in the clock is only ticking on the first \$500,000. We did a bond anticipation note and not on the full million. So that is why we do a lot of that because if a project tends to run over (and that happens) especially when you are digging underground. You just don't know. So we would spread it around a little bit to make sure we would borrow only what we needed. Construction financing you only pay interest only on what you borrowed. So we would do a lot of that for projects we knew might go longer than 18 months to 2 years.

Unidentified Person: Mr. Chairman, if I can. I'm just looking at the debt service forecast in April so there may be some changes. As Mr. McGuire says, the latest unauthorized, authorized but unissued was the bill (*not clear*). Then there was one in '94 for junior high remodeling (*not clear*). And everything else is '96...'97...'98.

Robert McGuire: The Junior High Remodeling was the original \$100,000 that was set aside for the school (*not clear*) which didn't get started right away so that has never been borrowed but that authorization is still sitting on the books.

BOS Member (Chairman): They never used it did they?

Robert McGuire: Well, they will be now. That is part of the plan, to finish up.

BOS Member (Chairman): That was there to re-, to, uh, create a superintendent office.

Robert McGuire: Yea, that was the original intent to do that.

BOS Member (Chairman): Anybody else.

BOS Member: Mr. Chairman, I'd like to ask the treasurer two things. First of all, can you supply or supply at least me or maybe the other members too, a list of this breakdown of what this accumulates? I think I have picked up most of it. But I would like to see it on paper and where it was specifically authorized.

Robert McGuire: Sure. I can give you a copy of this because this has to go up to the Department of Revenue, which outlines the votes that we're taking. It has the date the votes we're taking and the article number, the purpose. Some of them will have to be summarized because you know when the capital plan article, for instance, is so wide varied. You can't fit all on the form.

BOS Member: Understand where I am coming from. I have got to sign and vote and so forth for \$9.5 million. I would like to know what, somewhat, where it is all going and so forth. The other question I had is that based on some of things you are saying now. I would like to have at some point in time down the road Mr. Chairman an opportunity for the treasurer to sort of give us an education class if you will in the financial terminology and protocol if you will for bonding and some of the other things that go on.

BOS Member (Chairman): Would you be interested in that?

Robert McGuire: Sure. I would be happy to.

BOS Member: If we could have it on our schedule at some point.

BOS Member (Chairman): Sometime Mr. Moynihan when we have--when the schedule is not too rigid--we can set in Mr. McGuire.

BOS Member: Do I understand that we are not voting on this until we talk to the electric company.

Mark Fisher: No. They have the authorization to borrow up to \$4 million on what they feel is their expansion. We are authorizing the treasurer to issue the bond anticipation note. I think I would like to see some further explanation from the electric department. But they have the authority to borrow that for their expansion purposes.

BOS Member: OK

BOS Member (Chairman): If there is nothing else. All those in favor.

Unanimous BOS: Aye.

BOS Member (Chairman): All those opposed.

26059

4.28-19-038

RET

NORBAN 400

ATTACHMENT D

No. R-1

UNITED STATES OF AMERICA
THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF NORTH ATTLEBOROUGH
BOND ANTICIPATION NOTE
(MUNICIPAL PURPOSE LOAN OF 1998, BONDS)

\$9,552,000

INTEREST RATE: 4.00% PER ANNUM MATURITY DATE: MAY 1, 1999
ORIGINAL ISSUE DATE: SEPTEMBER 25, 1998 ✓ CUSIP: 657339- NL7
REGISTERED OWNER: CEDE & CO.
PRINCIPAL AMOUNT: NINE MILLION FIVE HUNDRED FIFTY-TWO THOUSAND DOLLARS

The TOWN OF NORTH ATTLEBOROUGH, MASSACHUSETTS (the "Town"), for value received, promises to pay to the Registered Owner of this Note or registered assigns, the Principal Amount stated hereon on the Maturity Date stated above, together with interest thereon from the original Issue Date to the Maturity Date, upon presentation and surrender hereof at the principal office of State Street Bank and Trust Company, in Boston, Massachusetts, as Paying Agent and Note Registrar (the "Agent").

This Note is issued under and pursuant to the applicable provisions of Chapter 44, Section 17, of the Massachusetts General Laws, as amended and supplemented, in anticipation of the proceeds of bonds duly authorized pursuant to Chapter 44, Sections 7, 8 and 16, of the Massachusetts General Laws, as amended and supplemented, and by votes of the Town, duly adopted, to raise funds for purposes described in said Sections 7 and 8 and said votes.

Unless this note certificate is presented by an authorized representative of The Depository Trust Company to the Town or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co., or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

The Note is issued originally by means of a book-entry system, with The Depository Trust Company ("DTC"), New York, New York, acting as securities depository for the Note. The ownership interest of each actual purchase of each Note (the "Beneficial Owner") will be recorded through the records of the participants in DTC. Beneficial Owners will receive a written confirmation of their purchase providing details of the Note acquired. Transfers of ownership interests in the Note will be accomplished by book-entries made by the Beneficial Owners. Beneficial O interest in the Note.

In the event that (a) DTC determines that (b) the Town Treasurer determines that of ownership of the Note would adversely affect the Town will discontinue the book entry depository to replace DTC, said State S will deliver to the Beneficial Owners,

IMPORTANT
This is a Book Entry Municipal Security.
Do not release to another Department
without specific authorization from the
Inventory Control Supervisor.
(_____ Pages)

Unless this certificate is presented by an authorized representative of The Depository Trust Company (55 Water Street, New York, New York) to the issuer for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co., or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

The Town has covenanted and agreed in a Material Events Disclosure Certificate executed and delivered by the Treasurer and Selectmen upon the original issuance of this Note, and does hereby covenant and agree, to comply with certain undertakings for the benefit of the holders from time to time of this Note, as provided in paragraphs (d)(3) and (b)(5)(i)(C) of Rule 15c2-12 of the Securities and Exchange Commission. Said Material Events Certificate is hereby incorporated in and made a part of this Note.

All acts, formalities and conditions essential to the validity hereof have been performed and complied with, but this Bond shall be obligatory until the authenticating certificate of said BankBoston, N.A. has been signed hereon.

IN WITNESS WHEREOF, the said Town has caused this Note to be signed in its name and behalf by the manual or facsimile signature of its Town Treasurer and countersigned by the manual or facsimile signatures of its Board of Selectmen, as of September 25, 1998.

Countersigned:

Thomas F. Linn
BB
Henry J. Mahedy
Margaret Kenelonas
Mark Asher
Board of Selectmen

TOWN OF NORTH ATTLEBOROUGH,
MASSACHUSETTS

By Robert L. McQuinn Jr
Town Treasurer

AUTHENTICATING CERTIFICATE OF
STATE STREET BANK AND TRUST COMPANY

State Street Bank and Trust Company, in Boston, Massachusetts, hereby certifies that this is a Note of the loans described herein, that the signatures and seal hereon are genuine or duly authorized facsimiles, and that, upon original delivery of said Note, Ropes & Gray, of Boston, Massachusetts, rendered an opinion, dated on the day of such delivery, approving the legality of this issue. The original opinion and copies of the supporting documents relating to this issue may be examined at our banking rooms.

STATE STREET BANK AND TRUST COMPANY

By Joyce McQuinn
Authorized Signature

ATTACHMENT E

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

DISTRICT COURT DEPARTMENT
FALL RIVER DIVISION

COMMONWEALTH,

NO. 734-CR-0334

v.

DAVID I. SWEETLAND,

Defendant.

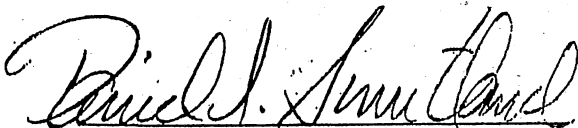
AFFIDAVIT OF DAVID I. SWEETLAND

1. My name is David Sweetland. From 1983 until 2004, I was the General Manager of the North Attleboro Electric Department ("NEAD").
2. The NEAD is a nonprofit, publicly owned utility, which was established under G.L. c. 164.
3. The NAED is governed by a three member Board of Electric Commissioners, who are separately elected by the citizens of North Attleboro.
4. I managed the day-to-day operations of the NAED. I reported to, and acted at the direction of, the board of commissioners.
5. In 1988, the Town of North Attleboro approved a \$12 million bond to make capital improvements to the Town's electric system. The article authorizing the bond listed five projects for which the bond proceeds could be used.
6. At some point on or around September 1996, the NAED began exploring the possibility of installing fiber-optic cable as part of the projects listed in the bond article (specifically distribution system improvements) and also to provide fiber-optic cable television and internet service to generate revenue for the NAED. At the time, there had been a trend among municipal electric departments to provide such services referred to as "ISP" an acronym for "internet service provider."
7. The NAED considered how it could fund its ISP project. One possible source of start-up capital considered was the 1988 bond fund, but the idea was scrapped when NAED's legal counsel concluded that the bond funds could be used only for the projects stated in the bond article absent a vote of the

Town expanding the list of authorized projects. As repeatedly noted by me, the ISP project was not covered by the 1988 bond article.

8. Upon further review, the NAED determined that it had adequate cash from other unrestricted sources to cover the cost of undertaking the cable and internet project. At the time, the NAED was using revenue from those other sources to pay for project costs that could be funded by the bond.
9. Accordingly, in 1998, the NAED requested authorization from the Town Treasurer to use the available remaining bond funds (at that point approximately \$4 million of the original \$12 million was still available and \$4 million had been authorized, not issued and ultimately returned to the Town by the NAED) to complete the projects listed in the 1988 bond article.
10. ~~At the same time, the NAED developed its ISP business, which it intended to fund by spending the available NAED funds originating from other revenue sources, which had been commingled in the Town's general fund. The ISP business did not turn a profit and the invoices relating to the project's undertaking began coming due before the invoices for the NAED's bond-related projects came due.~~
11. Between May 1998 and December 2001, ISP related invoices that were coming due were forwarded to the Town for payment.
12. The responsible town officials then paid the invoices from the Town's general fund accounting for payment as coming from the bond fund proceeds.

Signed under the penalties of perjury this ___ day of
September 2007


David I. Sweetland

CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the above document was served upon the attorney of record for each party by First-Class Mail.

Dated: 9/24/07

JOHN R. HITT

C. Spravo, Sheriff
SEP 27 2007
& Kiley, P.C.