

Commonwealth of Massachusetts



Supporting a Commonwealth of Communities

**Proper Municipal Expenditures and
Special Funds**

September 2021



Agenda for Today's Workshop

Proper Municipal Expenditures:

- Pre-emption
- Public Purpose
- Anti-Aid Amendment

Gifts and Grants:

- G.L. c. 44, § 53A
- Application to proper municipal expenditures
- Common gift/grant questions and situations

Departmental Revolving Funds:

- G.L. c. 44, § 53E1/2
- Departmental revolving fund questions and situations



G.L. c. 44, § 58

Question #1:

The City of Bourbon is on the brink of celebrating it's 350th anniversary. It establishes an incorporation celebration special fund pursuant to G.L. c. 44, § 53I and appropriates \$100,000 into the fund to pay for festivities at the anniversary's signature gala event. The City of Bourbon, founded by the cousin of "The Father of Bourbon" Elijah Craig, wants to honor that heritage by purchasing 10 barrels of Kentucky's finest to be enjoyed by gala guests. Is this purchase permissible?

Question 2:

Upon hearing that the City auditor and legal counsel advised against using the special fund from Question 1 to purchase the 10 barrels of bourbon, a descendant of Elijah Craig makes a gift in the amount of \$5,000 to the anniversary committee. Noting the express language in G.L. c. 44, § 58 prohibiting liquor and cigars, the descendant conditions his gift to the purchase of beer and cigarettes. As the funds are no longer from a City appropriation and for products not expressly named in the statute, can the purchase be made from the gift account?



Pre-emption

Pre-emption Origin Story

- Dillon's Rule
- Adoption of Amendment Article 89 and G.L. c. 43B in 1966
- What is pre-emption?
- The theory of pre-emption

Question 3:

The accountant in the Town of Compassion is reviewing warrant articles for the upcoming Town Meeting and comes across one that gives them pause. The article seeks to appropriate \$25,000 for the purpose of providing emergency fuel assistance to needy residents. The way the program is envisioned to work is as follows: if the Council on Aging Director receives a request from a resident for assistance, they would call a local oil delivery company and order an oil delivery for the resident. The bill would then be paid by the Town. This program is being put into place since there has been significant cuts in the federal and state fuel assistance programs. Is this expenditure permissible?



Pre-emption

Question 4:

The COVID-19 pandemic is a declared emergency. In the initial days, folks could be seen hoarding supplies, supermarkets were empty and there was significant concern that the most vulnerable residents in cities and towns would be facing food insecurity and lack access to other common necessities of life. Many communities desired to appropriate funds for these purposes, is that permissible?

Question 5:

The Town of Damon is the home of the prestigious Matt Damon Community College for the Performing Arts. Given the pandemic, the college has experienced an unexpected drop in attendance and the alternative of acting classes via a video platform was not appealing to many students. The Town, in recognition of the financial hardship, would like to appropriate money to the college. Is this permissible?



Pre-emption and Public Purpose

Question 6:

The City of Pawnee, while conducting a review of their charter, contemplates inserting language that would create a Fund for Participatory Budgeting to be overseen by a newly created Office of Participatory Budgeting. Further, Pawnee would like to require certain appropriations into such a fund each year to be spent in accordance with the goals of that office. Is the creation of this fund through Pawnee's charter process permissible?

Public Purpose

- Massachusetts Constitution
- What is a public purpose?
- Opinion of the Justices 313 Mass. 779, 784 (1943)

Question 7:

The residents of the Town of Capeside have been particularly affected by the closing of the local powerplant that employed close to 10% of the Town. In order to help these residents, the Town has instituted a policy that anyone who lost their powerplant job is authorized to fill their private vehicle gas tanks at the Town's gasoline vendor and to charge it to the Town until they are employed again. The Town's thinking is that if these folks are not able to get new jobs to meet their property tax obligations and contribute to local shops and businesses, it could eventually hurt the Town's fiscal position. Is this permissible?



Public Purpose

Question 8:

After decades of service to the City of Sunnydale, Buffy is retiring from the treasurer/collector's office. Buffy was a beloved staff member that was universally liked by colleagues and residents alike. She received numerous awards for her dedication to public service. To honor Buffy, the City plans on covering the costs of:

- **Presenting Buffy with a plaque honoring her years of dedicated service;**
- **Presenting said plaque after a banquet style dinner at the City's finest French restaurant, attendance optional for staff;**
- **Inviting Buffy's family to the dinner, including her 6 children; and**
- **A retirement gift equal to 3 months salary.**

Is the City permitted to do these things?

Question 9:

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



Public Purpose

Question 10:

A company in the Town of Quohog has filed a Chapter 11 bankruptcy and owes the town both pre-petition and post-petition real estate taxes on their facility, which it used for many years to manufacture asbestos cloth. Because of the asbestos production, the facility probably has levels of asbestos requiring remediation. There may also be other hazardous waste material on the site. As a result of certain Bankruptcy Court proceedings, the town has recently received payment of approximately \$40,000 to be applied to the company's post-petition tax obligations. However, unless the facility can be sold, no other funds are available for distribution to the town and the property would probably end up being taken by the town for non-payment of taxes. Quohog would like to lend funds to the bankruptcy estate, which would then contract with testing companies to identify the extent of contamination. The loan would be secured with a mortgage to be repaid with interest at the time the property is sold. This arrangement would be subject to the approval of the Bankruptcy Court. The facility, which is located in the downtown area of the town is in substantial disrepair, has been boarded up and presents a serious safety hazard.

Can the Town of Quohog loan a manufacturing company funds to have an abandoned facility inspected and tested for asbestos and hazardous waste contamination?



Anti-Aid

Anti-Aid Amendment

- Massachusetts Constitution
- What is the anti-aid amendment?
- 3 Factor Test

Question 11:

In an application to the Community Preservation Committee (CPC), a local church requests funds for the historic preservation of its stained-glass windows in exchange for a historic preservation restriction on the same. The windows date back to the early 1700s and were hand crafted by a famous artist of the era. The church played a central role in the development of the Town but has fallen on hard times. The only way the renovation of the windows can occur is if it is completely funded by outside sources. Objections are raised that the windows depict religious imagery. The CPC asks you if there is any reason the project cannot be funded?



Summary

- Preemption:
 - Is the expenditure inconsistent with the state constitution or general laws?
 - Did the State Legislature intend to preempt the municipality's authority to act?
 - Is there express language to that effect?
 - Or can it be inferred where the local regulation would somehow frustrate the purpose of a statute so as to warrant an inference that the Legislature intended to preempt the subject?
- Public Purpose:
 - Is the expenditure for a purpose where the public good will be served but not where the expenditure of money is directly for the private benefit of certain individuals?
 - If private individuals do benefit, what is the dominant purpose of the expenditure?
 - Is the expenditure required for the general good of the inhabitants of the city or town?
 - There is no universal test.
- Anti-Aid Amendment:
 - Does the expenditure satisfy the fact dependent three-factor test that was developed by the court in *Commonwealth v. School Comm. of Springfield*?



Gifts and Grants

Question 12:

Anytown receives a federal grant that must be spent in equal parts for the purposes of: providing income eligible residents with home heating fuel, distributing interest free loans to struggling private businesses for private use and providing funds to aid local non-profit humanitarian organizations. Is Anytown prohibited from making any of these expenditures?

Question 13:

Everytown received a grant from the federal government in the late 1990s. The grant money was to be used to give low interest loans to income qualifying persons to remove or otherwise renovate certain hazardous conditions in their homes. Loan payments would become part of the grant fund which would continuously be used to make like loans. Due to a combination of circumstances, including updates in building codes, the loan program has become obsolete. After Everytown didn't received any applications for a loan in over a decade, they contacted the division of the federal government responsible for the administration of this grant and discovered the division has long been dissolved. The updated information from the federal government is that they no longer consider the funds to be restricted in any way and Everytown can use these moneys as they see fit. When Everytown goes to spend said funds, do they have to adhere to the doctrines of pre-emption, public purpose and anti-aid?



Gifts and Grants

Question 14:

The school department has inquired if one of their administrative assistants can join the local Rotary Club and charge the approximately \$600.00 annual membership fee to “Incidentals or Gifts and Donations.” The Rotary involves students in many of their activities and awards scholarships every year. The Rotary has requested that someone from the school department join and accompany these students to the meetings. The administrative assistant would attend every regular meeting as the school representative. Is this charge to the gift account allowable?

Question 15:

Part of the state government’s response to a recent hurricane includes giving certain grants to local governments for “emergency services.” The expenditure of the grants is restricted to that broadly defined purpose, designed to assist the community in recovering from said disaster. The guidance from the state government indicates that the acceptor of the grant will be the city or town’s chief executive officer. Assuming there is no charter provision to the contrary, what is the main issue that arises in this situation concerning the expenditure of the grant?



Revolving Funds

- 1. Anytown, MA would like to establish a revolving fund pursuant to 44:53E1/2 for a kayak program along the beautiful Charlie River. Anytown would like to charge anyone who wants to rent a kayak a \$10/hour fee. The fees received from this program will be used to fund this kayak rental program for the purchase of kayaks, oars, life preservers, sunscreen, snacks, and to pay the part time teenage life guards. Is this allowed?**
- 2. The residents of Anytown, MA are very excited by this kayak program especially because Anytown is home to Nationally ranked kayaker Jack Donaghey. Many children in town would love to be like Jack one day. Anytown would like to move forward with their Summertime Kayak Revolving Fund. In the bylaw establishing this fund, councilor Liz Lemon proposes having Jack Donaghey approve all the expenditures of the funds. Is this allowed?**
- 3. Anytown's Recreation Department already has a revolving fund established for frisbee in the local park. Can they still establish this Summertime Kayak Revolving Fund when they already have the frisbee revolving fund?**



Revolving Funds

4. Anytown's Summertime Kayak Program would like to impose a fine for anyone who flips a boat over, intentionally, or intentionally throws someone off the kayak. This would be a \$25 fine. Assuming such a fine is permissible, can it be accounted for in the kayak revolving fund?

5. The kayak program has become so popular due to Jack Donaghey being a large supporter and user of the program. The demand has become so high lines are down the dock to get on a kayak. Anytown has decided it would be prudent to hire Tracy Jordan full time and let him be in charge of this program. However, Anytown does not plan on paying Tracy Jordan any type of benefit from the revolving fund besides a salary. Is this allowed?



Revolving Funds

6. Due to how popular this kayak program has become, Anytown has become overwhelmed with the amount of money they have earned and would like to credit some of the receipts to their general fund for other expenses in town that need the funding more than the kayak program. Is this allowed?

7. How does Anytown spend the funds in their Summertime Kayak Program? Are there any additional limitations?



Revolving Funds

- 8. Anytown would like to establish a sidewalk revolving fund. They would like to credit to the fund “payments in lieu” that have been given to the town as a condition in the Planning Board approval process. The intent was for the Planning Board applicant to pay to renovate or build sidewalks throughout town to mitigate the impact of their various developments. Is this permissible?**
- 9. Anytown would like to establish a revolving fund for fees associated with athletic programs for school aged children but the school committee already has a fund for this purpose under G.L. c. 71, § 47. Is the revolving fund allowed?**



Revolving Funds

10. How does Anytown account for the year end balances for each of their revolving funds?

11. Manytown, MA would like to establish a revolving fund for money received from applicants before the planning board pursuant to an application under the Manytown Mixed Use Planned Unit Development to support significant improvement to infrastructure and public amenities at the Manytown Landing which will be consistent with the Town's vision and improvement plans. Manytown would like to authorize the Town Administrator after consideration of recommendations and cost estimates from appropriate department heads and after a majority vote of the Planning Board and Select Board to expend money from the fund only for significant improvement to infrastructure and public amenities, including wayfinding, historic plaques, and markers, landscaping, parking, power/ water for Farmers Market and waterfront boat, canoe, kayak, and rowing docks, benches, gazebos, etc.



Revolving Funds

12. As in the previous example, Manytown would like to use these same funds to authorize the town administrator to expend money from the fund for the preservation of town owned historic properties within the district or the purchase of historic properties within the Manytown Business district, and to authorize the town administrator to expend money from the fund in the form of grants or zero interest loans. A property owner could be required to convey a preservation restriction to the town and to act on anything relating thereto. Is this allowed?



Revolving Funds

13. Now we are in the town of Everytown. Everytown has created a revolving fund for the Everytown Free Public Library. This Library Revolving fund was created for the purpose of replacing lost books and is funded by fines on those who lost said books. This program was largely successful in FY19 and the fund had more than enough money to help replace books that were lost. However, in FY20, the library shut down due to COVID and the library stopped charging fines for lost books. The fund has been very low and the Everytown library is planning a big reopening, but there are still lost books that the Library Director, Michael Scott would like to replace. Is Everytown allowed to deficit spend from this revolving fund account?



Revolving Funds

14. Michael Scott is also interested in an additional revolving fund for Everytown Library. He would like a Library materials replacement fee charged for all library users generally for the purpose of updating the library's catalog/circulation software? Is this allowed?

15. Everytown Police Chief, Dwight Schrute has expressed interest in establishing a revolving fund for firearm license permit fees to be used for upgrading police computer systems and purchasing mobile data terminals? Is this allowed?



Revolving Funds

16. Chief Schrute has noticed an increase in speeding and accidents in town since many Everytown residents are back to working in person at the local paper company, Dunder Mifflin. In fact, he recently had an accident where a woman named Meredith was hit by a car right outside the Dunder Mifflin Office by her very own boss. Chief Schrute would like to dedicate the fees received for copies of accident and incident reports to a revolving fund, should this be approved?

17. Two members of Everytown who are on the licensing board would like to help the environment. Jim and Pam are feeling guilty for their carbon footprint from working at a paper company. They, along with the licensing board, would like payments made in connection with construction permits where trees are removed to be reserved in a revolving fund to plant other trees in the future.



Revolving Funds

18. The Health Director in Everytown, Stanley Hudson, is planning on being proactive this year in keeping residents as protected as possible from Covid and other illnesses. He would like to set up a departmental revolving fund which would be credited a fee that is charged to residents to cover the costs of providing said residents with flu and COVID vaccinations. However, many of the residents won't pay the fee directly but will instead have that cost covered by their private insurance, Medicare or Medicaid. Is this fund permissible?

19. Everytown, has established several departmental revolving funds, including a "Cable Revolving Fund." The by-law states that the revenue source for the Cable Fund is "monies received from Cable Receipts."

20. Everytown has established several departmental revolving funds, including an "Ambulance Service Revolving Fund." The by-law states that the revenue source for the Ambulance Fund is "all of the service fees charged and received by the Ambulance Director in Connection with the Town's ambulance service."



Revolving Funds

21. Chief Dwight Schrute is pretty relentless in advocating for the revolving funds for the police department around town. One of the funds he has been fighting for with the Everytown Town Council is “The Police and Fire Vehicles Fund.” The by-law would state that the revenue source for this Fund is for the sale of public safety vehicles. Is this allowed?