

## DEPARTMENTAL SPENDING CASE STUDY 1

Based on revised revenue estimates, Bustertown's finance committee recommended FY10 operating budgets for most departments below the amounts requested by their department heads, and in some cases, below last year's amounts. In May, annual town meeting voted to budgets reflecting the recommended reductions. Depending on the department, reductions were made to personal services, as well as expense and contractual services line items. The school department's overall budget request was also reduced, but is still above the amount the town is legally obligated to spend under Education Reform.

As FY09 is coming to a close, several department heads with unspent monies in their budgets want to use extra funds to pay for certain goods and services. They ask the accountant to encumber or charge FY09 appropriations for the following:

- Office supplies.
- Orders of library and school text books.
- Electric bills.
- Association dues.
- Tax billing services.
- Special education tuition payments.
- Teacher salary increases that are still under negotiation.

### Questions:

1. Can the accountant encumber or charge FY09 appropriations to pay the bills for these goods and services?
2. When may goods to be used or services to be received in a fiscal year be paid from appropriations of a prior or subsequent year?

**Appropriations are made for operations of a particular FY. So the issue here relates to the scope of the appropriation and appropriate encumbrances for obligations incurred as part of the year's operations. It is not unique to school departments. See opinions 95-520, 2003-413 on pages 35-43. Wilmington case cited in the opinions does not alter the basic scope of appropriation rule. (In that case, the accountant advised that school department that it couldn't order after a certain date. Case is narrowly decided and we agree that accountant can't arbitrarily cut off school department's (or other departments') ability to spend budget through 6/30.)**

**The general rules regarding encumbrances follow. Schools line item autonomy doesn't broaden them since the bottom line appropriation and items school committee sets within that bottom line are for support of schools for the particular FY as well.**

**A department cannot spend or encumber funds from one fiscal year's budget for services/expenses that relate unambiguously to the next fiscal year. (e.g., is the tax billing contract all being performed during FY10? If so, must charge to FY10. Or is it for FY10 tax bills, where the preliminary bills are printed during FY09 to be mailed by 7/1?)**

**However, it can spend or encumber from the current year's budget to pay for services or recurring costs (e.g., utility/dues/subscription) that are performed over the current and next year. The department should only be charging one year (12 months) work of services/recurring costs to any one FY budget.**

**A department can also spend or encumber for certain supplies and materials ordered and delivered before June 30, even if most will be used next year. (i.e., library and school text books)**

### **Special Exceptions for Schools**

**See G.L. c. 71, § 49A page 33 –Allows school department to incur liabilities for goods and supplies against next year's approved budget before 7/1. Other departments may not do that. They cannot incur liabilities against those budgets until 7/1.**

**See G.L. c. 71, § 71D page 34 and education collaborative G.L. c. 40, § 4E pages 17-18, specifically last paragraph on page 18. For Special Education (SPED) tuitions, school department can prepay for services to be rendered solely in next FY out of current year budget if there is a legal obligation to make the payments at that time. These are recurring costs, so should be budgeting only 12 months worth of services in any particular year's budget. See Opinion 2004-319 page 44. This means that under G.L. c. 71, § 71D, for example, can have agreement to pay quarterly with payment made on 6/30 for services in July-September being charged to prior year budget. Could not, however, pay for tuition for periods after September from prior year's budget, i.e., can't pay tuition for September-November of following fiscal year. Under G.L. c. 40, § 4E, can only pay in advance for 1 year of services from any budget.**

**School raises – Department cannot encumber funds for raises being negotiated. Monies budgeted for salaries are for those earned during that year. Here there is no legal obligation o pay anything more at this time. To save the funds for next year, town meeting could have voted them as a funding source for next year's budget.**

**What if the contract was settled and approved by the union, but the department just hadn't finished calculated amounts owed to individuals yet? Different result as an obligation to pay had arisen under the contract.**

**Recommend accounting officer annually notify departments well in advance of close of year issues of policies regarding encumbrances, submission of bills, etc.**

After June 30, 2009, Bustertown's accountant discovered that the DPW's expense item is insufficient to pay a bill that had not previously been identified as outstanding. In addition, the accountant had encumbered at the cemetery department's request \$18,000 for supplies the department purchased in April. The bill presented for payment was only \$12,000, because the vendor applied a discount. On September 21, the school department forwarded to the accountant for payment a just discovered bill for copying services received in March.

**Questions:**

1. Can the accountant pay the DPW bill? Can extra funds remaining in other budgets be used to pay the bill? What if the only department with funds left over was the school department? What if the only accounts with left over funds were the sewer enterprise expense account and the unclassified retirement account? What options are there to cover deficits in budget items at the end of the year?

**See G.L. c. 44, § 33B pages 22-23, IGR 45-48. In towns, selectboard and finance committee can act up to July 15 to make transfers among departmental appropriations or from the fincom reserve to cover deficits, i.e., clean up the year's accounts. Also see G.L. c. 41, §§ 56 and 56A, the FY statutes that are not in the workshop book. There is a limit on the amount that may be transferred from any accounts and can't transfer from school or light departments. We also don't think you can transfer from unclassified accounts. Reason compare breadth of language in first sentence of G.L. c. 44, § 33B(b) to end of year transfer language, which is more restrictive. Legislature could have used broader language, but it didn't.**

**Up to 7/15, city council/town meeting could appropriate from any other operating appropriations that have unencumbered/unspent balances, including school or unclassified. It cannot appropriate from free cash, however, after June 30, to cover the deficits. Free cash balance expires and there is no balance on July 1, until certified.**

**So here couldn't pay full DPW bill unless before 7/15, transfers made to DPW line item. If not, it would be an unpaid bill of prior year. See G.L. c. 44, § 64 not in workshop book. Also, it results in an appropriation deficit (illegal deficit under G.L. c. 44, § 31) that has to be raised in tax levy**

2. Can the cemetery department spend the extra \$6,000 available in its budget after payment of the bill? Are those monies available to cover the DPW bill or for use for any other purpose?

**If the bill comes in after 6/30 but before 7/15, then cemetery can't spend on something else. Year is over. Funds close out to free cash. The extra monies would be unencumbered and available for transfer to DPW or other departments though during 7/15 accounts payable period.**

3. What procedures apply to the copying bill? Can the school department be required to pay it out of its FY10 budget? If so, how?

**See Opinion 2001-772 pages 49-50. This is not an issue of the school department notifying the accountant of the need to encumber and it wasn't done. If that were the case and free cash had not yet been certified, we think the accountant can adjust books.**

**Otherwise, you need a funding source for this as FY09 budget can't be charged now. Will have to go to legislative body and the issue is the quantum of vote needed. Only need supermajority under G.L. c. 44, § 64 (not in workshop book) if there were not sufficient monies in budget when liability incurred – that is an unpaid bill for purposes of the statute. If there were sufficient monies, but just forgot about bill or**

**was presented late by the vendor, then only need majority vote (unless the funding source, e.g. stabilization requires higher quantum).**

**Municipality can fund from any unspent/unencumber balance in current year budget of the department. Recommended policy as it serves to deter departments from not forwarding bills – particularly major bills – promptly.**

In late 2009, Bustertown is facing some unexpected expenses and the selectmen are looking for some extra funds to pay for them. They ask the assessors to review the overlay accounts because they believe the amounts reserved are more than needed due to a recent win for municipalities in a big telephone case. They want these extra amounts to be declared surplus by the assessors so they can be used for the unfunded expenses.

Questions:

1. Can the selectmen order the assessors to release amounts in the overlay account as surplus?

**No – they can only ask only the assessors to review accounts to see if there are any surpluses. Assessors have exclusive control over overlay accounts.**

2. When are overlay accounts in surplus?

**Accounts has more than amount needed for potential abatements/exemptions + uncollected personal property taxes + uncollected real estate not secured by tax title. This applies year by year, but DOR believes the best practice is for assessors to consider all accounts together. If one is nearly exhausted and later goes into deficit, the community will then be able to use surplus in others to cover – rather than fund from the levy and take away funds from operating budgets. See G.L. c. 59, § 25 not in workshop book.**

3. What purposes may overlay surplus funds be used for and what procedures apply to their use?

- **Assessors declare surplus and notify accounting officer.**
- **Accounting officer transfers to overlay surplus account.**
- **Account is an available fund until 6/30. May be appropriated for any purpose.**
- **Any balance as of 6/30 closes to free cash.**

In February 2010, the school committee agrees to the new collective bargaining agreement with the teachers' union covering FY09-11, which includes raises of 2% for each of those years. The next payroll appears to include the raises for FY09 and FY10, although the accountant has not been provided the new contract or other documentation detailing the amounts owed under it. The accountant wants to refuse payment of any raises. She does not believe that there is enough money in the school budget to pay the raises and still meet obligations the department has for the rest of the year?

Questions:

1. Can the accountant refuse to approve payment of these raises?

**Yes. It is accountant's responsibility to ensure departments do not overspend/incur liabilities in excess of appropriation under G.L. c. 44, § 31 page 21. Under *McHenry v City of Lawrence* case, salaries for year were treated as encumbrance on departmental appropriation and department head was not able to hire additional personnel. Also applies to any fixed or contractual costs. Accountant should encumber at beginning of year after budget adopted. If personnel leave, that may free up money for the department head to use to hire other personnel or other purpose within the applicable line item. Consider adoption of strong by-law or ordinance, but even if it does not exist, accounting officer has authority to monitor spending.**

**School committee line item autonomy and authority to fund collective bargaining contract from current budget does not allow them to overspend. Here, if the school committee frees up funds in its budget (e.g., layoffs, reductions in other expenses that can actually be implemented), then accountant can approve. Otherwise, it would need to go to legislative body to get supplemental appropriation to fund cost items. Also, accountant should have all contracts, documentation, etc. and may insist on it. See G.L. c. 41, § 57 page 20. Accountant should have a documentation policy and advise department heads at beginning of year and when new department head takes over.**

**In general, however, caution should be exercised on disapproval of payrolls and salaries due to prompt payment of wages statute. Consult with municipal counsel first. Issue here is there is no agreement unless funds are available for first year cost items – different that not approving salaries where amounts clearly established and work performed.**

2. What are the obligations of the school department (and other departments) in regard to spending during the year and the options that are available to ensure that overspending does not occur?

**See email to Greenfield pages 51-52.**

- **Accounting officer should be encumbering for salaries and fixed obligations at beginning of fiscal year based on adopted budget and departments' personnel and essential obligations.**
- **Department heads need to conform spending plan to adopted budgeted – not keep at requested budget – and should keep accounting officer informed during year of changes in personnel, contractual obligations, etc.**
- **Accounting officers should be sending monthly expenditure reports to department heads and municipal executives (mayor/manager/administrator/selectmen)**
- **Accounting officers can notify vendors and community can adopt policy of taking funds for unpaid bills from next year's budgets.**

## GIFT AND TRUST FUNDS CASE STUDY 2

Recently, a donation was made to the Pleasantville's Fire Department for public protection purposes. The Fire Chief accepted that donation and intends to spend the money to buy new automated external defibrillators. Concerned Citizen Josie Nosey read about this in the Pleasantville Times and doesn't think that Pleasantville's Fire Department needs new defibrillators. She would like the money spent on animal control since her neighbor's dog keeps wandering onto her property. She wants to know if the proper procedures for accepting gifts and donations were followed. She remembers that before her neighbor, Mrs. Rich, moved down to Florida few years ago, she made a sizeable donation to the town of Pleasantville. There was a vote at town meeting to accept that donation and later to spend it on new benches and a gazebo for the town green.

### Questions:

1. Is Josie Nosey correct to insist that town meeting vote to accept a cash gift to the Fire Department?

**No. Under G.L. c. 44, §53A, pages 23-24, a town officer or department head may independently accept a gift of money given specifically to that officer or department. There is no requirement that Town Meeting vote on acceptance. Therefore, in this case, the Fire Chief could accept the donation.**

**However, Josie Nosey is correct that when a gift or donation of money is made to a municipality generally, i.e., not to any particular officer or department and not for any specific use, Town Meeting should vote to accept, or the Board of Selectmen may accept the funds on behalf of the Town.**

2. Is she correct that the Fire Chief needs to seek town meeting approval to expend the donated funds on new defibrillators?

**The Fire Chief may expend the gift funds without appropriation for the purposes of the donation. However, under the provisions of G.L. c. 44, §53A, he does need to obtain the approval of the Board of Selectmen.**

**In addition, Josie Nosey is correct that with respect to the expenditure of funds where the gift is made for the general, unrestricted use of the Town, Town Meeting, as the appropriating authority, should vote the expenditure of such funds (unless donor clearly states selectboard may decide, but there are practical problems with them spending funds for operation, personnel of a department.) In the absence of an appropriation, there is no basis for any department to spend the funds.**

The owner of a local equipment franchise saw a recent news report about the lack of maintenance of the town cemetery, where his family has a plot. Due to budget cuts, the cemetery department has been unable to replace essential equipment. The owner wants to donate a deluxe riding lawnmower to the department to be used to maintain the cemetery.

### Question:

1. Who may accept a gift of personal property such as the lawnmower on behalf of the town?

**The selectboard (council with mayor's approval if required by charter in a city) See G.L. c. 44, § 53A½ page 24.**

**(Note- Gifts of real estate must be accepted by legislative body as well – See G.L. c. 40, § 3 on page 16 – town “may hold” real property for corporate purposes. There are legal obligations associated with ownership so legislative body should decide whether to accept.\_**

The Executor of the estate of Mr. Lavish, another former, wealthy resident of the town of Pleasantville, was given authority in the will to donate the balance of the estate to any organization of his choosing. The Executor chose to donate the remaining \$188,000 to Pleasantville's schools in memory of the late Mrs. Lavish who had volunteered in the school library for many years. A check was presented with a letter stating that the funds should be contributed to an endowment account to benefit Pleasantville's school children for years to come and be used for programs, activities and equipment not otherwise funded in the school operating budget. The check (made payable to the Town of Pleasantville) was accepted at a publicly held meeting of the School Committee.

Pleasantville's Finance Director has told the School Business Administrator that the funds must be accounted for in a special fund with the interest going to the general fund. Believing that the intent of the gift was to have the interest retained by the fund, the School Committee says a trust fund that retains interest should be established instead.

Questions:

1. Can this bequest be treated as a trust rather than a gift?

**Whether this is a gift or trust depends on the donor's intent. Ordinarily, a gift or grant is an outright transfer of monies for a specified purpose. A trust usually involves an ongoing gift, where the funds are intended to support a purpose on a continuing basis. It is created when the donor gives the funds to a particular board or officer as trustees for a specified purpose, by means of a trust agreement/instrument and directing the trustees to spend the principal and/or income for the specified purposes.**

**In this situation, the will itself did not make a particular gift or create a trust for the town or any department or officer, but gave the executor of the estate the discretion to dispose of the funds. Without reviewing the actual will and donation documents we don't know what the intent was. If the letter and check from the executor of the estate did not clearly give the money to the school committee, but rather gave it to the town and merely provided that the gift was to be used to benefit the school children for programs and items not otherwise funded by the town, it would seem to be more in the nature of a gift, governed by GL c. 44, §53A, with interest going to the general fund. However, given the size of the gift and that it was given an endowment, the executor may have intended that the funds would not be expended immediately, but over time, and that they would be invested in the ordinary course.**

**Trust funds are ordinarily meant to be a permanent or at least long-term fund whereas, if money given to town is intended to be completely spent in short period such as a year, it's probably a gift.**

**Donors do not always make their intent clear. Need to exercise care – particularly if amount significant and seek assistance of municipal counsel.**

2. If so, should it be characterized as expendable or non-expendable?

**It is a matter of donor's intent whether principal (expendable) or only interest (non-expendable) can be spent. That is reason written direction, trust instrument from donor is important. Not always provided, however. If the donor indicates expenditures restricted to accrued interest, then that would clearly manifest intent for non-expendable trust.**

3. May the school committee spend from the trust or must town meeting appropriate the funds?

**A trust is a form of gift, so monies can be spent without town meeting appropriation, unless the donor specified otherwise.**

**Custody of funds should be with treasurer, unless donor clearly expressed otherwise. Sometimes donor will clearly provide for custody by school committee or library trustees. This creates liability issues since they are not bonded and the treasurer is. Better practice if possible is to have donor make gift to department, but provide for custody in treasurer. In that case, the department given the gift still exercises power of direction regarding expenditure.**

At Pleasantville's annual town meeting, an article passed appropriating monies for the construction of an addition to the town library. The article provides, however, that a certain amount must be raised from donations first to cover the anticipated cost. The library trustees have advertised that donations will be accepted from individuals or businesses. If the town receives enough donations, it will go ahead with the construction. In September, the first donations began rolling in. Most are for small amounts. They are being held by the Town Treasurer who has several questions.

#### Questions:

1. What is the best way to manage and account for these multiple donations for the same purpose?

**Generally, if a city or town would like to accept many donations for a particular project or purpose, the appropriate officials (or could have been in the town meeting vote in this case) can ask the accounting officer to establish a single, consolidated gift account to hold the donations. In this situation, we would recommend that Pleasantville designate a name for the account and specify the terms and conditions under which the gifts will be accepted. For example:**

- the purposes for which the monies may be spent;

- whether interest earned will stay with the gift; and
- whether the donations will be returned if the project is not undertaken in X years. (in this case, the accounting officer will have to keep track of the donors)

See letters on pages 53-56 and City & Town article on pages 9-10, particularly discussion on page 10.

2. Do the donations have to be deposited in a separate bank account?

**Donations are treated as gifts under G.L c. 44, §53A, which means they are segregated from the general fund for accounting purposes and can be spent without further appropriation by the board/officer to which they are given for the purpose of the donation. However, there is no requirement that the treasurer maintain separate bank accounts for each special fund, including each gift account. The treasurer can pool gifts with other cash for investment purposes, but would have to allocate investment earnings.**

3. Does interest earned stay with the donations?

**Unless directed by the donors, investment earnings on gifts belong to the general fund, rather than become part of the gift. Under G.L. c. 44, § 53A, it is our view that interest earned on gift or grant funds may only remain with the gift or grant account if there is express, written direction to that effect. In the absence of such express direction, interest on gift or grant funds is general fund revenue.**

4. If the town does not construct the addition, do the donations have to be returned?

**It depends on the terms and conditions established for the gifts. Presumably yes for something like this. Many grants require expenditure within a specified period and if not, the monies must be returned. Donations must be tracked in these cases.**

The town of Pleasantville is considering buying the Flush mansion, a grand, old historic residence that lately has fallen into a state of disrepair. Co-chairs of Pleasantville's Historical Commission, Ainsley Stately and Neil Genteel, have been hard at work raising money to be put towards refurbishing the mansion. That got them thinking about establishing within Pleasantville's financial framework an ongoing fund for preservation of the mansion and other historic assets. They have proposed that the Historical Commission and Town Treasurer execute an agreement for the purposes of establishing a formal trust fund and creating certain rights and obligations regarding the administration, management and use of monies directed to the trust fund.

Question:

1. Can a town committee and the treasurer create a trust and agree that certain revenues received by the committee will be held by the treasurer as part of that trust?

**No. The custody, management, use and disbursement of general revenue, gift or grant funds, and trust funds is governed and prescribed by the statutory municipal**

**finance provisions. Agreements (formal or otherwise) may not alter or operate inconsistently with such statutory provisions. Likewise, the specific authority, duties and obligations of municipal finance officers with respect to various types of funds are established in the General Laws. Certainly, the Beautification Committee may accept grants or gifts of funds to further their purposes, and if the gift of funds is in the form of trust, accept the same. However, there is no authority for town officers to pre-arrange specific treatments for various types of monies they receive in the regular course of business to be applied universally, or prescribe requirements or obligations that may be inconsistent with provisions of the General Laws.**

**See letters on pages 53-56 and City & Town article on pages 9-10, particularly discussion on page 10.**

In 1995, a declaration of trust was written to have Pleasantville's treasurer hold monies donated to the trustees in a separate, interest bearing account to be called the "Parade and Fireworks Fund." The donations and other monies received by the trustees were to be used to pay for parades, fireworks displays and other similar public celebrations. Recently, the trustees decided to raise monies to replace worn out equipment in the town's parks and playgrounds as well. Until that time, they used monies in the fund to refurbish a tot lot that had to be closed because of the condition of the equipment. As a result, there are insufficient funds to pay for some of the annual parades and fireworks the trust supports and the trustees have asked the town to transfer monies to cover that deficit.

Questions:

1. Can the trustees use monies from the parade and fireworks fund for the tot lot equipment?

**Who are the trustees here and how was the trust established? Is this a private trust, i.e., established by a private group that raises money for these purposes and asked the treasurer to be custodian of the funds, or was the money raised and turned over to the town, naming certain town officials as trustees?**

2. Can the town transfer funds to cover the deficit in the trust fund?

**If a private trust, no. This would probably raise an issue under the Anti-aid Amendment to the state Constitution even though these purposes benefit public. If given to the town, the trustees cannot spend beyond available monies, but the town could supplement the trust funds with an appropriation to cover the expenditures.**

3. What is the process for changing the purposes for which gift and trust funds may be used?

**If the purpose of a trust fund is no longer feasible, you need to consult with municipal counsel. In certain cases, a court can alter trust provisions in order to achieve the general charitable objectives of the person who created it. Town officials, however, cannot change the purposes on their own unless the donor gave them some discretion to do so if circumstances changed.**

**See May 2009 City & Town article on the Gardner museum case not in workshop book.**