
**Massachusetts Department of Revenue
Division of Local Services**

**LOCAL FINANCES
Current Municipal Finance
and
Accounting Issues**



2010

Workshop B

**Navjeet K. Bal, Commissioner
Robert G. Nunes, Deputy Commissioner**

LOCAL FINANCES

Current Municipal Finance and Accounting Issues

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LOCAL FINANCES
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Discussion Topics

LITIGATION, RESTITUTION AND INSURANCE PAYMENTS
CASE STUDY 1

During the fiscal year, Sueborough receives recoveries under its insurance policies for two events. First, it received \$18,000 on a claim for property damage to a number of PC's in the library caused by an electrical fire. Second, it received \$100,000 on a claim related to a flood caused by a burst water pipe at one of the Sueborough's schools. The pipe manufacturer's insurance company paid monetary damages to the town under the terms of a settlement. The library commissioners and school committee claim they can retain the monies received for damage to property under their control.

Questions:

1. Can the library and school departments retain these proceeds?
2. If so, how may they be used?
3. If not, by what process may they be spent and for what purposes?

A check was sent to Sueborough's town counsel, Les Billem, following the settlement of a breach of contract case in Superior Court. After execution of all settlement documents and payment of all outstanding costs, the amount of \$23,000.00 was deposited in the client account of Les Billem's law firm. The terms of the settlement did not specify where the funds were to be placed or how they were to be used. The funds have been kept in the client account at Sueborough's request since September 2009. Sueborough has several other litigation cases pending on which its town counsel is working.

Question:

1. Can Sueborough leave these settlement proceeds with the firm and have town counsel draw on them to pay current legal costs?

In April of 2009, Sueborough teachers staged a 3-day strike that was later ruled illegal. In January of 2010, the Sueborough teachers' union was ordered by a judge to pay a \$75,000 fine. That amount represented an estimate of what the strike cost the school department in legal fees, spoiled food, make-up days, pay for police officers assigned to watch over picket lines, etc. The judge's order stated that the fine was to be

paid to the Sueborough School Committee. The School Committee plans to use the \$75,000 to make up for recent mid-year budget cuts affecting custodial positions, transportation and gasoline costs, and supplies.

Question:

1. Who has the authority to spend the funds and what year are they available for expenditure?

Sueborough recently received settlement proceeds as a result of a class action products liability lawsuit brought against manufacturers and distributors of an additive to gasoline that contaminated water supplies throughout the country, including Sueborough's wells. The settlement did not include any restrictions on the use of the proceeds. The Sueborough board of water commissioners believes that only the Water Department has legal authority to spend these funds and wants the proceeds directed to a special account for water purposes generally or to fund remediation in the event of further contamination.

Questions:

1. Must the settlement proceeds be directed to a special account for the benefit of the Water Department?
2. Can Sueborough reserve these settlement proceeds?

Five years ago, Sueborough's police department used federal grant money to purchase 18 bullet-proof vests. The vests turned out to be defective. The federal government initiated a class action lawsuit, which Sueborough joined, against the manufacturer of the vests. Sueborough recently received a \$10,000 distribution of compensatory damages from the settlement of the class action. That represents about 75% of the original cost of the vests. The police department is already in the process of replacing the vests, but has been awaiting the settlement to complete the transaction.

Questions:

1. Does the \$10,000 distribution have to be returned to the original grant account?
1. Can the police department use the \$10,000 distribution for replacement vests without appropriation?

Sueborough is negotiating a legal settlement for a grievance claim of a custodian related to the teachers' 3-day strike. However, the town does not have funds budgeted within the current fiscal year's budget for this expenditure. One member of the School Committee believes that if Sueborough settles the claim this fiscal year, the payment may be added to the subsequent year's tax recap to be raised in the next fiscal year.

Questions:

1. Can Sueborough fund payment of this settlement by raising it in next year's tax levy?
2. What type of claims (pre-litigation, arbitrator's decision, adjudicatory agency decision, court judgment) can be funded without appropriation and raised in the next tax levy?

**SCHOOL DEPARTMENT RECEIPTS
CASE STUDY 2**

Flatbroke's school department had its budget reduced for FY11. It anticipates receiving the following monies during the year and wants to retain them to supplement its budget:

- Medicaid reimbursements for medical services provided to low-income special needs students.
- Fees charged for drivers' education training.
- Fees charged for non-mandated bus service.
- Fees charged for pre-kindergarten and after school programs.
- Monies raised by the Class of 2011 from student run car washes, bike-a-thons and a variety of other student fundraisers.
- Monies received on a claim under the town's insurance policy for loss due to the theft of Class of 2012 student funds by a teacher serving as the class advisor.
- Monies left in the account for the Class of 2009.
- Fees charged for students to park in school parking lots.
- Lease payments received for the annual rental of a vacant wing of the elementary school.
- Fees charged to an informal basketball group that rents the gym on Monday nights.
- Monies raised by the Boosters Club to help defray the costs of various athletic and other programs, including proceeds from a raffle for the specific purpose of buying new boys and girls track equipment.

Questions:

1. Can the school committee retain and spend any of these revenues?
2. If so, how may they be used?
3. If not, by what process may they be spent and for what purposes?

MITIGATION FUNDS/REGULATORY EXACTIONS CASE STUDY 3

Boomtown has adopted a bylaw under c.40A §9 to allow by special permit residential developments with up to 40% higher density than would be otherwise permissible. The bylaw provides that in addition to any other conditions, the special permit must require the creation of additional affordable housing units equal to at least 25% of the total number of additional residential units authorized by virtue of the special permit. The bylaw also provides that in lieu of requiring the applicant to build such units, the special permit can require a payment to the town's affordable housing trust, in an amount per unit determined by the special permit granting authority. The bylaw does not specify how such a payment to the affordable housing trust must be determined.

The planning board, as the special permit-granting authority under the bylaw, has received a proposal for a new subdivision of 700 houses that would take maximum advantage of the increased density allowed by the bylaw.

In addition to a \$5m payment to the town's affordable housing trust for 50 new units of affordable housing required under the bylaw, which the planning board determines would cost \$100,000 per unit, the planning board will require:

- Widening of the street where the subdivision road will enter a public way, and the installation of a traffic light at the resulting intersection;
- Construction and conveyance to the town of a 3½ acre park within the subdivision;
- The grant of a trust fund to the town, the income from which will pay for the upkeep of the park;
- In addition to requiring the installation of sewer mains in the subdivision's ways, the planning board will require the developer to pay the town the cost of a ½ mile extension in the public street of a sewer line to serve the subdivision.

The planning board wants to have the developer pay the town the cost of the street widening and traffic light installation, with the work to be done by the town DPW.

Questions:

1. If the town had no affordable housing trust, could the planning board still require a payment from the developer of \$5m, in lieu of actually providing the additional affordable housing units? What if the planning board has underestimated the cost of affordable housing, so that the \$5m is enough to provide only 30 units of affordable housing?

2. Could the planning board require the developer to pay the town the cost of the street-widening and traffic light installation, instead of making the developer do the work itself?
3. Can the planning board require acquisition of real estate by the town without a town meeting vote? What if it wanted to require the construction and conveyance to the town of a new fire station? Or school? What if the construction of a new park, fire station, or school were on an existing piece of municipal property? Could it have required the developer to pay a lump sum to be used by the town to buy park/recreational property outside the new subdivision?
4. Can the planning board require that the payment for the future cost of the park's upkeep be dedicated to that purpose? Could it require a payment to create a trust fund to pay for some of the future operating costs of a fire station or a school? Are such operating costs "amenities" in the language of c.40A §9? At least with respect to payments for future operating costs, it's hard to see how they can be characterized as "other amenities," since the amenities specified in the statute are all elements of physical infrastructure, rather than types of municipal services.

What if the sewer commissioners or the town meeting refuse to approve the extension of the sewer system, or the cost exceeds the amount of the payment the developer is required to make?

ADDITIONAL FINANCE AND ACCOUNTING ISSUES
Several Recent Cases

(A.) Scope of Budget Line Items:

The senior center has been a congenial meeting place for the town's elderly for many years and traditionally served beverages and sweets at informal receptions during the week. As good nutrition became more serious, particularly for the elderly, the center began offering more nutritious lunches and offset the expenses by donations from the elderly as well as gifts of foodstuffs and cash from local businesses. At this time, however, the expenses of this informal but regular lunch program have outpaced the available revenue. The Director of the senior center has recently begun to submit bills for paper products and some foodstuffs with the direction they be charged to available balances in her "Office Supplies" line item appropriation.

Questions:

- 1.) What is the basic issue presented in this scenario?
- 2.) What statutory provision places this issue within the authority of the town accountant or City Auditor? Who else in a Town has authority regarding this issue?
- 3.) Is there any other board or officer that might weigh-in on this issue?
- 4.) What would DOR's role be in this issue?

(See Letter Opinion – Our File No. 2010-539)

(B.) Creative Financing and Gifts and Grants:

In Mytown, due to severe budget constraints, the DPW has ordered that certain street lights be turned off in an effort to save money and live within their budget. Not surprisingly, the residents of the selected streets are quite upset. Some, however, have proposed an "Adopt a Light" program whereby they will pay for their own street's lights. They have explored this proposal with the utility company, but the company will not bill the residents directly. How can this practical proposal be made to work within the municipal finance statutes?

Questions:

- 1.) Is a gift account under G.L. c. 44, §53A an appropriate option for implementing this proposal?
- 2.) Who would administer the account?
- 3.) Who would hold the cash?
- 4.) What practical issues might arise as the program continues in effect?

(See Letter Opinion – Our File No. 2009-1470, June 18, 2010)

(C.) Fees and General or Special Fund Accounting

The municipal golf course has proven quite successful as of late. In fact, the total annual greens fees and other associated revenues have substantially surpassed the amount of the annual operating appropriation for the course. (The golf course remains a traditional general fund program.) Certain citizens have claimed the fee structure is excessive and illegal and have clamored for fee reductions. These citizens have requested that DOR review the fee structure and financial and accounting procedures. They insist the course must be run as an enterprise fund so as to identify all expenses.

Questions:

- 1.) Must fee based recreational programs be accounted for in an enterprise fund? What other special fund options might be available for the golf course?
- 2.) Is there a different test for the legality of fees run through an enterprise fund rather than the General Fund?
- 3.) Generally, what are the standards for testing the legality of user fees?
- 4.) What are the appropriate costs that may be taken into consideration in setting the greens fees and other golf course related charges?
- 5.) Is a payment-in-lieu of tax to the municipality a proper expense to consider in developing a fee structure?

(See Letter Opinion – Our File No. 2010-56)

(D.) End-of-Year Transfers under G.L. c. 44, §33B

On April 1, the board of selectmen meet with the finance committee to consider the fast approaching, year-end budget situation. As a number of the members of each board plan on being away during May and June, they schedule a joint meeting for April 15. After their thorough analysis of line item balances and careful deliberation on budget adjustments, they decide to vote a package of transfers under §33B that night, with these transfers scheduled to take effect as of May 1. The next morning the list of votes is delivered to the town accountant with instructions to process them come May 1.

Question:

- 1.) Do these line item transfers under G.L. c. 44, §33B comply with the legal requirements of that section?

(See e-mail reply 2010-510)

(E.) Unpaid Bills of the Prior Fiscal Year

Several departmental bills got “lost in the shuffle” at the end of FY 2010 and did not get paid. As a result, the line item balances that were sufficient to cover the bills closed out and are no longer available. The vendors want to know what has to happen in order for them to get paid.

Questions:

- 1.) May the bills simply be paid from the FY 2011 budget line item?
- 2.) At an upcoming Special Town Meeting, what would be the quantum of vote necessary to appropriate funds to pay these bills? Majority? 4/5ths? 9/10ths?

(See G.L. c. 44, §64)

(F.) Application Fees - Disposition of Revenue

The local board of health and planning board are considering raising the application fees they charge applicants for certain permits and licenses. The boards have the following questions for the town accountant.

Questions:

- 1.) Will these funds be automatically available for their use in processing the applications?
- 2.) Also, if the additional funds are not automatically available for the board, by what vote, by-law or statute may they be retained by the boards for use in processing the applications?

(See Letter Opinion - Our File No. 2009-792)

TREATMENT OF MUNICIPAL REVENUES

GENERAL FUND REVENUES (Estimated Receipts)

Unrestricted revenues, including property taxes, state aid and other local revenues available to support general government operations. Revenue belongs to the general fund unless otherwise provided by statute. G.L. c. 44, § 53.

SPECIAL REVENUE FUNDS

Particular revenues that are earmarked for and restricted to expenditure for specified purposes. Special revenue funds include receipts reserved for appropriation, revolving funds, grants from governmental entities and gifts from private individuals and organizations. Special revenue funds must be established by statute.

Receipts Reserved for Appropriation

Receipts from a specific revenue source that by law is accounted for separately from the general fund (segregated) and must be spent by appropriation.

Examples are:

Parking Meter Receipts	G.L. c. 40, §§ 22A - 22C
Sale of Real Estate	G.L. c. 44, § 63
Waterways Improvement Fund	G.L. c. 60B, §§ 2(i) & 4
	G.L. c. 40, § 5G
Sale of Cemetery Lots	G.L. c. 114, § 15
County Dog Fund	G.L. c. 140, § 172

Revolving Funds

Receipts from a specific revenue source that are accounted for separately (segregated) from the general fund and may be spent without appropriation to support the activity, program or service that generated the revenue. Examples are:

Arts Lottery Council Fund	G.L. c. 10, § 58
School Rental Receipts	G.L. c. 40, § 3
Parks and Recreation Revolving Fund	G.L. c. 44, § 53D
Departmental Revolving Fund	G.L. c. 44, § 53E½
Planning/Zoning/Health/Conservation Outside Consultants Fund	G.L. c. 44, § 53G
Anniversary Celebration Fund	G.L. c. 44, § 53I
Student Athletic and Activity Fund	G.L. c. 71, § 47
Wetlands Protection Fund	G.L. c. 131, § 40
	c. 43, § 218 of the Acts of 1997
	c. 194, § 349 of the Acts of 1998

TRUST AND AGENCY FUNDS

Fiduciary funds segregated from the general fund to account for assets held by the city or town in a trustee capacity or as an agent for individuals, private organizations, other governmental units, etc. These include expendable trust funds, non-expendable trust funds, pension trust funds and agency funds.

Examples of Trust Funds are:

Scholarship Fund	G.L. c. 60, § 3C
Local Education Fund	G.L. c. 60, § 3C
Educational/Instructional Materials Trust Fund	G.L. c. 71, § 20A
Cemetery Perpetual Care Fund	G.L. c. 114, § 25

Examples of Agency Funds are:

Police Outside Detail Fund	G.L. c. 44, § 53C
Student Activity Agency Account	G.L. c. 71, § 47
Sporting License Receipts	G.L. c. 131, § 18
County Dog License Receipts	G.L. c. 140, § 172

ENTERPRISE FUNDS

Funds segregated from the general fund to account for services financed and delivered in a manner similar to private enterprises where the intent of the municipality is that all costs, direct or indirect, of providing the goods or services be financed or recovered primarily through user charges. Where the service is not fully financed by fees, provides information about the level of general fund subsidy of the service. G.L. c. 44, § 53F½ (formerly G.L. c. 40, § 39K).

APPROPRIATED SPECIAL PURPOSE FUNDS

Statutory funds to account for allocation of general revenues by the appropriating authority to particular purposes. Examples are:

Reserve Fund	G.L. c. 40, § 5A (cities) G.L. c. 40, § 6 (towns)
Stabilization Fund	G.L. c. 40, § 5B
Pension Reserve Fund	G.L. c. 40, § 5D
Unemployment Compensation Fund	G.L. c. 40, § 5E
Conservation Fund	G.L. c. 40, § 8C
Overlay (annual accounts)	G.L. c. 59, § 25
Overlay Surplus (balances)	G.L. c. 59, § 25

September 2010

LIST OF SPECIAL FUNDS AND CITATIONS

ENTERPRISE REVENUES

Water Surplus	G.L. c. 41, § 69B
Landfill/Trash Collection Charges	G.L. c. 44, § 28C(f)
Landfill Closure Reserve	G.L. c. 44, § 28C (f)
Enterprise Funds	G.L. c. 44, § 53F½
Electric Light Receipts	G.L. c. 164, § 57

TEMPORARY FUNDS (Expire at Year's End)

Reserve Fund	G.L. c. 40, § 5A (cities)
	G.L. c. 40, § 6 (towns)
Free Cash	G.L. c. 59, § 23
Overlay Surplus	G.L. c. 59, § 25

REVOLVING FUNDS (No appropriation needed)

Arts Lottery Council Monies	G.L. c. 10, § 58
School Lunch Fund	c. 548 of the Acts of 1948
School Rental Receipts	G.L. c. 40, § 3
Performance Bond Forfeitures (Up to \$100,000 by local option)	G.L. c. 41, § 81U
Expedited Permitting	G.L. c. 43D, § 6(b)
Police Special Detail	G.L. c. 44, § 53C
Parks and Recreation Fund	G.L. c. 44, § 53D
Departmental Revolving Fund	G.L. c. 44, § 53E½
Planning/Zoning/Health/Conservation Outside Consultants Fund	G.L. c. 44, § 53G
Anniversary Celebration	G.L. c. 44, § 53I
Affordable Housing Trust	G.L. c. 44, § 55C
Culinary Arts Programs	G.L. c. 71, § 17A
School Day Care Receipts	G.L. c. 71, § 26C
Student Athletic and Activities	G.L. c. 71, § 47
Student Activity Agency	G.L. c. 71, § 47
Community Schools Programs	G.L. c. 71, § 71C
Adult Continuing Education	G.L. c. 71, § 71E
Use of School Property	G.L. c. 71, § 71E
Non-resident Students' Tuition	G.L. c. 71, § 71F
METCO Reimbursements	G.L. c. 71B, § 12
Vocational Education Programs	G.L. c. 74, § 14B
School Choice	G.L. c. 76, § 12B(O)
Law Enforcement Trust	G.L. c. 94C, § 47
Wetlands Protection Fund	G.L. c. 131, § 40
	c. 43, § 218 of the Acts of 1997
	c. 194, § 349 of the Acts of 1998
Multi-community Yard Waste Program	c. 179 of the Acts of 1993
Millennium/Centennial Celebration	c. 59 of the Acts of 1998
School Bus Advertising Receipts	c. 184, § 197 of the Acts of 2002
Extended Election Polling Hours	c. 503 of the Acts of 1983

OTHER SPECIAL PURPOSE FUNDS (Held-over from Year to Year)

Tax Credit Bond Proceeds	G.L. c. 44, § 21B
Self-Insurance Health Fund	G.L. c. 32B, § 3A
Other Post Employment Benefits (OPEB) Liability Trust Fund	G.L. c. 32B, § 20
Stabilization Fund	G.L. c. 40, § 5B
Pension Reserve Fund	G.L. c. 40, § 5D
Unemployment Compensation Fund	G.L. c. 40, § 5E
Ambulance Receipts Reserved	G.L. c. 40, § 5F
Beach and Pool Receipts Reserved	G.L. c. 40, § 5F
Golf Course Receipts Reserved	G.L. c. 40, § 5F
Skating Rink Receipts Reserved	G.L. c. 40, § 5F
Waterways Improvement Fund	G.L. c. 40, § 5G
	G.L. c. 60B, § 2(i)
Conservation Fund	G.L. c. 40, § 8C
Recycling Commission Fund	G.L. c. 40, § 8H
Building Insurance Fund	G.L. c. 40, § 13
Workmen's Compensation Fund	G.L. c. 40, § 13A
Parking Meter Fees	G.L. c. 40, § 22A
Off-street Parking Receipts	G.L. c. 40, §§ 22B & 22C
Commission on Disabilities Fund	G.L. c. 40, § 22G
Bond Proceeds	G.L. c. 44, § 20
State Highway and Water Pollution Funds	G.L. c. 44, § 53
Insurance/Restitution Proceeds (Up to \$20,000)	G.L. c. 44, § 53
Lost School Books/Industrial Arts Supplies	G.L. c. 44, § 53
Grants and Gifts	G.L. c. 44, § 53A
Sale of Real Estate Proceeds	G.L. c. 44, § 63
Community Preservation Fund	G.L. c. 44B, § 7
Overlay	G.L. c. 59, §§ 25 & 70A
Local Education Fund	G.L. c. 60, § 3C
Scholarship Fund	G.L. c. 60, § 3C
Low Income Seniors and Disabled Tax Relief Fund	G.L. c. 60, § 3D
Wastewater Disposal Receipts	G.L. c. 83, § 1G
Estimated Sewer Betterments	G.L. c. 83, § 15B
Bicyclist Traffic Fines Receipts Reserved	G.L. c. 85, § 11E
Non-Resident Student Motor Vehicle Registration Fines Receipts Reserved	G.L. c. 90, § 3½
Weight and Measure Fines Receipts Reserved	G.L. c. 98, § 29A
Educational/Instructional Materials Trust Fund	G.L. c. 71, § 20A
Cemetery Sale of Lots Fund	G.L. c. 114, § 15
Cemetery Perpetual Care Funds	G.L. c. 114, § 25
Spay and Neuter Deposits	G.L. c. 140, § 139A
County Dog Fund	G.L. c. 140, § 172
Building and Fire Code Enforcement Fines Receipts Reserved	G.L. c. 148A, § 5

TOWN PROPERTY – LEASE OF SURPLUS SCHOOLS General Laws Chapter 40, § 3

Section 3. A town may hold real estate for the public use of the inhabitants and may convey the same by a deed of its selectmen thereto duly authorized, or by a deed of a committee or agent thereto duly authorized; may by its selectmen let or lease for not more than ten years, on such terms as the selectmen determine, a public building or part thereof, except schoolhouses in actual use as such; may by its selectmen let or lease for not more than twenty-five years, real estate to the Massachusetts Bay Transportation Authority for use by the authority as a parking lot for commuters; may hold personal estate for the public use of the inhabitants, and alienate and dispose of the same; may hold real and personal estate in trust for the support of schools, and for the promotion of education, within the limits of the town; may receive, hold and manage any devise, bequest or gift for the establishment or equipment of memorials for properly commemorating the services of the soldiers, sailors and marines who have served the country in war, and for the establishment or maintenance of any reading room for which it may grant money under the provisions of section five; and may make such orders as it may deem necessary or expedient for the disposal or use of its corporate property. All real estate or personal property of the town, not by law or by vote of the town placed in the charge of any particular board, officer or department, shall be under the control of the selectmen, except as is otherwise provided in this section or section nine.

Notwithstanding the provisions of this section, a city or town, with the approval of the school committee, may rent or lease any school building not in actual use and, with the approval of the commissioner of education, surplus space in a school building in actual use to any one or more public or private profit-making businesses or nonprofit organizations; provided, however, that joint occupancy of a school building in actual use as such shall not interfere with educational programs being conducted in said building. The terms of any such rental or lease shall be as approved by the school committee; provided, however, that no school building not in actual use shall be rented or leased for an initial term longer than ten years, but with renewal options if approved by the school committee.

The monies received from such rental or lease shall be kept separate and apart from other city or town funds in the city or town treasury and may be expended by the school committee without further appropriation for the upkeep of the facility so rented or surplus space which is so rented; provided, however, that any balance remaining in such account at the close of a fiscal year shall be paid into the General Fund of such city or town; and, provided further, that in any city or town that accepts this proviso, any such balance shall remain in said account and may be expended for the upkeep and maintenance of any facility under the control of the school committee.

PREPAYMENT TO EDUCATIONAL COLLABORATIVES General Laws Chapter 40, § 4E

Section 4E. Pursuant to the provisions hereof, two or more school committees of cities, towns and regional school districts may enter into a written agreement to conduct education programs and services which shall complement and strengthen the school programs of member school committees and increase educational opportunities for children. The school committees shall collaborate to offer such programs and services, and the association of school committees which

is formed pursuant hereof to deliver such programs and services shall be known as an education collaborative.

The education collaborative shall be managed by a board of directors which shall be comprised of one person appointed by each member school committee. Such person shall be either a school committee member or his designee or the superintendent of schools or his designee. Members of said board of directors shall be entitled to a vote according to the terms of the education collaborative agreement. The department of education shall appoint an individual to serve in an advisory capacity to the education collaborative board. Said individual shall not be entitled to vote on any matter which comes before the board of directors of the education collaborative.

The written agreement which shall form the basis of the education collaborative shall set forth the purposes of the program or service, the financial terms and conditions of membership of the education collaborative, the method of termination of the education collaborative and of the withdrawal of member school committees, the procedure for admitting new members and for amending the collaborative agreement, the powers and duties of the board of directors of the education collaborative to operate and manage the education collaborative and any other matter not incompatible with law which the member committees deem advisable. The agreement shall be subject to the approval of the member school committees and the commissioner of education.

Each board of directors of an education collaborative shall establish and manage a trust fund, to be known as an Education Collaborative Trust Fund, and each such fund shall be designated by an appropriate name. All monies contributed by the member municipalities, and all grants or gifts from the federal government, state government, charitable foundations, private corporations, or any other source, shall be paid to the board of directors of the education collaborative and deposited in the aforesaid Fund.

The board of directors of the education collaborative shall appoint a treasurer who may be a treasurer of a city, town or regional school district belonging to such collaborative. Such treasurer shall be authorized, subject to the direction of the board of directors of the education collaborative, to receive and disburse all monies of the trust fund without further appropriation. The treasurer shall give bond annually for the faithful performance of his duties as collaborative treasurer in a form approved by the department of revenue and in such sum, not less than the amount established by said department, as shall be fixed by the board of directors of the education collaborative. The board of directors of the education collaborative in its discretion may pay compensation to the treasurer for his services. No member of the board of directors of the education collaborative shall be eligible to serve as treasurer of said collaborative.

The treasurer of the education collaborative board of directors shall have the authority to make appropriate investments of the monies of the Education Collaborative Trust Fund consistent with the provisions of section fifty-four of chapter forty-four.

The board of directors of an educational collaborative shall have the authority to borrow money, enter into long-term or short-term loan agreements or mortgages and to apply for state, federal or corporate grants or contracts to obtain funds necessary to carry out the purpose for which such collaborative is established; provided, that the board of directors has determined that any such borrowing, loan or mortgage is cost-effective and in the best interest of the collaborative and its member municipalities. Such borrowing, loans or mortgages shall be consistent with the written agreement and articles of incorporation, if any, of the educational collaborative and shall be consistent with standard lending practices.

The board of directors of the education collaborative shall have the authority to employ an executive officer who shall serve under the general direction of such board and who shall be responsible for the care and supervision of the education collaborative.

The board of directors of the education collaborative shall be deemed to be a public employer and have the authority to employ personnel, including teachers, to carry out the purposes and functions of the education collaborative. No person shall be eligible for employment by said board of directors as an instructor of children with severe special needs, teacher of children with special needs, teacher, guidance counselor or school psychologist unless such person has been granted a certificate by the board of education under the provisions of section thirty-eight G of chapter seventy-one or section six of chapter seventy-one A or an approval under the regulations promulgated by the board of education under chapter seventy-one B or chapter seventy-four with respect to the type of position for which he seeks employment; provided, however, that nothing herein shall be construed to prevent a board of directors of an education collaborative from prescribing additional qualifications. A board of directors of an education collaborative may, upon its request, be exempted by the board of education for any one school year from the requirements of this section to employ certified or approved personnel when compliance therewith would in the opinion of the board constitute a great hardship.

The education collaborative shall be deemed to be a public entity and shall have standing to sue and be sued to the same extent as a city, town or regional school district. An education collaborative, acting through its board of directors, may enter into contracts for the purchase of supplies, materials and services, and for the purchase or leasing of land, buildings and equipment as deemed necessary by such board of directors.

A school committee of any city, town or regional school district may authorize the prepayment of monies for any educational program or service of the education collaborative, to the treasurer of an education collaborative, and the city, town or regional school district treasurer shall be required to approve and pay such monies in accordance with the authorization of the school committee.

STABILIZATION FUND

General Laws Chapter 40, § 5B

Section 5B. For the purpose of creating 1 or more stabilization funds, cities, towns and districts may appropriate in any year an amount not exceeding, in the aggregate, 10 per cent of the amount raised in the preceding fiscal year by taxation of real estate and tangible personal property or such larger amount as may be approved by the director of accounts. The aggregate amount in such funds at any time shall not exceed 10 per cent of the equalized valuation of the city or town as defined in section 1 of chapter 44. Any interest shall be added to and become part of the fund.

The treasurer shall be the custodian of all such funds and may deposit the proceeds in national banks or invest the proceeds by deposit in savings banks, co-operative banks or trust companies organized under the laws of the commonwealth, or invest the same in such securities as are legal for the investment of funds of savings banks under the laws of the commonwealth or in federal savings and loans associations situated in the commonwealth.

At the time of creating any such fund the city, town or district shall specify, and at any later time may alter, the purpose of the fund, which may be for any lawful purpose, including without

limitation an approved school project under chapter 70B or any other purpose for which the city, town or district may lawfully borrow money. Such specification and any such alteration of purpose, and any appropriation of funds into or out of any such fund, shall be approved by two-thirds vote, except as provided in paragraph (g) of section 21C of chapter 59 for a majority referendum vote. Subject to said section 21C, in a town or district any such vote shall be taken at an annual or special town meeting, and in a city any such vote shall be taken by city council.

SPECIAL PERMITS

General Laws Chapter 40A, Section 9 (extracts)

Section 9. Zoning ordinances or by-laws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit. Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use.

Zoning ordinances or by-laws may also provide for special permits authorizing increases in the permissible density of population or intensity of a particular use in a proposed development; provided that the petitioner or applicant shall, as a condition for the grant of said permit, provide certain open space, housing for persons of low or moderate income, traffic or pedestrian improvements, installation of solar energy systems, protection for solar access, or other amenities. Such zoning ordinances or by-laws shall state the specific improvements or amenities or locations of proposed uses for which the special permits shall be granted, and the maximum increases in density of population or intensity of use which may be authorized by such special permits. ...

Zoning ordinances or by-laws may provide for special permits authorizing the transfer of development rights of land within or between districts. These zoning ordinances or by-laws shall include incentives such as increases in density of population, intensity of use, amount of floor space or percentage of lot coverage, that encourage the transfer of development rights in a manner that protect open space, preserve farmland, promote housing for persons of low and moderate income or further other community interests.

...

“Cluster development” means a residential development in which the buildings and accessory uses are clustered together into one or more groups separated from adjacent property and other groups within the development by intervening open land. A cluster development shall be permitted only on a plot of land of such minimum size as a zoning ordinance or by-law may specify which is divided into building lots with dimensional control, density and use restrictions of such building lots varying from those otherwise permitted by the ordinance or by-law and open land. Such open land when added to the building lots shall be at least equal in area to the land area required by the ordinance or by-law for the total number of units or buildings contemplated in the development. Such open land may be situated to promote and protect maximum solar access within the development. Such open land shall either be conveyed to the city or town and accepted by it for park or open space use, or be conveyed to a non-profit organization the principal purpose of which is the conservation of open space, or to be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plot. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units. In any case where such land is not conveyed to the city or town, a restriction enforceable by the city or town shall be recorded providing that such land shall be kept

in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadway.

APPROVAL OF PAYROLLS

General Laws Chapter 41, § 41

Section 41. No treasurer or other fiscal officer of any town or city shall pay any salary or compensation to any person in the service or employment of the town or city unless the payroll, bill or account for such salary or compensation shall be sworn to by the head of the department or the person immediately responsible for the appointment, employment, promotion, or transfer of the persons named therein, or, in the case of the absence or disability of the head of the department or of such person, then by a person designated by the head of the department and approved by the board of selectmen in towns, and by the mayor in cities, or by the city manager in cities operating under a Plan D or Plan E charter. A commission, committee or board of trustees in a city or town, including a city council, board of aldermen or common council in a city, may for purposes of this section designate any one of its members to make oath to a payroll, bill or account for salary or compensation of its members or employees. This provision shall not limit the responsibility of each member of any such body in the event of a noncompliance with this section.

APPROVAL OF WARRANTS FOR PAYMENT

General Laws Chapter 41, § 56

Section 56. The selectmen and all boards, committees, heads of departments and officers authorized to expend money shall approve and transmit to the town accountant as often as once each month all bills, drafts, orders and pay rolls chargeable to the respective appropriations of which they have the expenditure. Such approval shall be given only after an examination to determine that the charges are correct and that the goods, materials or services charged for were ordered and that such goods and materials were delivered and that the services were actually rendered to or for the town as the case may be; provided, however, that such approval may be given to any bill received from a state agency for the town's share of the costs of a federal urban planning assistance program, established under the provisions of section 701 of Public Law 83-560, as amended, before any goods, materials or services ordered or to be ordered under such a program have been delivered or actually rendered, as the case may be. The town accountant shall examine all such bills, drafts, orders and pay rolls, and, if found correct and approved as herein provided, shall draw a warrant upon the treasury for the payment of the same, and the treasurer shall pay no money from the treasury except upon such warrant approved by the selectmen. If there is a failure to elect or a vacancy occurs in the office of selectman, the remaining selectman or selectmen, together with the town clerk, may approve such warrant. The town accountant may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive, and in such case he shall file with the town treasurer a written statement of the reasons for such refusal. The treasurer shall not pay any claim or bill so disallowed by the town accountant. So far as apt this section shall apply to cities.

TOWN ACCOUNTANTS

General Laws Chapter 41, §57

Section 57. The town accountant shall keep a complete set of books wherein shall be entered the amount of each specific appropriation, the amounts and purposes of expenditures made therefrom, the receipts from each source of income, the amount of each assessment levied, and the abatements made; and he shall keep his accounts, so far as practicable, in conformity with the classifications and forms prescribed by the director of accounts in accordance with section forty-three of chapter forty-four and in conformity with any systems, classifications, forms and designations prescribed pursuant to regulations of the board of education for use by school committees. The town accountant shall have custody of all contracts of the town, shall keep a register of the sureties on all bonds of indemnity given to the town, shall keep a detailed record of the town debt, showing the purpose for which it was incurred, when incurred, when due, the rate of interest and the provisions made for the payment of the debt.

TOWN BUDGETS

General Laws Chapter 41, §59

Section 59. The selectmen and all boards, committees, heads of departments, or other officers of a town authorized by law to expend money shall furnish to the town accountant, or, if there is no town accountant, to the appropriation, advisory or finance committee, if any, otherwise to the selectmen, not less than ten days before the end of the calendar year, or not less than ninety days prior to the date of the start of the annual town meeting, whichever is later, detailed estimates of the amount necessary for the proper maintenance of the departments under their jurisdiction for the ensuing fiscal year, with explanatory statements as to any changes from the amounts appropriated for the same purposes in the then current fiscal year, and an estimate of amounts necessary for outlays or permanent improvements. They shall also prepare estimates of any income likely to be received by the town during the ensuing fiscal year in connection with the town's business or property intrusted to their care. The selectmen shall include in their estimates the salaries and expenses connected with their own office, and the salaries of all other town officers shall be included in the estimates for the office, department or branch of the public service of which they are in charge. The treasurer shall, in addition to his estimate of the amount required for the maintenance of his own office, prepare a separate statement indicating the amounts required for the payment of interest on the town debt and for the payment of such portions of the town debt as may become due during the ensuing fiscal year.

LIABILITIES IN EXCESS OF APPROPRIATION

General Laws Chapter 44, § 31

Section 31. No department financed by municipal revenue, or in whole or in part by taxation, of any city or town, except Boston, shall incur a liability in excess of the appropriation made for the use of such department, each item recommended by the mayor and voted by the council in cities, and each item voted by the town meeting in towns, being considered as a separate appropriation, except in cases of major disaster, including, but not limited to, flood, drought, fire, hurricane, earthquake, storm or other catastrophe, whether natural or otherwise, which poses an immediate threat to the health or safety of persons or property, and then only by a vote in a city of two-thirds

of the members of the city council, and in a town by a majority vote of all the selectmen. Payments of liabilities incurred under authority of this section may be made, with the written approval of the director, from any available funds in the treasury, and the amounts of such liabilities incurred shall be reported by the auditor or accountant or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors who shall include the amounts so reported in the aggregate appropriations assessed in the determination of the next subsequent annual tax rate, unless the city or town has appropriated amounts specified to be for such liabilities; provided, that, if proceedings are brought in accordance with provisions of section fifty-three of chapter forty, no payments shall be made and no amounts shall be certified to the assessors until the termination of such proceedings. Payments of final judgments and awards or orders of payment approved by the industrial accident board rendered after the fixing of the tax rate for the current fiscal year may, with the approval of the director of accounts if the amount of the judgment or award is over ten thousand dollars, be made from any available funds in the treasury, and the payments so made shall be reported by the auditor or accountant or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors, who shall include the amount so reported in the aggregate appropriations assessed in the determination of the next subsequent annual tax rate, unless the city or town has otherwise made provision therefor.

The provisions of this section, so far as apt, shall apply to districts, and the prudential committee, if any, otherwise the commissioners, shall act in place of the members of the city council or selectmen.

APPROPRIATION TRANSFERS

General Laws Chapter 44, § 33B

Section 33B. (a) On recommendation of the mayor, the city council may, by majority vote, transfer any amount appropriated for the use of any department to another appropriation for the same department. In addition, the city council may, by majority vote, on recommendation of the mayor, transfer within the last 2 months of any fiscal year, or during the first 15 days of the new fiscal year to apply to the previous fiscal year, an amount appropriated for the use of any department other than a municipal light department or a school department to the appropriation for any other department, but the amount transferred from 1 department to another may not exceed, in the aggregate, 3 per cent of the annual budget of the department from which the transfer is made. Except as provided in the preceding sentence, no transfer shall be made of any amount appropriated for the use of any city department to the appropriation for any other department except by a 2/3 vote of the city council on recommendation of the mayor and with the written approval of the amount of the transfer by the department having control of the appropriation from which the transfer is proposed to be made. No transfer involving a municipal light department or a school department shall be made under the previous sentence without the approval of the amount of the transfer by a vote of the municipal light department board or by a vote of the school committee, respectively.

(b) A town may, by majority vote at any meeting duly held, transfer any amount previously appropriated to any other use authorized by law. Alternatively, the selectmen, with the concurrence of the finance committee or other entity establish under section 16 of chapter 39, may transfer within the last 2 months of any fiscal year, or during the first 15 days of the new fiscal year to apply to the previous fiscal year, any amount appropriated for the use of any

department other than a municipal light department or a school department to the appropriation for any other department or within a department, but the amount transferred from 1 department to another or within a department may not exceed, in the aggregate, 3 per cent of the annual budget of the department from or within which the transfer is made or \$5,000, whichever is greater.

(c) No approval other than that expressly provided in this section shall be required for any transfer under this section.

TREATMENT OF MUNICIPAL REVENUES

General Laws Chapter 44, § 53

Section 53. All moneys received by any city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury. Any sums so paid into the city, town or district treasury shall not later be used by such officer or department without specific appropriation thereof; provided, however, that (1) sums allotted by the commonwealth or a county to cities or towns for highway purposes and sums allotted by the commonwealth to cities, towns or districts for water pollution control purposes shall be available therefor without specific appropriation, but shall be used only for the purposes for which the allotment is made or to meet temporary loans issued in anticipation of such allotment as provided in section six or six A, (2) sums not in excess of twenty thousand dollars recovered under the terms of fire or physical damage insurance policy and sums not in excess of twenty thousand dollars received in restitution for damage done to such city, town or district property may be used by the officer or department having control of the city, town or district property for the restoration or replacement of such property without specific appropriation and (3) sums recovered from pupils in the public schools for loss of school books or paid by pupils for materials used in the industrial arts projects may be used by the school committee for the replacement of such books or materials without specific appropriation.

TREATMENT OF GIFTS AND GRANTS

General Laws Chapter 44, § 53A

Section 53A. An officer or department of any city or town, or of any regional school or other district, may accept grants or gifts of funds from the federal government and from a charitable foundation, a private corporation, or an individual, or from the commonwealth, a county or municipality or an agency thereof, and in the case of any grant or gift given for educational purposes may expend said funds for the purposes of such grant or gift with the approval of the school committee, and in the case of any other grant or gift may expend such funds for the purposes of such grant or gift in cities having a Plan D or Plan E form of government with the approval of the city manager and city council, in all other cities with the approval of the mayor and city council, in towns with the approval of the board of selectmen, and in districts with the approval of the prudential committee, if any, otherwise the commissioners. Notwithstanding the provisions of section fifty-three, any amounts so received by an officer or department of a city, town or district shall be deposited with the treasurer of such city, town or district and held as a separate account and may be expended as aforesaid by such officer or department receiving the grant or gift without further appropriation. If the express written terms or conditions of the grant

agreement so stipulate, interest on the grant funds may remain with and become a part of the grant account and may be expended as part of the grant by such officer or department receiving the grant or gift without further appropriation. Any grant, subvention or subsidy for educational purposes received by an officer or department of a city, town or school district from the federal government may be expended by the school committee of such city, town or district without including the purpose of such expenditure in, or applying such amount to, the annual or any supplemental budget or appropriation request of such committee; provided, however, that this sentence shall not apply to amounts so received to which section twenty-six C of chapter seventy-one of the General Laws, and chapter six hundred and twenty-one of the acts of nineteen hundred and fifty-three, as amended, and chapter six hundred and sixty-four of the acts of nineteen hundred and fifty-eight, as amended, apply; and, provided further, that notwithstanding the foregoing provision, this sentence shall apply to amounts so received as grants under the Elementary and Secondary Education Act of 1965, (Public Law 89-10). After receipt of a written commitment from the federal government approving a grant for educational purposes and in anticipation of receipt of such funds from the federal government, the treasurer, upon the request of the school committee, shall pay from the General Fund of such municipality compensation for services rendered and goods supplied to such federal grant programs, such payments to be made no later than ten days after the rendition of such services or the supplying of such goods; provided, however, that the provisions of such federal grant would allow the treasurer to reimburse the General Fund for the amounts so advanced.

GIFTS OF PERSONAL PROPERTY

General Laws Chapter 44, § 53A½

Section 53A1/2. A city council, with the mayor's approval if the charter so provides, or a board of selectmen or town council may, in its sole discretion and authority, accept gifts of tangible personal property on behalf of the city or town from the federal government, a charitable foundation, private corporation, individual, or from the commonwealth or any political subdivision thereof, and may, in its sole discretion and authority, use said gifts, without specific appropriation thereof, for the purpose of such a gift or, if no restrictions are attached to the gift, for such other purposes as it deems advisable.

DEPARTMENTAL REVOLVING FUND

General Laws Chapter 44, § 53E½

Section 53E½. Notwithstanding the provisions of section fifty-three, a city or town may annually authorize the use of one or more revolving funds by one or more municipal agency, board, department or office which shall be accounted for separately from all other monies in such city or town and to which shall be credited only the departmental receipts received in connection with the programs supported by such revolving fund. Expenditures may be made from such revolving fund without further appropriation, subject to the provisions of this section; provided, however, that expenditures shall not be made or liabilities incurred from any such revolving fund in excess of the balance of the fund nor in excess of the total authorized expenditures from such fund, nor shall any expenditures be made unless approved in accordance with sections forty-one, forty-two, fifty-two and fifty-six of chapter forty-one.

Interest earned on any revolving fund balance shall be treated as general fund revenue of the city or town. No revolving fund may be established pursuant to this section for receipts of a municipal water or sewer department or of a municipal hospital. No such revolving fund may be established if the aggregate limit of all revolving funds authorized under this section exceeds ten percent of the amount raised by taxation by the city or town in the most recent fiscal year for which a tax rate has been certified under section twenty-three of chapter fifty-nine. No revolving fund expenditures shall be made for the purpose of paying any wages or salaries for full time employees unless such revolving fund is also charged for the costs of fringe benefits associated with the wages or salaries so paid; provided, however, that such prohibition shall not apply to wages or salaries paid to full or part-time employees who are employed as drivers providing transportation for public school students; provided further, that only that portion of a revolving fund which is attributable to transportation fees may be used to pay such wages or salaries and provided, further, that any such wages or salaries so paid shall be reported in the budget submitted for the next fiscal year.

A revolving fund established under the provisions of this section shall be by vote of the annual town meeting in a town, upon recommendation of the board of selectmen, and by vote of the city council in a city, upon recommendation of the mayor or city manager, in Plan E cities, and in any other city or town by vote of the legislative body upon the recommendation of the chief administrative or executive officer. Such authorization shall be made annually prior to each respective fiscal year; provided, however, that each authorization for a revolving fund shall specify: (1) the programs and purposes for which the revolving fund may be expended; (2) the departmental receipts which shall be credited to the revolving fund; (3) the board, department or officer authorized to expend from such fund; (4) a limit on the total amount which may be expended from such fund in the ensuing fiscal year; and, provided, further, that no board, department or officer shall be authorized to expend in any one fiscal year from all revolving funds under its direct control more than one percent of the amount raised by taxation by the city or town in the most recent fiscal year for which a tax rate has been certified under section twenty-three of chapter fifty-nine.

Notwithstanding the provisions of this section, whenever, during the course of any fiscal year, any new revenue source becomes available for the establishment of a revolving fund under this section, such a fund may be established in accordance with this section upon certification by the city auditor, town accountant, or other officer having similar duties, that the revenue source was not used in computing the most recent tax levy.

In any fiscal year the limit on the amount that may be spent from a revolving fund may be increased with the approval of the city council and mayor in a city, or with the approval of the selectmen and finance committee, if any, in a town; provided, however, that the one percent limit established by clause (4) of the third paragraph is not exceeded.

The board, department or officer having charge of such revolving fund shall report to the annual town meeting or to the city council and the board of selectmen, the mayor of a city or city manager in a Plan E city or in any other city or town to the legislative body and the chief administrative or executive officer, the total amount of receipts and expenditures for each revolving fund under its control for the prior fiscal year and for the current fiscal year through December thirty-first, or such later date as the town meeting or city council may, by vote determine, and the amount of any increases in spending authority granted during the prior and current fiscal years, together with such other information as the town meeting or city council may by vote require.

At the close of a fiscal year in which a revolving fund is not reauthorized for the following year, or in which a city or town changes the purposes for which money in a revolving fund may be spent in the following year, the balance in the fund at the end of the fiscal year shall revert to surplus revenue unless the annual town meeting or the city council and mayor or city manager in a Plan E city and in any other city or town the legislative body vote to transfer such balance to another revolving fund established under this section.

The director of accounts may issue guidelines further regulating revolving funds established under this section.

ENTERPRISE FUND

General Laws Chapter 44, § 53F¹/₂

Section 53F1/2. Notwithstanding the provisions of section fifty-three or any other provision of law to the contrary, a city or town which accepts the provisions of this section may establish a separate account classified as an "Enterprise Fund", for a utility, health care, recreational or transportation facility, and its operation, as the city or town may designate, hereinafter referred to as the enterprise. Such account shall be maintained by the treasurer, and all receipts, revenues and funds from any source derived from all activities of the enterprise shall be deposited in such separate account. The treasurer may invest the funds in such separate account in the manner authorized by sections fifty-five and fifty-five A of chapter forty-four. Any interest earned thereon shall be credited to and become part of such separate account. The books and records of the enterprise shall be maintained in accordance with generally accepted accounting principles and in accordance with the requirements of section thirty-eight.

No later than one hundred and twenty days prior to the beginning of each fiscal year, an estimate of the income for the ensuing fiscal year and a proposed line item budget of the enterprise shall be submitted to the mayor, board of selectmen or other executive authority of the city or town by the appropriate local entity responsible for operations of the enterprise. Said board, mayor or other executive authority shall submit its recommendation to the town meeting, town council or city council, as the case may be, which shall act upon the budget in the same manner as all other budgets.

The city or town shall include in its tax levy for the fiscal year the amount appropriated for the total expenses of the enterprise and an estimate of the income to be derived by the operations of the enterprise. If the estimated income is less than the total appropriation, the difference shall be added to the tax levy and raised by taxation. If the estimated income is more than the total appropriation, the excess shall be appropriated to a separate reserve fund and used for capital expenditures of the enterprise, subject to appropriation, or to reduce user charges if authorized by the appropriate entity responsible for operations of the enterprise. If during a fiscal year the enterprise incurs a loss, such loss shall be included in the succeeding fiscal year's budget.

If during a fiscal year the enterprise produces a surplus, such surplus shall be kept in such separate reserve fund and used for the purposes provided therefor in this section.

For the purposes of this section, acceptance in a city shall be by vote of the city council and approval of the mayor, in a town, by vote of a special or annual town meeting and in any other municipality by vote of the legislative body.

A city or town which has accepted the provisions of this section with respect to a designated enterprise may, in like manner, revoke its acceptance.

MUNICIPAL AFFORDABLE HOUSING TRUST FUND

General Laws Chapter 44, Section 55C (extracts)

Section 55C. (a) Notwithstanding section 53 or any other general or special law to the contrary, a city or town that accepts this section may establish a trust to be known as the Municipal Affordable Housing Trust Fund, in this section called the trust. The purpose of the trust is to provide for the creation and preservation of affordable housing in municipalities for the benefit of low and moderate income households. Acceptance shall be by majority vote of the municipal legislative body under section 4 of chapter 4.

(b) There shall be a board of trustees, in this section called the board, which shall include no less than 5 trustees, including the chief executive officer, as defined by section 7 of chapter 4, of the city or town, but where the chief executive officer is a multi-member body, that body shall designate a minimum of 1 of its members to serve on the board. Trustees shall be appointed in a city by the mayor or by the city manager in a Plan D or Plan E municipality, subject in either case, to confirmation by the city council, and in a town by the board of selectmen, shall serve for a term not to exceed 2 years, and are designated as public agents for purposes of the constitution of the commonwealth. Nothing in this subsection shall prevent a board of selectmen from appointing the town manager or town administrator as a member or chair of the board, with or without the power to vote.

(c) The powers of the board, all of which shall be carried on in furtherance of the purposes set forth in this act, shall include the following powers, but a city or town may, by ordinance or by-law, omit or modify any of these powers and may grant to the board additional powers consistent with this section:—

(1) to accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the trust in connection with any ordinance or by-law or any general or special law or any other source, including money from chapter 44B;

...

PAYMENT OF BILLS INCURRED IN EXCESS OF

APPROPRIATIONS

General Laws Chapter 44, §64

Section 64. Any town or city having unpaid bills of previous fiscal years which may be legally unenforceable due to the insufficiency of an appropriation in the year in which such bills were incurred may, in the case of a town, at an annual meeting by a four fifths vote, or at a special meeting by a nine tenths vote, of the voters present and voting at a meeting duly called, and, in the case of a city which accepts this section, by a two thirds vote of the city council, appropriate

money to pay such bills; but no bill or payroll shall be approved for payment or paid from an appropriation voted under authority of this section unless and until certificates have been signed and filed with the selectmen or the city auditor, as the case may be, as hereinafter provided, stating under the penalties of perjury that the goods, materials or services for which bills have been submitted were ordered by an official or employee of the town or city and that such goods and materials were delivered and actually received by the town or city or that such services were rendered to or for the town or city, as the case may be.

Every such certificate that goods, materials or services were so ordered shall be signed and filed by the official or employee of the town or city who ordered the same or, if he has ceased to be an official or employee of the town or city, by any official or employee of the town or city; every such certificate of delivery to the town or city of goods or materials shall be signed and filed by the vendor thereof or, if such vendor is a corporation, shall be signed and filed by the treasurer thereof; every such certificate that goods or materials were received by the town or city shall be signed and filed by an official or employee of the town or city; and every such certificate of services rendered to or for a town or city shall be signed and filed by the person who rendered such services.

This section shall not prohibit or prevent appropriations by a majority vote for bills or obligations of previous fiscal years due to any other town or to a district, a city, a county or the commonwealth, or for legally incurred debt and interest the payment of which is provided for by any general or special law.

This section shall apply to districts.

MEDICAID REIMBURSEMENTS

General Laws Chapter 44, § 72

Section 72. Notwithstanding the provisions of any general or special law to the contrary, any local government entity may receive federal funds for reimbursable medical services where all conditions set forth in this section are met. Federal payments under Title XIX of the Social Security Act, claimed pursuant to this section, shall be distributed as follows: (1) with regard to federal payments that are attributable to reimbursable medical services provided to students who are in residential special education programs pursuant to the provisions of chapter 71B, (a) 50 per cent of such payments shall be returned to the local government entity, and (b) 50 per cent of such payments shall be deposited into the general fund; (2) with regard to federal payments that are attributable to any other reimbursable medical service, 100 per cent of such payments shall be returned to the local government entity, except that, for the purpose of paying the contingency fee due to a commonwealth contractor for obtaining federal payments attributable to such non-education-related services, the comptroller shall retain from such a local government entity payments in an amount equal to such contingency fee. For purposes of this section, "commonwealth contractor" shall mean any party with whom the commonwealth has entered into a contingency agreement for the purpose of assisting the local government entity in obtaining federal reimbursement. Federal payments under Title XXI of the Social Security Act, claimed pursuant to this section, shall be distributed as follows: (1) any federal payment amount in excess of 50 per cent of the expenditure amount claimed by the division of medical assistance on the federal claim form shall be deposited into the Children's and Seniors' Health Care Assistance Fund established by section 2FF of chapter 29; and (2) the remaining federal payment

amount shall be distributed in the manner described in the preceding sentence. Any funds received by a local government entity pursuant to the provisions of this section shall be considered unrestricted revenue of the local government entity and may be spent in accordance with any general or special law governing the expenditure of the entity's revenues. Before incurring any cost or providing any service for which it intends to claim federal payments under this section, the local government entity shall obtain the approval of the division, but the division, in its sole discretion, may waive this requirement where it determines that such a waiver would be in the best interests of the commonwealth. To receive any amounts under this section, the local government entity shall enter into a written agreement with the division directly or indirectly through an agency or other political subdivision, which agreement shall contain all provisions that the division deems suitable or necessary to support any claim for federal payments under this section. In addition, any local government entity that has entered into a written agreement with the division shall provide to the division, on such forms and at such times as the division may require, any information that the division deems suitable or necessary to support any claim for federal payments under this section. The division shall have the sole discretion to approve or disapprove any local government entity's proposal to claim federal payments. No action or failure to act by the division under this section shall be subject to any administrative or judicial review. The parent or guardian of any child who receives any service for which a local government entity is responsible under this section and which otherwise would be a reimbursable medical service shall, upon request, disclose to such local government entity the child's member identification number established by the division. For the purposes of this section, "federal payments" shall mean amounts received by the commonwealth as reimbursement for the federal share of payments for services described herein. For the purposes of this section, "local government entity" shall mean any city or town, public health commission, charter school or regional school district that is responsible, or assumes responsibility, either directly or indirectly through an agency or other political subdivision, for payment of the state share for services described herein. Such state share shall consist exclusively of public funds. Any local or regional school district or committee and the department of education may also contribute to the state share for any such services that are provided under the auspices of said department. For the purposes of this section, "reimbursable medical services" shall mean services, including administrative activities related to such services, that are medically necessary and for which federal payment otherwise is available under the programs of medical care and assistance established under chapter 118E and policies, procedures and criteria established by the division. For the purposes of this section, "state share" shall mean amounts which the commonwealth is obligated to assume in order to claim federal payment for reimbursable medical services.

DEFICITS AND AVAILABLE FUNDS

General Laws Chapter 59, § 23

Section 23. The assessors shall annually assess taxes to an amount not less than the aggregate of all amounts appropriated, granted or lawfully expended by their respective towns since the last preceding annual assessment and not provided for therein, of all amounts required by law to be raised by taxation by said towns during said year, of all debt and interest charges matured and maturing during the next fiscal year and not otherwise provided for, of all amounts necessary to satisfy final judgments against said towns, and of all abatements granted on account of the tax assessment of any year in excess of the overlay of that year and not otherwise provided for or any

such deficits resulting from section fifty-three E of chapter forty-four; but such assessment shall not include liabilities for the payment of which towns have lawfully voted to contract debts. Any estimate of interest charges attributable to variable interest rates on obligations issued pursuant to section twenty-two A of chapter forty-four shall be subject to the approval of the commissioner. The assessors shall deduct from the amount required to be assessed (a) the amount of all estimated receipts of their respective towns lawfully applicable to the payment of the expenditures of the next fiscal year, excluding sums to be received from the commonwealth or county for highway purposes, other than funds required to be distributed under section eighteen B of chapter fifty-eight, and excluding estimated receipts from loans and taxes, but including estimated receipts from the excise levied under chapter sixty A and receipts estimated by the commissioner under section twenty-five A of chapter fifty-eight, (b) the amount of all appropriations voted from available funds for the purpose of deduction, and (c) the amount of all other appropriations voted from available funds. Deductions made by the assessors under any provision of this section shall not be subject to the approval of the commissioner; provided, however, that deductions made under clause (a) on account of estimated receipts, other than those estimated by the commissioner, shall not exceed the aggregate amount of actual receipts received during the preceding fiscal year from the same sources, except with the written approval of the commissioner; and provided, further, that deductions made under clauses (b) and (c) shall not exceed the sums certified to the assessors and the commissioner by the director of accounts, after such examination of the accounts of the town as he may deem proper, as the amounts of available funds on hand on the preceding July the first with such additional funds as are hereinafter authorized not otherwise appropriated. Said director shall promulgate and from time to time revise rules and regulations for determining the available funds of a city or town in accordance with established accounting practices of said bureau of accounts. This section shall not be construed to require any approval for the use, application, transfer, appropriation or expenditure of any funds or accounts provision for which use, application, transfer, appropriation or expenditure is made under any other general or special law, beyond such approval or approvals as are required by such other general or special law.

In determining the amount of available funds to be deducted under the provisions of clauses (b) and (c), such available funds shall be the amount certified by the director of accounts as available on July the first next preceding the date of the appropriation, reduced by the amount of all intervening appropriations from available funds, and increased by the total of the proceeds from the sale of tax title possessions and the receipts from tax title redemptions, in addition to the real and personal property taxes of prior fiscal years, and such other amounts as the director may authorize, collected between said July first and a date which shall in no event be later than March thirty-first; provided, however, that no increases to the amount of certified available funds shall be allowed unless such increases have received the written approval of the director prior to the appropriation of such amounts. Such amounts of available funds so certified by the director of accounts as available on the July first immediately preceding shall be reported by the town accountant to the board of selectmen, or by the city auditor to the mayor or city manager and to the city council or board of aldermen, and shall be subject to appropriation.

To the extent that appropriations for programs provided for under chapter seventy-one B have been made without taking into account any reimbursement to which the city or town is entitled during the fiscal year under section thirteen of said chapter seventy-one B, the amount of such reimbursement, but not in excess of such appropriations, shall be included with other estimated receipts by the board of assessors of every city or town when compiling the local tax rate under this section. Such board of assessors shall show as an offset when compiling such rate the amount which represents the excess of such reimbursement over such appropriations.

The auditor or similar accounting officer in each city or town shall certify as soon as may be to the board of assessors the total of the proceeds from the sale of tax title possessions and receipts from tax title redemptions, in addition to the total real and personal taxes of prior years collected from July the first of the current fiscal year up to and including March the thirty-first of the same year.

If, prior to June first the assessors of any city except Boston shall not have received from the city clerk a certificate under section fifteen A of chapter forty-one of the appropriations voted for the annual budget for the next fiscal year and if it appears to them, after inquiry of the city clerk, that such appropriations have not been voted, they shall forthwith assess a tax for said year in accordance with the provisions of this section, except that, in determining the amount of the tax to be assessed, there shall be considered as having been appropriated for the annual budget for said year an amount equal to the aggregate appropriations voted for the annual budget for the then current fiscal year.

Notwithstanding the provisions of any general or special law, the provisions of this section, so far as apt, shall apply to fire, water and improvement districts.

No city, town or district tax rate for any fiscal year shall be fixed by the assessors until such rate has been approved by the commissioner, and a rate shall not be approved until the commissioner determines that the deductions under this section and the overlay addition under section twenty-five are in full compliance of law and are reasonable in amount. No city, town or district tax rate for any fiscal year shall be changed after it has been approved by the commissioner and returned to the assessors.

SCHOOL DAY CARE REVOLVING FUND

General Laws Chapter 71, §§ 26A-26C

Section 26A. If the school committee of a town determines that sufficient need exists therein for extended school services for children, between three and fourteen years of age, of parents who are employed, and whose employment is determined by said committee to be necessary for the welfare of their families, said school committee, subject to section twenty-six B, and with the approval of the city council or selectmen may establish and maintain such services.

Section 26B. If said school committee, upon determination by it of sufficient need, votes that said services should be established by it in such town upon approval of the city council or selectmen, it shall submit in writing a plan of said services to the commissioner of education for his written approval; provided, that said extended school services proposed in said plan shall consist of such care as shall be determined by standards established by said commissioner in consultation with the state department of public health and shall be operated by said school committee under the general supervision of said commissioner; and provided further, that said school committee shall establish as one of the rules of admission of any such child to the benefits of said extended school services that the parents of such child shall pay toward the cost of said services such sum as said school committee shall determine. For the purposes of clause (2) of section five of chapter forty, the establishment and maintenance of said extended school services shall be deemed to be included within the term "support of public schools".

Section 26C. The commonwealth and the school committee of any town may accept funds from the federal government for the purposes of sections twenty-six A to twenty-six F, inclusive. The school committee of any town may receive contributions in the form of money, material, quarters or services for the purposes of said sections from organizations, employers and other individuals. Such contributions received in the form of money, together with fees from parents and any allotments received from the federal government for said purposes, shall be deposited with the treasurer of such town and held as a separate account and expended by said school committee without appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four.

SCHOOL APPROPRIATIONS

General Laws Chapter 71, § 34

Section 34. Every city and town shall annually provide an amount of money sufficient for the support of the public schools as required by this chapter, provided however, that no city or town shall be required to provide more money for the support of the public schools than is appropriated by vote of the legislative body of the city or town. In acting on appropriations for educational costs, the city or town appropriating body shall vote on the total amount of the appropriations requested and shall not allocate appropriations among accounts or place any restriction on such appropriations. The superintendent of schools in any city or town may address the local appropriating authority prior to any action on the school budget as recommended by the school committee notwithstanding his place of residence. The city or town appropriating body may make nonbinding monetary recommendations to increase or decrease certain items allocating such appropriations.

The vote of the legislative body of a city or town shall establish the total appropriation for the support of the public schools, but may not limit the authority of the school committee to determine expenditures within the total appropriation.

STUDENT ATHLETIC AND ACTIVITIES REVOLVING FUND

STUDENT ACTIVITY AGENCY FUND

General Laws Chapter 71, § 47

Section 47. The committee may supervise and control all athletic and other organizations composed of public school pupils and bearing the school name or organized in connection therewith. It may directly or through an authorized representative determine under what conditions the same may compete with similar organizations in other schools. Expenditures by the committee for the organization and conduct of physical education, athletics, sports, games and play, for providing proper apparatus, equipment, supplies, athletic wearing apparel, including appropriate souvenir garments and trophies, and facilities for the same in the buildings, yards and playgrounds under the control of the committee, or upon any other land which it may have the right or privilege to use for this purpose, and for the employment of experienced athletic directors to supervise said physical education, athletics, sports, games and play, shall be deemed to be for a school purpose. Expenditures by the committee for making special awards to pupils who have performed meritoriously in the fields of art, debating, distributive education, music, science, social studies or languages shall also be deemed to be for a school purpose. Cities and towns may appropriate for the employment of coaches to supervise

in public schools physical education, athletics, sports, games and play, and for the transportation and expenses of public school athletic teams, coaches, cheerleaders, bands and any other groups composed of public school pupils which bear the school name and are under the control of the school committee, within and without the commonwealth, to places where athletic contests or physical education, sports, games, play, musical festivals, competition or other events are held, and for the purchase of band and cheerleaders' uniforms and musical instruments for the members of bands composed of public school pupils and bearing the school name and under the control of the school committee. All receipts by the committee in connection with the conduct of activities provided for under this section or any other activity not expressly provided for in this chapter but sponsored by the school committee in which participation is contingent upon the payment of a fee by the participant, shall be deposited with the treasurer of such town or, in cases where the town is a member of a regional school district, with the treasurer of such district and held as a separate account and expended by said school committee without further appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four. No moneys may be expended from an appropriation or from the separate fund authorized by this section except upon the approval of the school committee, or of the selectmen in towns and of mayors in cities, for travel to other states.

Notwithstanding the provisions of the preceding paragraph or section fifty-three of chapter forty-four, the school committee of a city, town or district may authorize a school principal to receive money in connection with the conduct of certain student activities and to deposit such money, with the municipal or regional school district treasurer, into an interest bearing bank account, hereinafter referred to as the Student Activity Agency Account, duly established by vote of the school committee to be used for the express purpose of conducting student activities. Interest earned by such Student Activity Agency Account shall be retained by the fund and the school committee shall determine for what purpose such earnings may be used. In addition to such Student Activity Agency Account, the school committee may authorize the municipal or regional school district treasurer to establish a checking account, hereinafter referred to as the Student Activity Checking Account, to be operated and controlled by a school principal and from which funds may be expended exclusively for student activity purposes for the student activities authorized by the school committee. Such account shall be used for expenditures only and funds received for student activities may not be deposited directly into such account.

The school committee shall vote to set the maximum balance that may be on deposit in such Student Activity Checking Account. The principal designated to operate and control such Student Activity Checking Account shall give bond to the municipality or district in such amount as the treasurer shall determine to secure the principal's faithful performance of his duties in connection with such account. To the extent that the funds are available in such Student Activity Agency Account, funds up to the maximum balance set by the school committee shall be transferred from the Student Activity Agency Account through the warrant process to initially fund such Student Activity Checking Account.

Periodically, to the extent that funds are available in such Student Activity Agency Account, the municipal or regional school district treasurer shall reimburse such Student Activity Checking Account, through the warrant process, to restore the limit set by the school committee. The principal shall adhere to such administrative procedures as the municipal or regional school district treasurer or accountant may prescribe. There shall be an annual audit of the student activity funds which shall be conducted in accordance with procedures as agreed upon between the school committee and the auditor based upon guidelines issued by the department of education.

ORDERS FOR SCHOOL MATERIALS

General Laws Chapter 71, § 49A

Section 49A. At any time after the annual appropriations for the ensuing fiscal year are made by a city or town or by all the member cities and towns of a regional school district, a school committee may order materials, supplies and equipment and may contract for services for the public schools which are chargeable against such appropriations, provided that no payment therefor shall be made prior to the commencement of said ensuing fiscal year.

USE OF SCHOOL PROPERTY

General Laws Chapter 71, § 71

Section 71. For the purpose of promoting the usefulness of public school property the school committee of any town may conduct such educational and recreational activities in or upon school property under its control, and, subject to such regulations as it may establish, and, consistently and without interference with the use of the premises for school purposes, shall allow the use thereof by individuals and associations for such educational, recreational, social, civic, philanthropic and like purposes as it deems for the interest of the community. The affiliation of any such association with a religious organization shall not disqualify such association from being allowed such a use for such a purpose. The use of such property as a place of assemblage for citizens to hear candidates for public office shall be considered a civic purpose within the meaning of this section. A school committee shall award concessions for food at any field under its control only to the highest responsible bidder. This section shall not apply to Boston.

PREPAYMENT OF SPECIAL NEEDS TUITIONS

General Laws Chapter 71, § 71D

Section 71D. A school committee of any city, town, or regional school district may authorize the prepayment of tuition for a period not exceeding three months to any approved private school or approved program source which a student is attending under the provisions of chapter seventy-one B, and the city, town or regional school district treasurer shall be required to approve and pay such monies in accordance with the authorization of the school committee.

USE OF SCHOOL PROPERTY FUND

General Laws Chapter 71, § 71E

Section 71E. In any city or town which accepts this section, all moneys received by the school committee in connection with the conduct of adult education and continuing education programs, including, but not limited to adult physical fitness programs conducted under section seventy-one B, summer school programs and programs designated by prior vote of said committee as community school programs, and in connection with the use of school property under section seventy-one, shall be deposited with the treasurer of the town or city and held as separate

accounts. The receipts held in such a separate account may be expended by said school committee without further appropriation for the purposes of the program or programs from which the receipts held in such account were derived or, in the case of the use of school property account, for expenses incurred in making school property available for such use, notwithstanding the provisions of section fifty-three of chapter forty-four of the General Laws. A city or town may appropriate funds for the conduct of any such program or for expenses incurred in making school property available for such use, which funds shall be expended by the school committee in addition to funds provided from other sources. Three years from the date a city or town accepts the provisions of this paragraph, and every third year thereafter, said city or town may act to rescind its original acceptance.

February 26, 2007

Laurence R. Pizer, Town Clerk
11 Lincoln Street
Plymouth, MA 02360

**RE: Plymouth Fall Annual Town Meeting of October 23, 2006 — Case # 4118
Warrant Articles # 15 and 26 (General)
Warrant Articles # 18, 19, 21, 22, and 23 (Zoning)**

Dear Mr. Pizer:

Articles 15, 18, 19, 21, 22, 23, and 26 - I return with the approval of this Office the amendments to the town by-laws adopted under these Articles on the warrant for the Plymouth fall annual town meeting that convened on October 23, 2006, and the maps pertaining to Articles 19, 21, and 22.

Article 18 - The amendments adopted under Article 18 make a number of changes to the town's Inclusionary Housing by-law. One such change adds a new Section C (5) (c), which pertains to fee in lieu of affordable housing and provides in pertinent part as follows:

- i. As an alternative to Section (C) (4a), and allowed by law, a Developer may contribute a fee to the Plymouth Affordable Housing Trust Fund or other 501 (C) (3) fund established for the purposes of creating affordable housing as designated by the Special Permit Granting Authority to be used for the development of affordable housing in-lieu of constructing and offering affordable units within the locus of the proposed development or off-site.

(Emphasis added.)

In approving the provisions of the proposed by-law pertaining to an Affordable Housing Trust Fund, we remind the town of the requirements of G.L. c 44, §§ 53 and 55C.

General Laws Chapter 44, § 53, provides that “[a]ll moneys received by a city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury.” While we find no facial inconsistency between state laws and the mere imposition and collection of the fee prescribed in the proposed by-law, it is our opinion that the funds collected become part of the town's general fund unless placed in a fund established by the Legislature by general law or special act.

In the absence of any general or special law to the contrary, fees of the sort contemplated here would, pursuant to G.L. c. 44, § 53, have to be deposited with the Town Treasurer and made part of the town's general fund, thus not available to the town for the purpose for which they were assessed unless in accordance with an appropriation made by Town Meeting. Illustrative of such legislative authority is G.L. c. 44, § 55C, authorizing an Affordable Housing Trust Fund.

Effective April 7, 2005, the Legislature adopted G.L. c. 44, § 55C. Section 55C, as amended by Chapter 109 of the Acts of 2006, is a local option statute that allows municipalities accepting it to establish a special “Municipal Affordable Housing Trust Fund,” with the money

from this fund to be used for the creation and preservation of affordable housing for the benefit of low and moderate income households. Municipalities that accept the act must establish a board of trustees. If the town does not accept the provisions of G.L. c. 44, § 55C, the fees of the sort contemplated here would, pursuant to G.L. c. 44, § 53, have to be deposited with the Town Treasurer and made part of the town's general fund, unless such fees can be placed in another fund established by the Legislature. It is unclear from the materials submitted to us for review whether the town has created an Affordable Housing Trust. Thus, we caution the town that any funds collected must be handled in a manner consistent with G.L. c. 44, § 53.

In approving the provisions of the proposed by-law pertaining to an Affordable Housing Trust Fund, we also remind the town that fee imposed under Section C (5) (c) cannot exceed the limits imposed on local government by the Constitution and the statutes of the Commonwealth. Valid fees are distinguishable from invalid taxes by three criteria: (i) the fee is assessed for a particular government service benefitting the party paying the fee in a manner not shared by other persons; (ii) the person assessed has the option to decline the service and thus avoid the charge; and (iii) the amounts paid compensate the town for its costs and expenses of providing the services rather than raising revenues. Emerson College v. Boston, 391 Mass. 415, 427-28 (1984). The town might wish to discuss with town counsel whether the fees established by the Planning Board, collectively and as applied, amounts to a tax not specifically authorized by the Legislature and are therefore unlawful.

Lastly, Section C (4) prescribes a "basic requirement" that governs the number and default location of affordable units in a project. Section C (4) (e) prescribes that, except as provided later in Section C (5), the affordable units "shall be built on the same site as the remainder of the project." Against this default arrangement, a Developer may elect to "propose an alternative means of compliance with" Section C (4), that election being framed in terms of "a request" for the Special Permit Granting Authority ("SPGA") to exercise its authority to approve substituting one of three alternatives to the basic, default on-site location as provided in Section C (5). Those alternatives are: "off-site construction" (Section C (5) (a), "land dedication" (Section C (5) (b), and "fees in lieu of affordable housing units" (Section C (5) (c). In Section C (5) (c) (i), it is not entirely clear whether grammatically the SPGA's power to "designate" the depository is a choice between the Affordable Housing Trust Fund and some "other 501 (C) (3) fund," as suggested by the Developer, or rather is a choice only among one or more organizations exempt under the Internal Revenue Code but chosen by the SPGA itself. It would be well if this section were revised at a future town meeting to make clear how the process laid down in Section C (5) (c) (i) actually works; but given its ambiguity, we caution the town that in those instances in which an exempt organization is to be the "designated" depository, town counsel be consulted to assure compliance with state statutes governing municipal revenues (G.L. c. 44, generally) and the Anti-Aid Amendment, so-called (Article 103 of the Articles of Amendment to the Constitution of the Commonwealth). In any event, it would appear that the ultimate decision is that of the Developer between (1) complying with the basic on-site requirement, and (2) one of the alternatives requested of and approved by the SPGA.



Alan LeBovidge
Commissioner

Gerard D. Perry, Acting
Deputy Commissioner

City and TOWN

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School Department Revolving Funds

by Gary A. Blau

Generally, revenue received by any municipal department must be deposited in the general fund and cannot be expended for any purpose without further appropriation by the legislative body. M.G.L. Ch. 44, Sec. 53. However, many exceptions to this rule appear in the general laws and in special acts of the commonwealth establishing special funds.

One category of special fund is the so-called "revolving fund," established to dedicate a specific source of revenue from fees and charges to pay expenses in rendering the service for which those payments are made. The hallmarks of a revolving fund are that expenses cannot be paid until sufficient amounts have been received and that once received, money in the fund can be expended without further appropriation. The municipal treasurer, a bonded official, is generally the custodian of revolving funds under M.G.L. Ch. 41, Sec. 35 and M.G.L. Ch. 44, Sec. 53, and expenditures are made using the normal warrant process. M.G.L. Ch. 41, Secs. 52 & 56. About 25 such funds exist for particular or limited purposes, and of those about 13 apply specifically for schools. Each fund has its own limitations and restrictions with respect to whether it must be accepted by the municipality, whether interest remains with the fund, continuity and limits on amounts that may be expended or retained.

One of the broadest funds for school departments is the student athletic/activity fund into which are deposited stu-

dent fees and other charges made for participation in school sponsored athletic and other student programs. M.G.L. Ch. 71, Sec. 47. No local acceptance is required to establish this fund, from which expenses of running the student programs may be paid. Compensation for program employees may be made from the fund, and may include employee benefits. Interest from deposits go to the general fund, but no limits are placed on the amount of expenditures or the amount that may be retained from year to year. Any out-of-state travel expenditures from the fund require approval of the mayor in cities and the board of selectmen in towns. The fund is broad enough to be used for fee-based school transportation, day care and after-school programs run by the school committee. All school-sponsored activities may be run out of one fund or individual funds may be set up for each program.

An adjunct of the student athletic/activity fund is the student activity agency account, also provided by M.G.L. Ch. 71, Sec. 47. This account is for funds raised by students for student activity purposes, such as for special trips or projects. No local acceptance is required and no statutory spending limits apply. Interest remains with this account, which may carry forward. Raised funds are deposited into a treasurer's agency account, but school principals are permitted to set up a separate checking account for immediate expenditures to be made by the principal. The

school committee fixes a maximum balance for this checking account and funds may be transferred from the treasurer's agency account to the student activity checking account utilizing the warrant process. The principal must be bonded and an annual audit is required.

Two other revolving funds allow the school committee to rent or lease out school controlled property and retain the funds for maintenance and upkeep. M.G.L. Ch. 40, Sec. 3 authorizes the committee to retain rents charged for use of surplus school property or space. Revenues may be expended for upkeep of the property rented for the year of the rental. However, if the municipality specifically accepts the provisions of a particular clause, revenues may also be used to maintain any school facility and carry over from year to year. This fund may be used for salaries and capital items and no spending ceiling is provided. M.G.L.

Revolving Funds

Ch. 71, Sec. 71E, if accepted by the municipality, authorizes the school committee to rent out space in school buildings for civic, social, educational or recreational purposes during non-school hours and to expend those funds for the upkeep of the facilities. The fund has no spending ceiling, interest goes to the general fund, and the fund carries forward.

The school lunch program is operated using a hybrid grant/revolving fund. Established by St. 1948, c. 548, revenues include federal grants and sales of meals. No acceptance is required and the fund may be expended for wages and equipment to provide student meals during the school day. Under M.G.L. Ch. 44, Sec. 53A the school may spend in anticipation of grant funds. Interest remains with the fund, which carries forward. The school must comply with federal and state reporting/auditing requirements.

Land Conservation

there were apparently no educational programs relating to conservation. On these facts, the ATB ruled that the Gun Club did not benefit an indefinite class of the public. On the contrary, the Gun Club operated merely as a social club for the benefit of members and guests with only incidental charitable purposes.

In *Nature Preserve, Inc. v. Board of Assessors of the Town of Pembroke*, 2000 ATB Adv. Sh. 796 (2000), the ATB found the subject property was not open to the general public. "No trespassing" signs were posted and only those people with a permit were allowed access to the land. In *Nature Preserve*, the ATB held that a Clause 3 charitable exemption requires that the property be *directly* occupied in accordance with the charitable purposes set forth in the corporate charter. A taxpayer claiming

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Other school revolving funds include school choice tuition (M.G.L. Ch. 76, Sec. 12B(o)), nonresident student tuition (M.G.L. Ch. 71, Secs. 16D½ & 71), day care (M.G.L. Ch. 71, Sec. 26C), vocational education (M.G.L. Ch. 74, Sec. 14B), culinary arts (M.G.L. Ch. 71, Sec. 17A), adult/continuing education (M.G.L. Ch. 71, Sec. 71E), community schools (M.G.L. Ch. 71, Sec. 71C) and school bus advertising (St. 2002, c. 184, Sec. 197). The departmental revolving fund under M.G.L. Ch. 44, Sec. 53E½ may technically be used for school purposes. However, it is not well adapted for schools because it has strict expenditure and retention limitations and must be renewed annually to carry forward.

A chart summarizing school department revolving fund programs is available online at www.mass.gov/dls under "Publications and Forms," or link to www.mass.gov/dls/revolvingfund.htm.

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exemption must show the property is *actively appropriated* for charitable purposes. In *Nature Preserve*, the taxpayer argued that its charitable occupancy consisted of conserving open space. According to the ATB's *Nature Preserve* ruling, a charitable occupancy for wildlife protection requires some affirmative action on the part of the taxpayer. There must be an active appropriation of the property, and not merely passive ownership as was the case in *Nature Preserve*.

In the *Wing's Neck* case, the ATB found that the three parcels were not open to the general public. Since there was primarily a private benefit to the property owners in the area and only an incidental public benefit from conservation of the land, the ATB held that the three parcels were taxable. ■

Bond Ratings

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Barzel, Dari. "Moody's Perspective on Increased Pension Costs for California Local Governments." *Moody's Investors Service*, June 2003

Incorvaia, John. "Your General Fund Balance — One Size Does Not Fit All." *Moody's Investors Service*, February 2002

Lipnick, Linda Hird and Rattner, Yaffe. "The Determinants of Credit Quality (A Discussion of Moody's Methodology for Rating General Obligation, Lease-Backed and Revenue Bonds)" *Moody's Investors Service*, May 2002

"Public Finance Criteria: GO Debt." *Standard & Poor's*, 12 November 2002

For a more in-depth look at how these agencies determine credit ratings, please refer to these articles in their entirety by contacting Moody's at (212) 553-1658 and S&P at (212) 438-2400 for copies.

3. Moody's and S&P also assign bond ratings to short-term securities (i.e., Revenue Anticipation Notes (RANS), Tax Anticipation Notes (TANS), and Tax and Revenue Anticipation Notes (TRANS). For more information, contact Moody's to receive a copy of the article "Short-Term Note Rating Methodology" (October 2003).

4. The Division of Local Services encourages communities to conduct audits annually, rather than every two or three years. Audits conducted every two or three years involve more work for the auditor, and more work means more cost to the town. For example, when audits are conducted every three years, the auditor cannot rely on the accuracy of the prior year's ending balances, since that year was not formally audited (nor was the year before it). Consequently it takes more time to verify the accuracy of beginning balances, and this additional work is reflected in the auditor's fee.

Massachusetts Department of Revenue Division of Local Services

Navjeet K. Bai, Commissioner Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



June 9, 2009

Ann Vandal
Finance Director/Treasurer
Town Hall
62 Arlington Street
Dracut, MA 01826

Re: Medicaid Reimbursements
Our File No. 2009-540

Dear Ms. Vandal:

You asked about federal Medicaid funds paid to the technical regional school district of which the town is a member for certain medical services provided to students attending district schools.

The monies belong to the district since it is the governmental entity that pays for the medical services that are being reimbursed. Please see G.L. c. 44, § 72, which provides that "any local government entity may receive federal funds for reimbursable medical services where all conditions in this section are met" and defines "local government entity" as the entity that is responsible, or assumes responsibility, either directly or indirectly through an agency or other political subdivision, for payment of the state share for the services. Also see G.L. c. 44, § 53. According to the Department of Elementary and Secondary Education (DESE), the regional school district pays the medical expenses for its special needs students. District assessments paid by member communities or tuitions paid by non-member communities are fixed by formula and do not typically increase based on the actual costs of serving individual students receiving these services.

If you have any further questions on this matter, you may wish to contact the DESE.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen Colleary".

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC
CC: Jeff Wulfson, Associate Commissioner, DESE



August 28, 2006

Daniel M. Sullivan
Sullivan, Rogers and Company, LLC
Corporate Place I, Suite 204
99 South Bedford Street
Burlington, MA 01803

Re: G.L. Chapter 71, Sections 26A, 26B and 26C
Fees of Extended School Programs
Our File No. 2006-220

Dear Mr. Sullivan:

This is in reply to your recent letter requesting our opinion with respect to several issues relating to the fees of an extended day school services program operated under the provisions of G.L. Chapter 71, Sections 26A, 26B and 26C. Under these provisions, a school committee, with the approval of the selectmen in a town, is authorized to offer extended school services, determine a fee to be paid by parents toward the cost of such services and establish a special account for financing the program. This special account, a so-called "revolving fund," is the repository for governmental grants or other monies received from organizations, employers or other individuals, as well as the fees charged to parents for the extended school services. Pursuant to Section 26C, monies in this special fund may be expended by the school committee in support of the program without town meeting appropriation.

You first inquire as to whether there is any limit on the amount of fees that can be charged for enrollment in the program. In this regard, you ask whether the fees are essentially intended to cover the cost of providing the service, or whether the fees may be set so as to generate a surplus or profit. In considering whether an exaction is a fee or an unlawful tax, the Supreme Judicial Court generally observed that fees are charged for a particular governmental service, are paid by choice, and "...the charges are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses." *Emerson College v. City of Boston*, 391 Mass. 415, 424, 425 (1984) In our view, therefore, the fees or charges for participation in the extended school services program must be calculated and used to offset the overall costs or expenses of providing the service, and not to produce a surplus or profit in excess of the costs of the program.

Your second question asks more specifically what costs should be considered program expenses and be charged to the special fund. In our opinion, the overall "costs" or "expenses" of a program would include all direct and indirect costs associated with the provision of the services or program. As you mention, salaries, employees' benefits, and operational supplies would clearly constitute program costs. Likewise, in our view, custodial, maintenance and utility expenses that are clearly associated with the premises

Daniel M. Sullivan
Sullivan, Rogers and Company, LLC
Page Two

occupied and used by the program would be appropriate costs of the program, provided the amounts so determined have been reasonably and realistically allocated. Additional information regarding the costing of municipal services may be found in our publication Costing Municipal Services: Workbook and Case Study, which may be found at <http://www.dls.state.ma.us/publics.htm>.

Your next question asks whether any accumulated surplus of an extended day program may be used by the school committee for non-related expenses, i.e., "...to supplant the costs of the regular school operating budget." As it is our view that the nature of user fees or program charges is "compensatory," and they are not intended to serve as a resource for the augmentation of general revenues, it is our opinion that such funds cannot be expended for any non-related purposes. This would be the case whether such non-related expenditures were proposed by the school committee or town meeting. (Question 4) Moreover, this conclusion seems confirmed by the specific language of G.L. Chapter 71, Section 26B that authorizes the school committee to establish fees to be paid by parents "...toward the cost of said services." Accordingly, to the extent that monies have been accumulated in a special Extended School Services revolving fund under Section 26C, the monies remain in the fund to be used by the school committee as necessary and appropriate in support of continuing extended school services.

I hope this information proves helpful.

Very truly yours,



Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC/DJM



November 10, 2006

Sharon L. Summers
Director of Finance
Acton Public Schools
16 Charter Road
Acton, MA 01720

Re: Revolving Fund Options for Extended School Programs
Our File No. 2006-345

Dear Ms. Summers:

This is in reply to your letter of September 20, 2006 regarding the use of special revolving funds to finance certain "before and after school" programs offered by the school department. To date, it seems the programs have been operated by use of a Departmental Revolving Fund under the provisions of G.L. c. 44, §53E½. However, you indicate that the subject programs also fall within the type of "extended school service" programs that are provided for in G.L. c. 71, §26A, §26B and §26C. You inquire as to which of these special fund provisions you should use with respect to these programs.

While G.L. c. 44, §53 generally provides that all municipal receipts are general fund revenue and may only be expended by regular appropriation, there are many provisions in the General Laws and special acts that authorize special revenue funds for a host of programs and activities. Many of these special fund financing options are available for school programs and educational services. By way of general information, I have included charts that inventory many of the special fund provisions for school-related programs and activities as well as general town programs and explain their features and requirements. For certain school programs or activities, there may be more than one statutory "special fund" option available for the service, and the referenced educational program would appear to be such a program.

You indicate that this "before and after school" program has been operated to date under the provisions of G.L. c. 44, §53E½, the departmental revolving fund provision. While this provision is generally available for all town departments, and the schools generally have a variety of revolving fund provisions available, we know of no reason why the subject school program could not continue to be operated under §53E½. Key considerations thereunder, however, remain the need for an annual reauthorization by town meeting, the expenditure limitations imposed by annual vote, and the overall percentage limitations (10% cumulative and 1% per department) imposed upon the town's general use of these special funds.

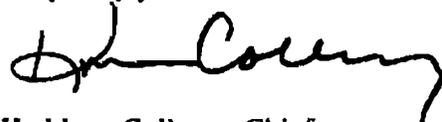
Our File No. 2006-345
November 9, 2006
Page Two

On the other hand, from the descriptive information provided, it would appear that the "before and after school" program would likewise be a candidate for operation under the special provisions of G.L. c.71, §26A, §26B and §26C, the Extended School Services for Children provisions. Specifically, under §26C, the school department may establish a revolving fund for the receipts received in connection with the program and expend these funds without appropriation in support of the program. Unlike the §53E½ departmental revolving fund, this §26C revolving fund does not need to be voted by town meeting each year. Instead, it is established originally by approval of the school committee, board of selectmen and the Commissioner of Education. Once established, it will continue year to year until revoked. Moreover, the §26C revolving fund does not have expenditure limitations such as those found in the §53E½ departmental revolving fund.

In any event, where several choices exist, it is a local decision as to which option best suits the needs and requirements of the particular program, as well as the best interests of the schools and town generally. We can only suggest that school officials and town finance officers evaluate the features and requirements of the several choices, and determine which financial arrangement would provide for the most beneficial and efficient operation of the program. If you have any additional questions relating to technical, legal or accounting issues, please do not hesitate to contact us.

I hope this information proves helpful.

Very truly yours,



Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC/DJM
Enclosures



April 22, 2003

Joseph J. Connelly, Supt
149 Franklin St.
Stoneham, MA 02180

FAX 781 279-3818

Re: Expenditure of 40:3 Revolving Fund
Our File No. 2003-158

Dear Dr. Connelly:

This is in reply to your letter to Chris Hinchey, a member of our staff, asking several questions relating to the use of revenue from the rental of school buildings. The money is deposited in a revolving fund established under G.L. Ch.40 §3, the final clause of which is in effect in Stoneham pursuant to a town meeting vote on June 12, 2000. That clause allows money in the revolving fund to be spent for the maintenance of buildings other than the buildings that are rented, and allows the money to be carried in the revolving fund into the next fiscal year rather than being closed to the general fund.

The final paragraph of §3 reads as follows:

The monies received from such rental or lease shall be kept separate and apart from other city or town funds in the city or town treasury and may be expended by the school committee without further appropriation for the upkeep of the facility so rented or surplus space which is so rented; provided, however, that any balance remaining in such account at the close of a fiscal year shall be paid into the General Fund of such city or town; and, **provided further, that in any city or town that accepts this proviso, any such balance shall remain in said account and may be expended for the upkeep and maintenance of any facility under the control of the school committee.**

The boldface local option provision was added to the third paragraph by Ch.151 §28 of the Acts of 1993. You asked whether we thought the reference to "any such balance" in the optional proviso must be read as referring to the "balance remaining in such account *at the close of a fiscal year*" (emphasis added). Reading the section that way would require that surplus revenue from the rental of school buildings in one fiscal year not be spent for the maintenance of other school buildings in the year the revenues were received, but only in the following fiscal year

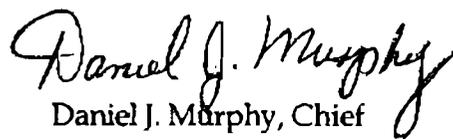
We would not infer such restriction on the use of excess rental proceeds. Although the language of the statute permits such an interpretation, it does not compel it, and it is difficult to see why the legislature might have wished to impose such a restriction. In

voting to accept the last clause of §3, a town meeting is deciding both to let the school department carry such surplus rental revenue forward from year to year, and to let it spend such surplus on the maintenance of other school buildings. Since the rental revenue in such circumstances will not revert to the general fund in any case, we see little reason why the two authorizations should not be understood to be operative concurrently. The reference in the earlier part of the sentence to closing out the balance at the end of the fiscal year obviously had no reference originally to the use of the balance for the maintenance of other school buildings, since no such use was originally permitted. We think it was simply a prohibition on carrying the balance beyond one fiscal year. For comparison, see the former provisions of G.L. Ch.44 §53D, which had two separate limitations on the balance in the recreation revolving fund, a maximum balance during the fiscal year, and a lower maximum balance at the end of the year. Where a sentence in a statutory provision is a compound of different clauses enacted in different years, we think it unwise to be overly rigorous in the syntactical analysis of the result.

You also asked whether we thought the town meeting had to authorize the rental of school buildings under Ch.40 §3. We do. The statute says a city or town may rent school buildings with the approval of the school committee (and of the commissioner of education, in the case of school buildings in actual use, a circumstance not relevant here). Approval typically connotes concurrence with an act done by another body. See *Simpson v Marlborough*, 236 Mass 210. We believe the section gives school committees, and the commissioner of education in certain cases, a veto over the decision by the town. We see no reason, however, why the town could not ratify an existing rental arrangement.

Please do not hesitate to contact us again if we may be of further assistance.

Very truly yours,



Daniel J. Murphy, Chief
Property Tax Bureau



March 31, 2006

Edmund Traverso
38 East St.
Ipswich, MA 01938

Re: Revenues from the Use of School Property
Our File No. 2006-59

Dear Mr. Traverso:

This is in reply to your letter asking several questions about the use of revenue from school property.

The general rule for municipal receipts is that all such money is general fund revenue that the town may spend for any lawful purpose, and only by appropriation. GL Ch. 44 §53, available at <http://www.mass.gov/legis/laws/mgl/44-53.htm>. There are, however, a number of statutory exceptions for various types of school revenues. GL Ch.40 §3 and GL Ch. 71 §71E both deal in particular with revenue from the lease or rental of school buildings. It is not clear that either of these revolving funds would be available for revenue from the types of rental you mention in your letter.

A school committee can spend money without appropriation from revolving funds established under either statute. The revolving fund under G.L. Ch.40 §3, which may be spent only for maintenance, is funded by revenues from the leasing of school buildings not in actual use, or surplus space in school buildings that are still used in part for regular school purposes. Unless the municipality has accepted the last sentence of §3, the balance in the revolving fund at the end of each fiscal year closes out to the municipality's general fund, and the money fund may be spent only for the maintenance of the property that generates the revenue. There are no particular limitations on the nature of the lessees or the activities that they may conduct on the leased premises, except that if the lease is for property part of which is still being used as a school, the lessee's occupancy cannot interfere with the school use. Revenue from market rate leases for purely commercial, for-profit purposes is within the scope of the revolving fund under Ch.40 §3. However, leases or rental agreements under Ch.40 §3 must be authorized by the town and approved by the school committee.

G.L. Ch.71 §71E, which must be accepted by a town meeting vote to be in effect, provides for two revolving funds. One is for the revenues of adult and continuing education programs sponsored by the school committee. Such revenue may be spent for

the expenses of the program, such as instructors' stipends. The other revolving fund under Ch.71 §71E is for the temporary use of school property under G.L. Ch.71 §71. It may be spent for "...expenses incurred in making school property available for such use...." Typical expenses from that fund would include such costs as janitors' overtime. Section 71 is narrower in the scope of uses contemplated than G.L. Ch.40 §3. It authorizes uses of school property outside regular school hours, either for educational and recreational activities sponsored by the school committee, or by third parties for "...educational, recreational, social, civic, philanthropic and like purposes...." We do not think that Ch.71 §71E applies to a purely commercial rental of school property to for-profit entities.

You also mentioned the so-called athletic revolving fund, authorized under GL Ch.71 §47. This fund cannot be used for revenue from rentals unconnected with school activities. It is restricted to the deposit of revenues from specifically identified activities, mostly connected with athletics, and from activities "sponsored by the school committee in which participation is contingent upon the payment of a fee by the participant," which does not seem applicable to the revenues you described in your letter.

We hope this information proves helpful.

Very truly yours,



Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC/CH



MASSACHUSETTS DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES

P.O. Box 9655
Boston, MA 02114

(617) 727-2300
(FAX) (617) 727-6432

MITCHELL ADAMS
Commissioner

LESLIE A. KIRWAN
Deputy Commissioner

October 25, 1994

Edward F. Iacaponi, Treasurer/Finance Director
Department of Finance
P.O. Box 9399
North Dartmouth, MA 02747

Re: Interest on School Lunch Program Funds
Our File No. 94-846

Dear Mr. Iacaponi:

This is in response to your letter asking whether interest earned on school lunch fund balances should be credited to the general fund or to the school lunch fund.

The usual rule of course is that interest, like all other revenues, goes to the general fund unless otherwise specified. G.L. Ch.44 §53. The state law governing the school lunch revolving fund, Ch.548 of the Acts of 1948 as amended, does not mention interest earned on the fund balance. However, federal regulations governing the school lunch program do require interest earned on program funds to be credited to the program fund. See the enclosed extract from the Code of Federal Regulations and the attached memorandum from the director of the US Department of Agriculture's Child Nutrition Division. Since Federal Law supersedes conflicting state law, interest on the school lunch program account should be credited to the revolving fund.

Please do not hesitate to contact us again if we may be of further assistance.

Very truly yours,

Harry M. Grossman, Chief
Property Tax Bureau



October 25, 2001

John D. Petrin
Assistant Superintendent of Schools
City of Marlborough
17 Washington Street
Marlborough MA 01752-5505

Re: School Lunch Revolving Fund
Our File No. 2001-714

Dear Mr. Petrin:

You asked whether the school department may purchase a computerized cash register system using monies from the school lunch revolving fund.

The school lunch revolving fund is established under Chapter 548 §3 of the Acts of 1948, as amended. That act generally authorizes school committees to participate in the federal school lunch program by maintaining and operating school lunch programs using funds received as state and federal grants and fees from the sales of lunches. While the act does not list specific types of expenditures that may be charged to the fund, it does provide that the committee may make all contracts for material, personnel and equipment needed to carry out the provisions of the act, *i.e.*, operate the school lunch program.

We think a cash register would be equipment typically required to run a fee based school lunch program and therefore, it could be acquired with revolving fund monies. However, because the program relies on state and federal grants, the granting agencies may have promulgated regulations that govern this matter. We recommend that you contact the Department of Education since it is more likely to be familiar with any such requirements.

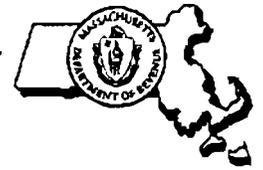
If you have any further questions, please do not hesitate to contact me again.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bruce H. Stanford".

Bruce H. Stanford
Chief, Property Tax Bureau

BHS/KC



February 9, 2009

V. James Marini
Superintendent, North Andover Public Schools
43 High St.
North Andover, MA 01845

Re: Community Program Fund
Our File # 2009-26

Dear Dr. Marini:

You have sought our opinion as to whether monies from the North Andover Schools' "Community Programs" Fund can be used to lease or purchase two or three modular units to be placed adjacent to one of the elementary schools. We assume you are referring to a revolving fund created under G.L. c. 71, § 71C, which allows "[a]ll moneys received by the school committee in connection with the conduct of community school programs, so designated by prior vote of said committee, [to be] deposited with the treasurer...."

Community Program Fund money is restricted in that it must be used "for the purchase of materials and equipment for [community school] programs." *Id.* The statute provides only for a purchase, not a lease, of eligible items. Moreover, expenditures from the revolving fund cannot exceed "three thousand dollars within any fiscal year...." *Id.* Leaving aside doubts as to whether the phrase "materials and equipment" would encompass the modular units in question, we deem it highly unlikely that the modular units could be purchased for less than \$3000 in any given fiscal year.

The school committee has the option not to designate given programs for which fees are required as "community school programs." In that event, fees would go into the General Fund and be available for appropriation without limitation as to use or amount. Another option the Town may wish to consider is to seek special legislation permitting the expenditure of Community Programs Fund money without regard to the restrictions of G.L. c. 71, § 71C.

Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Colleary".

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC: DG



March 1, 2005

William J. Rowe
Town Accountant
Town Hall
10 Pearl Street
Stoughton MA 02072

Re: Payment from Property Owner
Our File No. 2005-12

Dear Mr. Rowe:

You asked how to treat a payment a property owner made to the town in connection with an application to conduct certain activities on wetlands. We understand the conservation commission established several conditions for issuing a permit to develop on the site. Included was a provision that the property owner provide a "\$100,000 donation into the Conservation Restriction/Easement Fund" to purchase or protect additional conservation or open space land. The purpose cited for that condition was to provide off-site mitigation of the impact of the project on wetlands and buffer zones. Apparently, limited space was available on the site itself for adequate mitigation measures.

As a general rule, mitigation payments, infrastructure charges or other exactions made by a private party in connection with a regulatory activity or a municipal contract are general fund revenues and may not be spent without appropriation. G.L. c. 44 §53. On occasion, the municipality and private party characterize these payments, which may be made on a one-time or ongoing basis, as gifts, grants or donations. Under G.L. c. 44 §53A, gifts or grants made to a particular town department may be segregated into a separate account and spent without appropriation by the department head, with the approval of the selectmen, consistent with the donor's intent. The ordinary meaning of gift is a voluntary payment of money or transfer of property made without anything in consideration. Some argue that a party's decision to develop a property, engage in a regulated activity or contract with a municipality is one of choice and therefore, any payment it makes in connection with that decision is voluntary. Even if that is so, these payments are still usually being made with the expectation of receiving something valuable in return and therefore, we question whether they are properly characterized as gifts.

In cases where there is doubt about the nature of the payment, the town can still achieve the purpose of reserving it for a particular purpose. Town meeting can establish a stabilization fund for that purpose and appropriate the amount of the payment into that fund. G.L. c. 40 §5B. The payment can be treated as an estimated receipt on the tax rate recapitulation to offset the appropriation. If the payment is received and fund established after the tax rate is set, the appropriation could be made from free cash, which would be restored by the revenue becoming part of the next year's free cash certification.

If you have any further questions, please do not hesitate to contact me again.

Very truly yours,

A handwritten signature in cursive script that reads "Daniel J. Murphy".

Daniel J. Murphy
Chief, Property Tax Bureau

DJM:KC



April 12, 1999

Claudia Cataldo
Town Accountant
P.O. Box 2
Mendon, MA 01756

Re: Payments Under ANP Agreement – Second Payment
Our File No. 99-205 (See 98-415)

Dear Ms. Cataldo:

You have requested an opinion concerning the use of a second \$25,000 payment received by the town pursuant to an agreement with American National Power, Inc. You wish to know whether the payment can legally be deposited into a trust fund to be used for a selectmen's "school scholarship program" without town meeting approval. Based on the information provided, we believe that our opinion to you dated July 29, 1998 is applicable to the second payment as it was to the first. See Opinion 98-415, enclosed. Any payment made by ANP pursuant to the agreement should be deposited in the general fund as provided in that earlier letter, and cannot be used without a town meeting vote.

Nothing in the agreement, nor in accompanying memos from the Administrative Assistant to the Board of Selectmen (March 18, 1999) and Robert J. Charlebois to the Town Administrator (March 12, 1999), indicates that ANP has specifically made this payment to the board of selectmen for the purpose of such a scholarship fund. Indeed, the memo from Charlebois which accompanied the check reiterates that the funds are being provided in accordance with paragraph 1 of its March 30, 1999 agreement. The agreement states that the payments are to "mitigate any demands or effects of the plant and transmission line on the Town or to be used as the Town otherwise determines." This language does not give the board of selectmen or other town board or officer the funds, nor the authority to decide how the funds are to be spent.

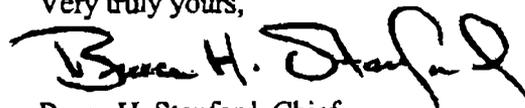
The March 12, 1999 memo further states: "These monies are to be used at the Town's discretion." Also, "ANP has no role in how the Town directs these funds but we support your wishes to establish a scholarship program if such use is ultimately deemed appropriate by the Town." These statements do not import an obligation or even suggestion that the town use the funds for the purposes of scholarships, or that the board of selectmen can make such a determination on behalf of the town.

The check itself is made out to "Town of Mendon" and "Mendon Board of Selectmen" and the administrative assistant's memo to the board of selectmen indicates that "Mr. Charlebois has advised that ANP will be satisfied with the Board of Selectmen acting as Trustees [of the Town of Mendon Selectmen's Scholarship Account] and establishing the criteria for awards." Again, in the

context of the agreement and the memo from Charlebois, these statements do not clearly indicate the specific intention of ANP to give the money directly to the board of selectmen for the purpose of establishing the scholarship fund.

We hope this addresses your concerns. If we may be of further assistance, please do not hesitate to contact us again.

Very truly yours,

A handwritten signature in black ink that reads "Bruce H. Stanford". The signature is written in a cursive style with a large, stylized initial "B".

Bruce H. Stanford, Chief
Property Tax Bureau

Enc.



July 29, 1998

Claudia M. Cataldo
Town Accountant
P.O. Box 2
Mendon, MA 01756

Re: Payments Under ANP Agreement
Our File No. 98-415

Dear Ms. Cataldo:

You have asked whether an "initial non-refundable deposit of \$25,000.00" paid by American National Power Co. (ANP) is a gift under Massachusetts General Laws Chapter 44 Section 53A. The payment was made pursuant to a comprehensive March, 1998 agreement between ANP and the town's board of selectmen with respect to the impact of a power plant being constructed in the neighboring town of Blackstone by ANP and potential construction of transmission lines in Mendon. Payments totaling \$750,000 or \$1,500,000 are expected depending on the ultimate route of the transmission lines and contingent on receipt of local permits needed for the lines.

Under the agreement ANP will pay an initial and a second \$25,000.00 deposit as well as the balance of the payments "to the Town to enable the Town to address or mitigate any demands or effects of the plant and transmission line on the Town or to be used as the Town otherwise determines." A municipal department or officer of a town may accept grants or gifts for particular purposes and spend such funds without appropriation for the purposes specified, with the approval of the board of selectmen. G.L. c. 44, s. 53A. However, the grant or gift must be to a particular department or officer and it must be for a specific spending purpose. Given the language quoted above, it appears that the funds are being paid "to the Town" and may be used for general town purposes.

We believe that the purpose of section 53A of chapter 44 is to avoid the delay and expense of obtaining pro forma appropriation of grant funds by town meeting where the granting agency has chosen both the spending purpose and the town department to carry out that purpose. Since neither of those circumstances exist in this case, we see no basis for divesting the town meeting of its power to determine by appropriation how to spend the money. If it has not been treated as a local estimated receipt, the initial \$25,000 should be included as a general fund receipt and used in determining the town's certified available funds for FY1999. Any subsequent amounts could be credited as estimated receipts and used in determining the tax rate for the year in which it is reasonably expected to be received.

Sincerely,

A handwritten signature in black ink, appearing to read "Harry M. Grossman".

Harry M. Grossman
First Deputy Commissioner



April 17, 2001

David S. Tobin, Esquire
Tobin and Sullivan
60 William Street, Suite 330
Wellesley, MA 02481

Re: Traffic Mitigation Fund
G.L. Chapter 40A, Section 9
Our File No. 2001-136

Dear Mr. Tobin:

This is in reply to your recent letter requesting an opinion with respect to a proposal to amend the Town of Needham's zoning by-laws and, as a part thereof, to establish a special fund, the Traffic Mitigation Fund.

Specifically, the proposal would amend the zoning by-laws by changing the dimensional requirements in certain zoning districts. These changes would allow for more intensive uses if authorized by special permits approved by the Planning Board. Under the proposed by-law, special permits would be conditioned upon the payment to the Town of \$1500 for each additional parking space required for the permitted additional floor space. This fee would be called a Traffic Improvement Fee and would be deposited in the Traffic Mitigation Fund (the Fund). Pursuant to the by-law, monies in the Fund would be used by the Town:

"...for the purpose of addressing long term traffic improvements clearly related to and directly benefiting the uses within the area covered by the District Plan" (Section 6.8.1(e))"

Initially, you ask whether the proposed zoning by-law provisions are authorized under the provisions of G.L. Chapter 40A, Section 9 or any other provisions of law. Secondly, you inquire as to the type of fund that would be used to handle the proposed fees on an interim basis. In this regard, you indicate that the Town plans to file a home rule petition if this proposed zoning by-law is approved by Town Meeting, which petition would legislatively authorize the establishment of the Fund and prescribe the accounting and expenditure requirements for such monies.

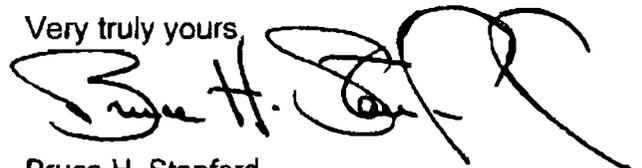
The answer to your first question, whether the imposition of fees for restricted purposes such as the proposed Traffic Mitigation Fee is authorized by G.L. Chapter 40A, Section 9, is uncertain to us. Although Section 9 permits municipalities to require the provision of open space, low and moderate income housing, and traffic and pedestrian improvements in connection with certain types of development, it does not address directly the imposition of fees for such purposes. Case law suggests that towns do not have unrestricted power to assess impact fees for development. See Northeast Builders Association of Massachusetts, Inc. v. Dracut, (1987) Middlesex Sup. Ct. 87-6222.

Also, we believe that a town may not dedicate particular revenue items to restricted accounts except as authorized by statute. For these reasons, we think your plan to seek home rule legislation specifically providing for such fees, establishing the Traffic Mitigation Fund, and prescribing the expenditure requirements for such monies is prudent.

You also inquire as to how such fees should be handled if the by-law is enacted and implemented and monies are received before the enactment of the proposed home rule statute. In this regard, you inquire about the use of a revolving fund or enterprise account. In our view, neither a departmental revolving fund under G.L. Chapter 44, Section 53E½, nor an enterprise fund under G.L. Chapter 44, Section 53F½, would be appropriate for such fees. The Section 53E½ fund is only available for "departmental receipts received in connection with the programs supported by such revolving fund." In our view, payments of conditional fees at the time of the issuance of a special permit would not constitute departmental program receipts within the purview of Section 53E½. Moreover, we find no features of this zoning proposal that would warrant the establishment and operation of an "enterprise" fund under the provisions of G.L. Chapter 44, Section 53F½. Rather, to the extent such fees are valid as a condition of the special permit process under G.L. Chapter 40A, Section 9, we think such monies would have to be earmarked as a part of a special revenue account for traffic improvements. As there is no provision of law as yet authorizing a special expenditure process for such monies, we think they would have to be expended by the regular appropriation process.

I hope this information proves helpful. If I may be of any additional assistance in this or any other matter, please do not hesitate to contact me.

Very truly yours,



Bruce H. Stanford
Chief, Property Tax Bureau

BHS/jeb

Massachusetts Department of Revenue Division of Local Services

Naveet K. Bal, Commissioner Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



May 12, 2010

Lina Arena-DeRosa, Director
Holliston Senior Center
150 Goulding Street
Holliston, MA 01746

Re: Senior Center Budget Items
Our File No. 2010-539

Dear Ms. Arena-DeRosa:

Your letter regarding the line item appropriations made for the use of the Senior Center was referred to our office. You are seeking assistance in establishing a budget item for expenses associated with particular nutritional programs operated by the center. Apparently, you were informed that these expenses should not be paid from your supply item.

We suggest you discuss this matter with the officials responsible for presenting the budget to town meeting in Holliston. Whether the expenditures in question are within the scope of your current line item appropriations or require an additional item to be added by town meeting is a local matter. Based on information on the town's web site, it appears the finance committee presents an annual budget with at least three items for each department: Personal Services, Purchased Services, Supplies and Materials. Some departmental budgets include other items such as Other Expenses. The scope of these appropriations, i.e., the type of expenditures that they are intended to fund is ultimately a matter of town meeting intent and the finance committee's review of your department's past expenses and budget request may bear on that intent. We would think Supplies and Materials would include supplies and materials needed to conduct any programs or activities within the charge of the department, but local officials are best positioned to determine town meeting's intent.

We hope this information is helpful.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kathleen Colleary', written over a horizontal line.

Kathleen Colleary, Chief
Bureau of Municipal Finance Bureau

KC



June 18, 2010

MaryAnne M. Gibbs
Town Accountant
Town Hall
485 Main St.
South Dennis, MA 02660

Re: Gift Account for "Adopt-A-Light" Program
Our File No. 2009-1470

Dear Ms. Gibbs:

You have requested our opinion as to whether Dennis may establish a gift account under G.L. c. 44, § 53A to fund an "Adopt-A-Light" program. You have explained that the Department of Public Works (DPW) has had to turn off certain street lights given funding constraints. Yet certain residents are willing to cover the cost of keeping particular street lights illuminated at their own expense. However, the electric utility company will not bill residents willing to sponsor a particular street light directly since the town owns the poles. Accordingly, a funding mechanism is needed whereby residents can pay the DPW to "adopt-a-light" and the town can use the proceeds to continue operating sponsored street lights. We apologize for the delay in providing a written response.

We see no reason under municipal finance law why the town cannot accept gifts from town residents who wish to assume the cost of keeping particular street lights illuminated. Under G.L. c. 44, § 53A, "[a]n officer or department of any ... town ... may accept grants or gifts of funds from ... an individual ... and ... may expend such funds for the purposes of such grant or gift ... with the approval of the board of selectmen." Cash so donated "shall be deposited with the treasurer of such ... town ... and held as a separate account and may be expended as aforesaid by such officer or department receiving the grant or gift without further appropriation." *Id.* Therefore, the DPW could accept a gift earmarked for the operation of a street light and pay the corresponding cost out of the gift account with the approval of the selectboard without appropriation.

Any difficulties with using gifts for the "Adopt-a-Light" program seem to us to be mostly administrative in nature. The town should develop policies and procedures to ensure the program is implemented smoothly. With respect to municipal finance law, the town may not spend in excess of its appropriations, gifts, grants or other financing sources. G.L. c. 44, § 31. Accordingly, the DPW would need to match gifts with the particular street lights intended to be illuminated thereby and be assured of having gift funds available in order to incur obligations to pay the electric utility company over and above the amount appropriated for that purpose. Pre-payment of the amount needed for each "adopted" street light would be necessary in advance of the billing period for which the electric utility company would illuminate the light. The town would also have to arrange with the electric utility company to have designated street lights turned on or off depending on the availability of adequate funds to illuminate it for a given billing cycle.

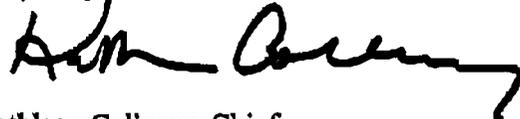
MaryAnne M. Gibbs
Town Accountant
Town of Dennis
Page Two

Program participants would need to be diligent in making their donations. If a resident signifies intent to participate in the program but fails to make the necessary advance donation at any point, the "adopted" street light could not be operated without other available funds to illuminate it. A question arises as to whether the Town would undertake to "bill" participating residents to ensure the timely receipt of their donations. If so, which town officer would be responsible for sending out "billing notices" so as to ensure receipt of the necessary funds to "adopt-a-light," and on what schedule? These are the types of questions that may need to be addressed in the policies and procedures the town develops for the program.

In sum, "Adopt-A-Light" gifts would enable residents to pay, in advance of the relevant billing periods, to operate street lights which would otherwise be dark given the available appropriation. The active cooperation of the selectmen, DPW, treasurer and accountant, would be needed to carry out the program plan.

If you have further questions, please do not hesitate to contact me again.

Very truly yours,



Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC:DG

Massachusetts Department of Revenue Division of Local Services

Navjeet K. Bal, Commissioner Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



March 30, 2010

Cranberry Valley Golf Course Committee
Town of Harwich
183 Oak Street
Harwich, MA 02645

Re: Golf Course Revenues
Our File No. 2010-56

Dear Committee Members:

This is in reply to your letter regarding golf course revenues. You claim "excess earnings" are being used by the town for non-golf course purposes. We understand that the town currently budgets all course revenues in the general fund so that the committee's annual operating appropriation is made from the levy ("raise and appropriate"). By excess earnings, we assume you mean the estimated revenue from fees and other receipts generated by the course that exceed the course's annual appropriations.

You requested that the Department of Revenue direct the town to cease its current practice of accounting for golf course revenues. We are not aware of any law that prohibits the town from accounting for golf course fees and other revenues in the general fund. On the contrary, the revenues belong to the general fund, G.L. c. 44, § 53, unless the town has opted to use one of several special revenue funds that allow it to segregate and separately account for them. See, e.g., G.L. c. 40, § 5F; c. 44, §§ 53D, 53E, 53E½ and 53F½.

With respect to the town practice of setting golf course fees to recover a payment in lieu of taxes, the Department of Revenue does not have any regulatory authority over municipal fees and therefore, we cannot direct the town to cease this practice either. Under state law, cities and towns have broad authority to impose fees. In most cases, as here, communities may set and collect a particular fee without approval of any state agency. Those aggrieved by the imposition of the fee would have to bring a legal action to challenge its validity.

You noted that one of the characteristics of a fee that distinguishes it from a tax is that it is collected to compensate the governmental entity for its costs, not to raise revenue generally. *Emerson College v. City of Boston*, 391 Mass. 415 (1984). However, depositing a charge in a municipality's general fund instead of a special purpose fund is not decisive in determining whether the charge meets that legal standard. The courts look at whether the charge is reasonably designed to compensate the municipality for its anticipated costs in providing the service. *Silva v. Attleboro*, 454 Mass. 165 (2009). In that regard, the municipality may set fees to recover all anticipated direct and indirect costs, not just those found in any particular annual budget of the department responsible for the service. From an accounting perspective, a payment in lieu of taxes is considered a proper expense for a municipal proprietary service, such as operating a golf course. The appropriate amount depends on the type and amount of property used to provide the service. As a legal matter, however, it is not yet known whether the courts would regard such a payment as part of the cost of providing the service.

If you have further questions, please do not hesitate to contact me again.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen Colleary".

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC

From: Hinchey, Christopher M on behalf of DOR DLS Law

Sent: Tuesday, April 13, 2010 2:11 PM

Subject: 2010-510 RE: Chapter 44, Section 33B

We think the statutory language of §33B requires that the vote of the selectmen and finance committee take place on or after May 1st "...the selectmen, with the concurrence of the finance committee or other entity establish under section 16 of chapter 39, may transfer **within the last 2 months of any fiscal year**, or during the first 15 days of the new fiscal year ... (emphasis added)". If the vote could be taken before May 1st, it's hard to see why it couldn't take place many months earlier, which would give the selectmen and finance committee de facto power to impose a spending freeze up to 3% of municipal departments' budgets, something that does not seem consistent with the statutory purpose. It also raises potential problems about knowing the extent of the unencumbered balance of appropriations in the departments from which the transfers are to be made.

Chris Hinchey Tax Counsel
Bureau of Municipal Finance Law
PO Box 9569
Boston, MA 02114-9569
617-626-2400
dlslaw@dor.state.ma.us

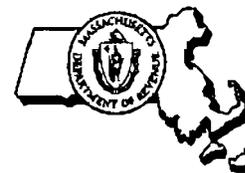
This e-mail response is intended to provide general information about the application of municipal tax and finance laws and Department of Revenue policies and procedures. It is not a public written statement, as defined in 830 CMR 62C.3.1, and does not state the official position of the Department on the interpretation of the laws pertaining to local taxes and finance. It should be considered informational only.

Sent: Tuesday, April 13, 2010 9:20 AM
To: DOR DLS Law
Subject: Chapter 44, Section 33B

Hello DLS Law:

We are contemplating some Chapter 44, Section 33B transfers. Must the meetings of the Selectmen and FinCom take place after April 30 or can they meet before May 1 with an effective transfer date of May 1?

Thanks,
[REDACTED]



January 27, 2010

Curt T. Bellavance, Director
Community Development Division
1600 Osgood Street
North Andover, MA 01845

Re: Application Fees
Our File No. 2009-792

Dear Mr. Bellavance:

This is in reply to your letter asking our opinion about the extent of the authority of municipal regulatory boards, such as the planning board, zoning board of appeals and board of health, to set or waive application fees where the town has not accepted G.L. c. 40, § 22F. That statute permits department heads to set fees for services rendered or work performed for individuals or for certain licenses, permits or certificates. We have also received a related inquiry from the chairman of the town's zoning board of appeals.

Although we come across issues concerning various municipal fees and charges in the course of reviewing and overseeing municipalities' fiscal situations, the Department of Revenue has regulatory responsibility only for municipal taxes and excises, and for accounting and borrowing. We have no supervisory role over the boards you mentioned, or over their fees. Our comments in response to your letter must therefore be general with respect to the various boards, and strictly advisory.

As far as the general laws are concerned, local regulatory bodies may have inherent power to impose reasonable application fees to cover the administrative cost of processing applications, even in the absence of a statute or by-law authorizing those fees. See *Southview Co-operative Housing Corporation & others vs. Rent Control Board of Cambridge*, 396 Mass. 395. The general law that authorizes a revolving fund for fees charged to pay outside consultants to review certain applications, G.L. c. 44, § 53G, refers to fees set by planning boards, zoning boards, boards of health, and conservation commissions acting under particular statutes. The language of § 53G seems to assume that the specified statutes authorize the imposition of the fees. It is clear, however, that § 53G itself does not authorize those fees. It authorizes only the use of a revolving fund to account for and spend the fees, exempting them from the otherwise applicable requirement of G.L. c. 44, § 53 that they be credited to the general fund and spent only by appropriation.

We are not aware of any general law that addresses the issue of waivers or exemptions from regulatory application fees, or what limitations may apply to such waivers and exemptions in a fee schedule promulgated by a regulatory board. We also venture no opinion on whether town meeting, the board of selectmen, or other town officials or boards may have a role in setting or approving such fees under the town charter or by-laws. These matters should be discussed with town counsel.

Curt T. Bellavance, Director
Community Development Division
Town of North Andover
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With respect to accounting for the application fees, a regulatory board must turn over the fees to the treasurer "upon their receipt." G.L. c. 44, § 53. As a general rule, this means promptly and in most towns, departments are expected to make turnovers at least once a week. Any waiver or abatement of a fee already paid would generate a refund, which would be charged against the receipts of the fiscal year in which the refund is paid, irrespective of the fiscal year in which the fee was originally paid to the town. This is how motor vehicle excise and other abatements are handled, except for abatements of property taxes for which an overlay account is established by statute. See G.L. c. 59, §§ 25 and 70A.

We hope this information proves helpful.

Very truly yours,



Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC: CH

CC: Albert P. Manzi, III, ZBA Chairman
Carol McGravey, Town Counsel



MASSACHUSETTS DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES

P.O. Box 9655
Boston 02114-9655

MITCHELL ADAMS
Commissioner

(617) 727-2300
FAX (617) 727-6432

LESLIE A. KIRWAN
Deputy Commissioner

March 25, 1993

Mary A. Notaro
Town Accountant
Town Hall
Clinton, MA 01510

Re: Fire Department Receipts
Our File No. 93-200

Dear Ms. Notaro:

You forwarded to us a copy of a letter submitted to you by the Clinton Fire Chief. With this letter, the chief billed Weetabix Company, a commercial enterprise in the town, for services rendered by the fire department at the company's premises when an accident with a backhoe resulted in the release of liquid propane. The billing, in the amount of \$13,023.00, assessed Weetabix a per hour charge for each of three pieces of equipment and seventeen firefighters that responded to the incident. Weetabix tendered payment in the full amount. The fire chief now wishes to use the money to pay fire department costs without appropriation by town meeting, pursuant to G.L. Ch. 44 §53. You requested our opinion whether such action is authorized by the statute.

As you know, Ch. 44 §53 provides three circumstances when monies received by a municipality may be spent without town meeting appropriation. Of these circumstances, the one relevant to the case before us pertains to the receipt of insurance proceeds or restitution payments for damage to property. The statute, as amended by Chapter 62 of the Acts of 1992, permits to be spent without further appropriation:

"sums not in excess of twenty thousand dollars recovered under the terms of fire or physical

Mary A. Notaro
Page Two

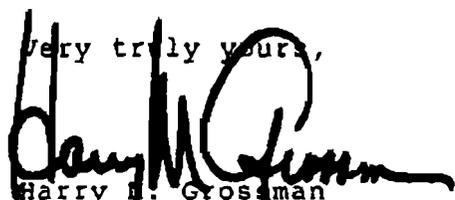
damage insurance policy and sums not in excess of twenty thousand dollars received in restitution for damage done to city, town or district property... for the restoration or replacement of such property."

We do not think the circumstance presented falls within the relevant statutory provision. The provision limits spending to payment for the repair or replacement of damaged property. The fire chief, however, made no representation that any property was damaged, other than usual wear and tear. Moreover, a substantial portion of the amount billed was for personnel who responded to the incident. Certainly, money received to reimburse the town for labor costs sustained cannot reasonably be characterized as money for damage to town property.

In sum, we think the provision of Ch. 44 §53 pertaining to restitution is pertinent only when restitution is made for specific and identifiable damage to town property. Frequently, such restitution is made pursuant to a judicial order. In such a situation, we think it is clear that the statute applies. Where restitution is received without a judicial order, the money can be spent without appropriation under the provisions of Ch. 44 §53 only if it (a) was received in restitution for damage to specific property and (b) is for repair or replacement of that damaged property.

If you have any additional questions on this matter, please do not hesitate to ask.

Very truly yours,


Harry M. Grosman
Chief, Property Tax Bureau

