



January 3, 2006

Beatrice Kearney  
Town Accountant  
Six Park Row  
Mansfield, MA 02048

Re: Electric Light Department Unpaid Bills  
Our File No. 2005-357

Dear Ms. Kearney:

This is in reply to your letter asking whether the light department could pay a bill of a prior fiscal year without obtaining an additional appropriation.

Municipal departments that have unpaid bills of a prior fiscal year for which they have not encumbered the prior year's appropriation must ordinarily seek an additional appropriation to pay such bills. If the bill was unpaid because the department overspent its budget, the additional appropriation needs a 9/10 vote at a special town meeting or a 4/5 vote at an annual town meeting. GL Ch.44 §64. Otherwise, a majority vote is sufficient for the appropriation. The logic behind this is that paying a bill of a prior year is beyond the scope of the current fiscal year's departmental appropriation, which is for the operating expenses of the current year. In the case of bills incurred in excess of the departmental appropriation, the appropriation requires a supermajority because liabilities incurred in excess of appropriation are not legally enforceable against the town. GL Ch.44 §31.

However, municipal light departments have an ambiguous fiscal status. They are not separate legal entities, and need the approval of the town to borrow, but they have the authority to spend their own revenues without appropriation by the town meeting. See GL Ch.164 §§56-57A and *Municipal Light Commission of Peabody & another vs. City of Peabody & others*, 348 Mass. 266. Since a municipal light commission or board does not need a municipal appropriation in order to incur and pay liabilities during the course of the year, we do not believe it needs an appropriation to pay a liability incurred in an earlier fiscal year, provided that the bill will be paid from light department revenues. It is the budget adopted by the light commissioners, rather than a town meeting appropriation, that determines what bills may be paid from such revenues.

We hope this information is helpful.

Very truly yours,

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

Kathleen Colleary, Chief  
Bureau of Municipal Finance Law

KC/CH