



February 23, 2009

Lisa L. Mead, Esq.
30 Green St.
Newburyport, MA 01950

Re: Borrowing Authority in Special Acts
Our File No.2008-811

Dear Ms. Mead:

This is in reply to your letter asking us to confirm that the \$100,000 of borrowing authority set out in the enabling legislation for the Deerfield Fire District (§3 of Ch.33 of the Acts of 1987) is in addition to its borrowing authority under Ch.44 of the General Laws. You referred to a conversation with James Crowley of our office, in which he conveyed our view that under GL Ch.4 §8, borrowing authorizations for cities, towns, and districts contained in special acts is supplemental to any borrowing authority they have under the general laws, rather than a limitation on their overall borrowing authority.

That is indeed our reading of GL Ch.4 §8. It is consistent with the language of Ch.44 §2, which provides that “**Except as otherwise expressly permitted by law**, cities, towns and districts shall incur debts only in the manner of voting and within the limitations as to amount and time of payment prescribed in this chapter...(emphasis added).” The Deerfield Fire District’s enabling legislation, rather unusually for such special acts, restates the rule established by Ch.4 §8, when it provides (in §3) that its authorization to borrow is “...in addition to any other authority to borrow under the General Laws...”

We believe that the rationale of such supplemental borrowing authorizations is twofold. The first point is that the authorizations typically encompass (as Deerfield’s does) any purposes of the district other than expenses of maintenance and operations. This is broader than the borrowing authority of GL Ch.44 §§7 & 8, which is limited to specifically enumerated purposes. The second point is that newly created districts that do not yet have any revenues might have to borrow for start-up expenses before the district’s equalized valuation has been established. Since the equalized valuation is used to calculate the debt limit under Ch.44 §10, districts might face a problem in trying to borrow even for purposes that are within the scope of Ch.44 §7.

We note that a borrowing authorization in a special act such as Deerfield’s enabling legislation does not establish a supplemental borrowing limit in addition to the debt limit established by GL Ch.44 §10. Instead, it amounts to a one-time power to borrow outside the debt limit of Ch.44 §10. Once debt up to the amount of the borrowing authorization in such a special act is issued, the authorization is exhausted, and does not become available again when the debt

Lisa L. Mead
Page 2

that has been issued is paid off. After that, the district is limited to borrowing authorized under the General Laws, both as to amount and as to purpose.

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". The signature is fluid and cursive, with a large initial "K" and a long, sweeping tail.

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC: CH