



February 22, 2010

Patrick J. Costello, Esq.  
Louison, Costello, Condon & Pfaff, LLP  
67 Batterymarch Street  
Boston, MA 02110

Re: Tax Title: Contingent Fees and Revolving Fund  
Our File No. 2009-1532

Dear Mr. Costello:

This is in reply to your letter asking about the practice of charging municipalities for work on tax title foreclosures on a contingent fee basis, and about the possible use of a revolving fund to pay attorneys' fees in such cases.

We do not see a municipal finance issue with respect to attorneys' charging for work in tax title foreclosure cases on a contingent fee basis, and therefore, we believe that issue is best addressed by the land court or other bodies.

With respect to the use of a revolving fund to pay attorneys' fees in land court foreclosure cases, whether contingent or not, we do not believe any existing statute authorizes such a practice. All proceeds from the redemption of tax titles or from the sales of tax possession properties after foreclosure must be used in the calculation of a community's free cash under G. L. c. 59, § 23, with the exception of certain surplus proceeds received from land of low value foreclosure sales. G.L. c. 60, § 79. Therefore, attorneys' fees for work on tax title foreclosures must be paid from an appropriation or amounts raised without appropriation in the tax levy under G.L. c. 60, § 50B.

We recognize, however, that funding treasurers' tax title foreclosure efforts is often difficult for communities, and would welcome working with treasurers, their tax title attorneys and other interested parties, to draft legislation that would authorize a revolving fund to pay for legal and other foreclosure costs. If property is redeemed before foreclosure, for example, the treasurer's attorneys' fees included in the redemption amount could be credited to the fund and used without appropriation to pay the corresponding attorneys' fees. If the tax title is foreclosed and the property is later sold, proceeds of the sale in excess of the taxes, interest and other charges representing the attorneys' fees could be credited to the revolving fund. In that case, the amounts credited to the revolving fund in such cases would normally be realized too late to be able to pay the particular attorneys' fees upon which the calculation of the revolving fund credit is based. However, they would be available to pay for legal expenses in other tax title foreclosure actions.

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:CMH