

Massachusetts Department of Revenue Division of Local Services

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



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.

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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