



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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March 13, 2024

Alexis Fedorjaczenko, Town Clerk
Town of Ashfield
P.O. Box 560
Ashfield, MA 01330

**Re: Ashfield Special Town Meeting of December 5, 2023 – Case # 11290
Warrant Article # 3 (General)**

Dear Ms. Fedorjaczenko:

Article 3 - Under Article 3 the Town voted to amend Section 5, “Revolving Funds” of the general by-laws to add two new revolving funds, “Fire Department Fees” and “Town Hall.” We approve Article 3 because it is consistent with state law. Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986) (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law). However, we offer the following comments for the Town to consider when it implements the new Town Hall revolving fund.

General Laws Chapter 44, Section 53E ½ requires revolving funds to be established by by-law. Section 53E ½ authorizes municipalities to establish revolving funds for “any fees, charges or other receipts from the departmental programs or activities supported by the revolving fund,” to be accounted for separately from other monies in the town, and authorizes expenditures from such fund without further appropriation, subject to the provisions of Section 53E ½. According to the Department of Revenue/Division of Local Services (DOR/DLS), the purpose of a departmental revolving fund is to enable the department to separately account for money received from a specific program or activity and to make expenditures from that separate account for that specific program or activity.

However, according to DOR/DLS, not all receipts may lawfully be deposited in a revolving fund. For example, property taxes, motor vehicle taxes, or revenues from general municipal activities, rather than those of a particular department, are not properly categorized as “fees, charges or other receipts from the departmental programs or activities supported by the revolving fund.” See G.L. c 44, § 53 and 53E ½. In addition, receipts reserved by law (for example betterment payments under G.L. c. 44, § 53J), or receipts authorized by law for expenditure for a particular purpose (for example, local acceptance of G.L. c. 44B, Community Preservation Act), are expressly prohibited from being included in a revolving fund under the statute.

The DOR/DLS has published several informational guidelines to provide information regarding municipal revenues and special funds. In particular, DOR/DLS has published: (1) Bulletin 2017-01B, “Authorization of Departmental Revolving Funds and Model By-law/Ordinance: <https://www.mass.gov/doc/departmental-revolving-funds-model-by-law-ordinance-and-annual-spending-cap-vote/download>; (2) an “Overview of Statutory Treatment of Municipal Revenues:” <https://www.mass.gov/doc/statutory-treatment-of-municipal-revenue-overview/download>; and (3) Informational Guideline Release (IGR) 21-23, “Departmental Revolving Funds,” September 2021: <https://dls.gateway.dor.state.ma.us/gateway/DLSPublic/IgrMaintenance/Index/772>

Under the Town Hall revolving fund rental fees collected for use of the Town Hall may be used to pay for Town Hall building repairs, maintenance, upgrades, utility bills, and “employee wages.” As to the use of a revolving fund to pay for wages or salaries, Section 53E ½ requires the payment of salaries to include the costs of fringe benefits for full-time employees as follows: “Revolving fund expenditures shall not be made to pay wages or salaries for full-time employees unless the revolving fund is also charged for the costs of fringe benefits associated with the wages or salaries so paid...” While the by-law authorizes revenue in the Town Hall revolving fund to pay employee wages, it does not expressly state that the payment of wages will include the costs of fringe benefits for full-time employees. The Town should consult closely with Town Counsel to ensure that the payment of employee wages includes the cost of fringe benefits for full time employees, if any.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

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cc: Town Counsel Donna L. MacNicol