



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

MAURA HEALEY
ATTORNEY GENERAL

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

July 21, 2017

Beth R. Klein, Town Clerk
Town of Wayland
41 Cochituate Road
Wayland, MA 01778

RE: Wayland Annual Town Meeting of April 2, 2017 - Case # 8302
Warrant Article # 14 (Zoning)
Warrant Article # 5, 23 and 24 (General)

Dear Ms. Klein:

Articles 5, 23 and 24 - We approve Articles 5, 23 and 24 from the April 2, 2017 Wayland Annual Town Meeting.¹ Our comments regarding Article 5 are provided below.

Article 5 - Article 5 amends the Town's general by-laws by inserting a new Section 19-10, "Revolving Funds." 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

¹ Due to a deficiency in the procedural adoption of Article 14, on June 30, 2017, we placed Article 14 on 299 hold in accordance with Chapter 299 of the Acts of 2000.

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 Bulletin 2017-01B, "Authorization of Departmental Revolving Funds and Model By-law/Ordinance:"

<http://www.mass.gov/dor/docs/dls/publ/bull/2017/2017-01b.pdf>

and an "Overview of Statutory Treatment of Municipal Revenues:"

<http://www.mass.gov/dor/docs/dls/training/overview.pdf>

We approve the by-law created under Article 5. However, the Town should consult closely with Town Counsel to ensure that receipts designated for each revolving fund are not already reserved under other funds or statutes, and are properly included in the designated revolving fund. In addition, the Town should consult closely with Town Counsel to ensure that any deposits into a revolving fund are properly from "fees, charges or other receipts" associated with a specific departmental program or activity and that the funds are expended in connection with that specific program or activity, not for the general use of the department.

Further, G.L. c. 44, § 53E ½, requires the establishment of any revolving fund to be "made not later than the beginning of the fiscal year in which the fund shall begin." The Town established these revolving funds by by-law at a vote of Town Meeting on April 2, 2017, apparently with the intention that these funds be used during Fiscal Year 2018 (beginning July 1, 2017). According to DOR/DLS, all receipts collected during Fiscal Year 2018 can be credited to the revolving funds created under Article 5. The Town should consult with Town Counsel and/or DOR/DLS with any questions on this issue.

In light of the above, we offer specific comments on certain revolving funds.

1. School Department: Curriculum.

Pursuant to the provisions of G.L. c. 44, § 53E ½, the Town has established several departmental revolving funds, including "School Department: Curriculum." The by-law states that the revenue source for the School Department Curriculum Fund is "[f]ees paid for student instructional materials" to be used for the "payment of costs for student instructional materials." General Laws Chapter 44, Section 53E ½, provides that the following receipts may not be used as a revenue source for a revolving fund: "receipts reserved by law or as authorized by law for expenditure for a particular purpose."

According to DOR/DLS, many fees, charges or other receipts pertaining to schools are not properly deposited into a departmental revolving fund because these school related fees have previously been designated by the Legislature for other specific funds. DOR/DLS has published a chart pertaining to specific school revolving funds to assist municipalities in determining where certain school related fees must, or may by local option, be deposited:

<http://www.mass.gov/dor/docs/dls/training/revolvingfundchartschool.pdf>

The Town should work closely with Town Counsel and DOR/DLS to review the "School Department: Curriculum" fund to determine whether such fees are properly accounted for in a departmental revolving fund under G.L. c. 44, § 53E ½, or whether these school fees need to be accounted for in a separate school specific revolving fund, as detailed in the DOR/DLS link provided above.

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,

MAURA HEALEY
ATTORNEY GENERAL

Nicole B. Caprioli

By: Nicole B. Caprioli
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 ext. 4418
nicole.caprioli@state.ma.us

cc: Town Counsel Carolyn M. Murray