

Revolving and other Special Funds for School Department Programs

Revolving Fund	Legal Reference	Local Acceptance	Town Meeting/ City Council Action	Department/Activities	Salaries	Capital Items/ Debt Service	Spending Ceiling	Revenue Source	Interest	Fund Balance	Other Accounting Procedures	Reports	Other
School Rental	M.G.L. Ch. 40 S3.	No, but provision permitting use of funds for any facility and accumulation of funds requires acceptance.	None	Upkeep of rented facility or space, including custodial costs, utilities, ordinary repairs and maintenance. May be used for upkeep of any school facility if city/town has accepted provision so permitting	Yes	Not Prohibited	None	Rental payments	General Fund	Closes to general fund at end of FY unless city/town has accepted provision permitting carry over to next FY			
Student Athletics and Activities	M.G.L. Ch. 71 S 47.	No	None	School Committee sponsored athletic and extracurricular programs, awards, equipment and facilities	Yes	Program Equipment and Facilities	None	Participation Fees and Program Receipts	General Fund	Carries Forward to Next FY			
Student Activity Agency	M.G.L. Ch 71 S 47	No	None	School Committee Authorized Student Activities	Not Applicable	Not Applicable	None	Student Activity Receipts	Agency Account	Carries forward to next FY		Annual audit based on procedures agreed to by the School Committee and Auditor, and DOE Regulations	Principals authorized by school committee to receive student activity receipts and deposit into agency account. S. C. fixes maximum balance on deposit in checking account. Committee transfers initial funds from agency account into checking account and treasurer replenishes.
Use of School Property	M.G.L. Ch. 71 S. 71E	Yes	None	Upkeep of facility, including custodial costs, utilities, ordinary repairs and maintenance	Yes	Not Prohibited	None	User Fees and Charges	General Fund	Carries Forward to Next FY			Use of school facilities by individuals, groups, organizations for civic, social, educational recreational purposes governed by school committee policies established under M.G.L. Ch 71. S 71.

Vocational Education (Shop Revolving Accounts)	M.G.L. Ch. 74 S. 14B	Yes In Regional School District, by vote of the school committee and a majority of the boards of selectmen/City council members	None	Culinary Arts, Home Economics and other Vocational-Technical Programs	No	Program Equipment	\$15,000 total \$5,000 cap annually in equipment purchases	Sales of program products and services	General Fund	Carries Forward to Next FY	FY receipts over \$15,000 credited to general fund	Annual Report by School Superintendent to Mayor, City Manager and City Council Selectmen/Town Manager Copy to BOA (schedule A)	
Adult Education and Continuing Education	M.G.L. Ch. 71 S. 71E	Yes	None	Adult Education, Continuing Education, Adult Physical Fitness, Summer School and Community School Programs	Yes	Not Prohibited	None	Participation Fees and Program Receipts	General Fund	Carries Forward to Next FY			
Community Schools	M.G.L. Ch. 71 S. 71C	No	None	Materials and Equipment for Community School Programs	No	Program Equipment	\$3,000	Participation Fees and Program Receipts	General Fund	Carries Forward to Next FY			Not clear if this still applies when City/Town has accepted M.G.L. Ch. 71 S. 71E
Culinary Arts	M.G.L. Ch. 71 S. 71A	Yes In regional school district, acceptance by majority vote of boards of selectmen/city council member	None	Culinary Arts Programs	No	Program Equipment	\$15,000 Total \$5,000 in equipment purchases	Sale of Culinary Program Products	General Fund	Carries Forward to next FY	FY receipts over \$15,000 credited to general fund	Annual Audit by treasurers to school committee, mayor/City Manager and City Council Selectmen/Town Manager. Copy to BOA (schedule A)	
Non-Resident Student Tuition	M.G.L. Ch. 71 Section 71F	Yes	None	Educational Expenditures of non-resident and foster care children enrolled in school	Yes	Instructional Equipment that could be funded from the School Budget	None	Non-resident tuition payments and State reimbursements for foster care children	General Fund	Carries Forward to next FY			
School Bus Advertising	Ch. 184 S. 197 of the Acts of 2002	No	None	Education Expenses	Yes	Instructional Equipment that could be funded from the School Budget	None	Sale of Advertising Space on School Buses	General Fund	Carries Forward to next FY			Sale of space must be overseen by governing board appointed by school committee and is subject to statutory standards

School Choice Tuition	M.G.L. Ch. 76 S 12B(o)	No	None	Education Expenses	Yes	Instructional Equipment that could be funded from the School Budget	None	State Reimbursement, Federal Grants, gifts and grants	General Fund	Carries Forward to next FY	Funds received after the school budget fir FY is submitted must be accounted for in next year's budget		
School Day Care	M.G.L. Ch. 71 S.62C	No	None	Extended School Services for Children Ages 3-14 of working parents	Yes	Not Prohibited	None	Program Fees, Federal Funds, other grants, gifts, donations	General Fund	Carries Forward to next FY	Must comply with prescribed Federal and State reporting and Auditing Requirements		
School Lunch	Ch. 548 of the Acts of 1948 , Amended Ch. 650 of the acts of 1969	No	None	Operation of School Lunch Programs	Yes	Program Equipment	None	Fees from sales of lunch and other meals, school lunch grant funds	Revolving Fund	Carries forward to next FY	Must comply with prescribed Federal and State reporting and auditing requirements		
School Bus Rental	M.G.L. Ch 159A, S 32 and M.G.L. Ch. 71 S. 71E	Yes	None	Upkeep, including ordinary repairs and maintenance	Yes	Not Prohibited	None	Fees and Charges for Use	General Fund	Carries Forward to next FY			
Drivers Education	M.G.L. Ch. 71 S 13D and M.G.L. Ch. 71 S. 71E	Yes	None	Upkeep, including ordinary repairs and maintenance	Yes	Not Prohibited	None	Fees and Charges for Use	General Fund	Carries Forward to next FY			
Vocational Child Care Programs	M.G.L. Ch. 71 S. 71E and M.G.L. Ch. 74 S. 14B	Yes	None	Upkeep of facility, including custodial costs, utilities, ordinary repairs and maintenance	Yes under Ch. 71 S. 71E but not under 74 S 14B	Not Prohibited	None	User Fees and Charges	General Fund	Carries Forward to Next FY			Use of school facilities by individuals, groups, organizations for civic, social, educational recreational purposes governed by school committee policies established under M.G.L. Ch 71. S 71.

Other Special Permanent Funds – The MCTA’s treasurer’s Manual (available online at <http://www.masscta.com/TreasurersManual/chapter06.php>) contains helpful information on establishing other special funds. Also helpful are the following:

- Gifts, trusts, and grants to School Departments – [M.G.L. Ch. 71 Section 37A](#) and [M.G.L. Ch 44 Section 53A](#)
- Stabilization Fund – [M.G.L. Ch. 40 Section 5B](#)
- Lost Books/ industrial arts supplies – [M.G.L. Ch. 44:Section 53](#)

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TITLE XXII. CORPORATIONS

CHAPTER 159A. COMMON CARRIERS OF PASSENGERS BY MOTOR VEHICLE

Chapter 159A: Section 32. School department vehicles; use for transporting community groups

Section 32. Notwithstanding other provisions of this chapter, the school department of a town may make vehicles under its control available to transport a community group, including, but not limited to, senior citizens, little league teams, and a town recreation group, and may charge such group for such transportation an amount sufficient to cover the cost thereof.

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Chapter 40: Section 3. Towns; power to hold, lease and convey property

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Section 3. A town may hold real estate for the public use of the inhabitants and may convey the same by a deed of its selectmen thereto duly authorized, or by a deed of a committee or agent thereto duly authorized; may by its selectmen let or lease for not more than ten years, on such terms as the selectmen determine, a public building or part thereof, except schoolhouses in actual use as such; may by its selectmen let or lease for not more than twenty-five years, real estate to the Massachusetts Bay Transportation Authority for use by the authority as a parking lot for commuters; may hold personal estate for the public use of the inhabitants, and alienate and dispose of the same; may hold real and personal estate in trust for the support of schools, and for the promotion of education, within the limits of the town; may receive, hold and manage any devise, bequest or gift for the establishment or equipment of memorials for properly commemorating the services of the soldiers, sailors and marines who have served the country in war, and for the establishment or maintenance of any reading room for which it may grant money under the provisions of section five; and may make such orders as it may deem necessary or expedient for the disposal or use of its corporate property. All real estate or personal property of the town, not by law or by vote of the town placed in the charge of any particular board, officer or department, shall be under the control of the selectmen, except as is otherwise provided in this section or section nine.

Notwithstanding the provisions of this section, a city or town, with the approval of the school committee, may rent or lease any school building not in actual use and, with the approval of the commissioner of education, surplus space in a school building in actual use to any one or more public or private profit-making businesses or nonprofit organizations; provided, however, that joint occupancy of a school building in actual use as such shall not interfere with educational programs being conducted in said building. The terms of any such rental or lease shall be as approved by the school committee; provided, however, that no school building not in actual use shall be rented or leased for an initial term longer than ten years, but with renewal options if approved by the school committee.

The monies received from such rental or lease shall be kept separate and apart from other city or town funds in the city or town treasury and may be expended by the school committee without further appropriation for the upkeep of the facility so rented or surplus space which is so rented; provided, however, that any balance remaining in such account at the close of a fiscal year shall be paid into the General Fund of such city or town; and, provided further, that in any city or town that accepts this proviso, any such balance shall remain in said account and may be expended for the upkeep and maintenance of any facility under the control of the school committee.

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PURPOSES FOR WHICH TOWNS MAY APPROPRIATE MONEY

Chapter 40: Section 5B. Stabilization funds; establishment

Section 5B. For the purpose of creating 1 or more stabilization funds, cities, towns and districts may appropriate in any year an amount not exceeding, in the aggregate, 10 per cent of the amount raised in the preceding fiscal year by taxation of real estate and tangible personal property or such larger amount as may be approved by the director of accounts. The aggregate amount in such funds at any time shall not exceed 10 per cent of the equalized valuation of the city or town as defined in section 1 of chapter 44. Any interest shall be added to and become part of the fund.

The treasurer shall be the custodian of all such funds and may deposit the proceeds in national banks or invest the proceeds by deposit in savings banks, co-operative banks or trust companies organized under the laws of the commonwealth, or invest the same in such securities as are legal for the investment of funds of savings banks under the laws of the commonwealth or in federal savings and loans associations situated in the commonwealth.

At the time of creating any such fund the city, town or district shall specify, and at any later time may alter, the purpose of the fund, which may be for any lawful purpose, including without limitation an approved school project under chapter 70B or any other purpose for which the city, town or district may lawfully borrow money. Such specification and any such alteration of purpose, and any appropriation of funds into or out of any such fund, shall be approved by two-thirds vote, except as provided in paragraph (g) of section 21C of chapter 59 for a majority referendum vote. Subject to said section 21C, in a town or district any such vote shall be taken at an annual or special town meeting, and in a city any such vote shall be taken by city council.

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Chapter 44: Section 53. City, town or district funds; use and disposition

Section 53. All moneys received by any city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury. Any sums so paid into the city, town or district treasury shall not later be used by such officer or department without specific appropriation thereof; provided, however, that (1) sums allotted by the commonwealth or a county to cities or towns for highway purposes and sums allotted by the commonwealth to cities, towns or districts for water pollution control purposes shall be available therefor without specific appropriation, but shall be used only for the purposes for which the allotment is made or to meet temporary loans issued in anticipation of such allotment as provided in section six or six A, (2) sums not in excess of twenty thousand dollars recovered under the terms of fire or physical damage insurance policy and sums not in excess of twenty thousand dollars received in restitution for damage done to such city, town or district property may be used by the officer or department having control of the city, town or district property for the restoration or replacement of such property without specific appropriation and (3) sums recovered from pupils in the public schools for loss of school books or paid by pupils for materials used in the industrial arts projects may be used by the school committee for the replacement of such books or materials without specific appropriation.

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Chapter 44: Section 53A. Grants and gifts; acceptance and expenditure

Section 53A. An officer or department of any city or town, or of any regional school or other district, may accept grants or gifts of funds from the federal government and from a charitable foundation, a private corporation, or an individual, or from the commonwealth, a county or municipality or an agency thereof, and in the case of any grant or gift given for educational purposes may expend said funds for the purposes of such grant or gift with the approval of the school committee, and in the case of any other grant or gift may expend such funds for the purposes of such grant or gift in cities having a Plan D or Plan E form of government with the approval of the city manager and city council, in all other cities with the approval of the mayor and city council, in towns with the approval of the board of selectmen, and in districts with the approval of the prudential committee, if any, otherwise the commissioners. Notwithstanding the provisions of section fifty-three, any amounts so received by an officer or department of a city, town or district shall be deposited with the treasurer of such city, town or district and held as a separate account and may be expended as aforesaid by such officer or department receiving the grant or gift without further appropriation. If the express written terms or conditions of the grant agreement so stipulate, interest on the grant funds may remain with and become a part of the grant account and may be expended as part of the grant by such officer or department receiving the grant or gift without further appropriation. Any grant, subvention or subsidy for educational purposes received by an officer or department of a city, town or school district from the federal government may be expended by the school committee of such city, town or district without including the purpose of such expenditure in, or applying such amount to, the annual or any supplemental budget or appropriation request of such committee; provided, however, that this sentence shall not apply to amounts so received to which section twenty-six C of chapter seventy-one of the General Laws, and chapter six hundred and twenty-one of the acts of nineteen hundred and fifty-three, as amended, and chapter six hundred and sixty-four of the acts of nineteen hundred and fifty-eight, as amended, apply; and, provided further, that notwithstanding the foregoing provision, this sentence shall apply to amounts so received as grants under the Elementary and Secondary Education Act of 1965, (Public Law 89-10). After receipt of a written commitment from the federal government approving a grant for educational purposes and in anticipation of receipt of such funds from the federal government, the treasurer, upon the request of the school committee, shall pay from the General Fund of such municipality compensation for services rendered and goods supplied to such federal grant programs, such payments to be made no later than ten days after the rendition of such services or the supplying of such goods; provided, however, that the provisions of such federal grant would allow the treasurer to reimburse the General Fund for the amounts so advanced.

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Chapter 71: Section 13D. High schools; required subjects; driver training

Section 13D. Motor vehicle driving education may be incorporated as a phase of the safety education program in high schools of the commonwealth. The content of driver education courses shall be established by the registrar of motor vehicles. No school committee and no high school, public or private, shall employ a person to conduct a driver education course unless the person is certified by the registrar as a driving instructor. Courses in motor vehicle driver education may be given as evening courses in the schools of any town for the training of persons under twenty-five years of age. No person shall be precluded from taking any such course because he is licensed to operate motor vehicles. School committees may fix reasonable fees for tuition in such evening courses or may provide that no fee shall be charged. If a motor vehicle driver education course is required pursuant to the provisions of section thirteen such courses shall consist of classroom and behind-the-wheel training; provided, however, that no school committee shall be required to include behind-the-wheel training during the regular school day as part of such course.

The front seats of motor vehicles used for driver education under this section shall be equipped with safety belts for the instructor and the pupil.

A driver education course shall include a motorcycle awareness program module, as approved by the Motorcycle Safety Foundation, to ensure that new operators of motor vehicles have some knowledge and awareness of motorcycles on roadways for the safety of motorcyclists. Two dollars from each motorcycle registration fee paid under section 34 of chapter 90 shall be used to fund the cost of the required materials for the motorcycle awareness program module required by this section.

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REGIONAL SCHOOL DISTRICT

Chapter 71: Section 17A. Culinary arts program; special fund

Section 17A. In any city or town which accepts the provisions of this section and in any regional school district upon its acceptance by the school committee of said district and a majority of the cities and towns in said district by vote of the city council or board of selectmen of said cities and towns, any income received in a fiscal year not exceeding, in the aggregate, fifteen thousand dollars derived from the sale of products produced in a culinary arts program conducted in any public high school shall be deposited in a special fund by the school committee in any banking institution in the commonwealth. Expenditures may be made from said special fund by the school committee for the culinary arts program without further appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four; provided, however, that said special fund shall not be used to pay the salary of any employee, and in any fiscal year no more than five thousand dollars from said fund shall be used for the purchase of equipment. The treasurer of a city or town shall annually audit the account of said special fund and shall submit copies thereof to the mayor, city council, city or town manager, board of selectmen and school committee of such city or town, and to the director of the bureau of accounts. In regional school districts, the school committee shall select the city or town treasurer from among member cities and towns to complete said audit and make such report.

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EXTENDED SCHOOL SERVICES FOR CERTAIN CHILDREN OF CERTAIN EMPLOYED MOTHERS

Chapter 71: Section 26C. Contributions and federal funds; use

Section 26C. The commonwealth and the school committee of any town may accept funds from the federal government for the purposes of sections twenty-six A to twenty-six F, inclusive. The school committee of any town may receive contributions in the form of money, material, quarters or services for the purposes of said sections from organizations, employers and other individuals. Such contributions received in the form of money, together with fees from parents and any allotments received from the federal government for said purposes, shall be deposited with the treasurer of such town and held as a separate account and expended by said school committee without appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four.

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Chapter 71: Section 37A. Grants; acceptance and disbursement

Section 37A. School committees of cities and towns and regional district school committees may accept grants or gifts for educational purposes from federal, state, county and municipal governments or agencies thereof, charitable foundations and private corporations and disburse the same for such purposes. Any amounts so received by a school committee of a city or town shall be deposited with the treasurer of such city or town and held as a separate account, and expended by said school committee without further appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four. Any amounts so received by a regional district school committee shall be deposited with the treasurer of such regional school district and held as a separate account and expended by said committee.

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Chapter 71: Section 47. Athletic programs; school organizations; student activity accounts

Section 47. The committee may supervise and control all athletic and other organizations composed of public school pupils and bearing the school name or organized in connection therewith. It may directly or through an authorized representative determine under what conditions the same may compete with similar organizations in other schools. Expenditures by the committee for the organization and conduct of physical education, athletics, sports, games and play, for providing proper apparatus, equipment, supplies, athletic wearing apparel, including appropriate souvenir garments and trophies, and facilities for the same in the buildings, yards and playgrounds under the control of the committee, or upon any other land which it may have the right or privilege to use for this purpose, and for the employment of experienced athletic directors to supervise said physical education, athletics, sports, games and play, shall be deemed to be for a school purpose. Expenditures by the committee for making special awards to pupils who have performed meritoriously in the fields of art, debating, distributive education, music, science, social studies or languages shall also be deemed to be for a school purpose. Cities and towns may appropriate for the employment of coaches to supervise in public schools physical education, athletics, sports, games and play, and for the transportation and expenses of public school athletic teams, coaches, cheerleaders, bands and any other groups composed of public school pupils which bear the school name and are under the control of the school committee, within and without the commonwealth, to places where athletic contests or physical education, sports, games, play, musical festivals, competition or other events are held, and for the purchase of band and cheerleaders' uniforms and musical instruments for the members of bands composed of public school pupils and bearing the school name and under the control of the school committee. All receipts by the committee in connection with the conduct of activities provided for under this section or any other activity not expressly provided for in this chapter but sponsored by the school committee in which participation is contingent upon the payment of a fee by the participant, shall be deposited with the treasurer of such town or, in cases where the town is a member of a regional school district, with the treasurer of such district and held as a separate account and expended by said school committee without further appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four. No moneys may be expended from an appropriation or from the separate fund authorized by this section except upon the approval of the school committee, or of the selectmen in towns and of mayors in cities, for travel to other states.

Notwithstanding the provisions of the preceding paragraph or section fifty-three of chapter forty-four, the school committee of a city, town or district may authorize a school principal to receive money in connection with the conduct of certain student activities and to deposit such money, with the municipal or regional school district treasurer, into an interest bearing bank account, hereinafter

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referred to as the Student Activity Agency Account, duly established by vote of the school committee to be used for the express purpose of conducting student activities. Interest earned by such Student Activity Agency Account shall be retained by the fund and the school committee shall determine for what purpose such earnings may be used. In addition to such Student Activity Agency Account, the school committee may authorize the municipal or regional school district treasurer to establish a checking account, hereinafter referred to as the Student Activity Checking Account, to be operated and controlled by a school principal and from which funds may be expended exclusively for student activity purposes for the student activities authorized by the school committee. Such account shall be used for expenditures only and funds received for student activities may not be deposited directly into such account.

The school committee shall vote to set the maximum balance that may be on deposit in such Student Activity Checking Account. The principal designated to operate and control such Student Activity Checking Account shall give bond to the municipality or district in such amount as the treasurer shall determine to secure the principal's faithful performance of his duties in connection with such account. To the extent that the funds are available in such Student Activity Agency Account, funds up to the maximum balance set by the school committee shall be transferred from the Student Activity Agency Account through the warrant process to initially fund such Student Activity Checking Account.

Periodically, to the extent that funds are available in such Student Activity Agency Account, the municipal or regional school district treasurer shall reimburse such Student Activity Checking Account, through the warrant process, to restore the limit set by the school committee. The principal shall adhere to such administrative procedures as the municipal or regional school district treasurer or accountant may prescribe. There shall be an annual audit of the student activity funds which shall be conducted in accordance with procedures as agreed upon between the school committee and the auditor based upon guidelines issued by the department of education.

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Chapter 71: Section 71. Use of school property; purposes

Section 71. For the purpose of promoting the usefulness of public school property the school committee of any town may conduct such educational and recreational activities in or upon school property under its control, and, subject to such regulations as it may establish, and, consistently and without interference with the use of the premises for school purposes, shall allow the use thereof by individuals and associations for such educational, recreational, social, civic, philanthropic and like purposes as it deems for the interest of the community. The affiliation of any such association with a religious organization shall not disqualify such association from being allowed such a use for such a purpose. The use of such property as a place of assemblage for citizens to hear candidates for public office shall be considered a civic purpose within the meaning of this section. A school committee shall award concessions for food at any field under its control only to the highest responsible bidder. This section shall not apply to Boston.

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Chapter 71: Section 71C. Community school programs; receipts; deposit and expenditure

Section 71C. All moneys received by the school committee in connection with the conduct of community school programs, so designated by prior vote of said committee, shall be deposited with the treasurer of the town or city. The school committee may expend, from such receipts and without further appropriation, any sums not in excess of three thousand dollars within any fiscal year for the purchase of materials and equipment for such programs.

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Section 71E. In any city or town which accepts this section, all moneys received by the school committee in connection with the conduct of adult education and continuing education programs, including, but not limited to adult physical fitness programs conducted under section seventy-one B, summer school programs and programs designated by prior vote of said committee as community school programs, and in connection with the use of school property under section seventy-one, shall be deposited with the treasurer of the town or city and held as separate accounts. The receipts held in such a separate account may be expended by said school committee without further appropriation for the purposes of the program or programs from which the receipts held in such account were derived or, in the case of the use of school property account, for expenses incurred in making school property available for such use, notwithstanding the provisions of section fifty-three of chapter forty-four of the General Laws. A city or town may appropriate funds for the conduct of any such program or for expenses incurred in making school property available for such use, which funds shall be expended by the school committee in addition to funds provided from other sources. Three years from the date a city or town accepts the provisions of this paragraph, and every third year thereafter, said city or town may act to rescind its original acceptance.

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Chapter 71: Section 71F. Nonresident or foster care students; deposit of tuition payments and state reimbursements; expenditures and appropriations

Section 71F. In any city or town which accepts this section, all monies received by the school committee as tuition payments for nonresident students and as state reimbursements for students who are foster care children shall be deposited with the treasurer of the town or city and held as separate accounts. The receipts held in such a separate account may be expended by said school committee without further appropriation for expenses incurred in providing education for such nonresident students or for such students who are foster care children, notwithstanding the provisions of section fifty-three of chapter forty-four. A city or town may appropriate funds for expenses incurred in providing education for such nonresident students or for such students who are foster care children, which funds shall be expended by the school committee in addition to funds provided from other sources.

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PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XII. EDUCATION

CHAPTER 74. VOCATIONAL EDUCATION

VOCATIONAL SCHOOLS

Chapter 74: Section 14B. Culinary arts; revolving fund

Section 14B. In any city or town which accepts the provisions of this section, any income received in a fiscal year not exceeding, in the aggregate, fifteen thousand dollars derived from the purchase and sale of products produced in the culinary arts subject area of the home economics program, or any other vocational-technical program conducted in any public vocational-technical high school shall be deposited in a special fund by the school committee in any banking institution in the commonwealth. Expenditures may be made from said fund by the school committee for purposes needed for the culinary arts subject area or in the case of a fund established for any other program, such funds may be expended for the purposes of such program area without further appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four; provided, however, that said special funds shall not be used to pay the salary of any employee, and in any fiscal year no more than five thousand dollars from said funds shall be used in the purchase of equipment. Three years from the year a city or town accepts the provisions of this section, and every third year thereafter, said city or town may act to rescind its original acceptance. The superintendent of a school district with such a fund shall submit annually a report of said fund to the mayor, city council, city manager, board of selectmen or town manager of each city and town in said district and a copy of said report shall be submitted to the director of the bureau of accounts. The provisions of this section shall be effective in any regional school district upon its acceptance by the school committee of said district and a majority of the towns and cities and said district by vote of the board of selectmen or city council of said cities and towns.

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PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XII. EDUCATION

CHAPTER 76. SCHOOL ATTENDANCE

Chapter 76: Section 12B. Definitions; attendance of school other than in city or town of residence of child; reports; tuition; parent information system; transportation reimbursement program; funding

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Section 12B. (a) As used in this section, the following terms shall have the following meanings:

“Above foundation reimbursement amount”, (i) for fiscal year nineteen hundred and ninety-four, fifty percent of the net losses due to the provisions of this section; provided, however, that if the amount lost by said district pursuant to subsection (f) is greater than two percent of the total school budget of said district, the amount of said reimbursement shall be equal to seventy-five percent of the net losses due to the provisions of this section; (ii) beginning in fiscal year nineteen hundred and ninety-five, twenty-five percent of the net losses due to the provisions of this section.

“Receiving district”, any city, town or regional school district within the commonwealth in which a child does not reside, but in which that child attends public school under the provisions of this section.

“Sending district”, any city, town or regional school district within the commonwealth in which a child resides, but in which that child does not attend public school under the provisions of this section.

“State school choice limit”, in fiscal year nineteen hundred and ninety-four, one percent of the total number of students attending public schools in the commonwealth; in fiscal year nineteen hundred and ninety-five, one and one-half percent of the total number of students attending public schools in the commonwealth; in fiscal year nineteen hundred and ninety-six, one and three-quarters percent of the total number of students attending public schools in the commonwealth; in fiscal year nineteen hundred and ninety-seven and thereafter, two percent of the total number of students attending public schools in the commonwealth; provided, however, that students enrolled under the program for the elimination of racial imbalance as provided in section twelve A shall not be counted toward these limits.

(b) Notwithstanding the provisions of section twelve, or any other special or general law to the contrary, any child may attend a public school, in a city or town where he does not reside; provided, however, that the receiving district shall be paid by the commonwealth a tuition rate as established in subsection (f).

(c) Not later than May first of every year, the school committee of each city, town or regional school district shall submit a report to the department stating:

- (1) The capacity of each school in said city, town or regional school district for the following academic year.
- (2) The number of students expected to attend each school in said city, town or regional school district in the following academic year.
- (3) The number of students attending said school district under the terms of this section in the prior school year and the number of those students who are expected no longer to be attending said school district in the next school year.
- (4) The number of additional seats therefore available to non-resident students reduced by the number of students enrolled under the program for the elimination of racial imbalance as provided in section twelve A, in said charter school or each school in said city, town or regional school district. The board may require every district to update this report in whatever manner is required to effectuate the objectives of this section.
- (d) Each city, town or regional school district shall enroll non-resident students at the school of such non-resident student's choice; provided, however, that such receiving district has seats available as stated in said report; provided, however, that this obligation to enroll non-resident students shall not apply to a district for a school year in which its school committee, prior to June first, after a public hearing, adopts a resolution withdrawing from said obligation, for the school year beginning the following September. Any such resolution of a school committee shall state the reasons therefor, and such resolution with said reasons shall be filed with the department of education; provided, however, that said department shall have no power to review any such decision by a school committee. If the city, town or regional school district operates an intra-district choice plan, non-resident students may apply for schools on the same basis as resident students, but the intra-district choice plan may give preference to resident students in assigning students to schools.
- (e) Not later than the first day of July, each city, town or regional school district shall each year submit a non-resident attendance report to the board and to the state treasurer, certifying the number of non-resident applicants for each available seat in each school, the disposition of their applications, how many of said applicants will be attending the district in the next school year, the identity of the sending districts for those students, the annual amount of tuition for each such child and the total tuition owed to the district based on full or partial attendance, itemized by the amount attributable to each city or town of residence. The board may review said certification to determine that the amount of the individual tuition charged for each child is in accordance with the provisions of this section and shall inform the state treasurer of any errors. The department may also, on a post-audit basis, verify the admission and attendance of the number of children certified by each school district. In addition to the foregoing, all said districts shall, on October first and April first, report to the board and certify to the state treasurer accurate and up to date reports of all the information required in the non-resident attendance report. If the total number of students admitted to receiving districts pursuant to this section is greater than the state school choice limit, the board shall notify all districts that no more students may be accepted pursuant to this section.
- (f) For each student enrolling in a receiving district, there shall be a school choice tuition amount. Said tuition amount shall be equal to seventy-five percent of the actual per pupil spending amount in the receiving district for such education as is required by such non-resident student, but not more than five thousand dollars; provided, however, that for special education students whose tuition amount shall remain the expense per student for such type of education as is required by such non-resident student. The state treasurer is hereby authorized and directed to deduct said school choice tuition amount from the total education aid, as defined in chapter seventy, of said student's sending district, prior to the distribution of said aid and to deposit said aid in the School Choice Tuition Trust Fund

established by section twelve C. In the case of a child residing in a municipality which belongs to a regional school district, the school choice tuition amount shall be deducted from said chapter seventy education aid of the school district appropriate to the grade level of the child. If, in a single district, the total of all such deductions exceeds the total of said education aid, this excess amount shall be deducted from other aid appropriated to the city or town. If, in a single district, the total of all such deductions exceeds the total state aid appropriated, the commonwealth shall appropriate this excess amount; provided, however, that if said district has exempted itself from the provisions of chapter seventy by accepting section fourteen of said chapter, the commonwealth shall assess said district for said excess amount.

(g) The state treasurer is further directed to disburse to the receiving district, from the School Choice Tuition Trust Fund established by section twelve C, an amount equal to each student's school choice tuition as defined in subsection (f); provided, however, that each public school district which admits children under the provisions of this section shall certify to the state treasurer the number of such children attending its public schools, the city or town of residence of each such child, the annual amount of tuition for each such child and the total tuition owed to the district based on full or partial attendance, itemized by the amount attributable to each city or town of residence; and, provided further, that such certification shall be made on October first of each year and April first of each year. Each school district submitting a certification to the state treasurer shall also submit a copy of said certification to the department of education. Said department may review said certification to determine that the amount of the individual tuition charged for each child is in accordance with the provisions of this section and shall inform the state treasurer of any errors. The department may also, on a post-audit basis, verify the admission and attendance of the number of children certified by each school district.

(h) There shall be a parent information system established, maintained and developed by the board of education to disseminate to parents detailed and comparable information about each school system participating in the school choice program, so-called, which shall include, but not be limited to, information on special programs offered by the school, philosophy of the school, number of spaces available, transportation plans, class sizes, teacher/student ratios, and data and information on school performance that indicate its quality. Said information shall include the school profiles, so-called, developed pursuant to section one B of chapter sixty-nine. The board may include information regarding regional choice initiatives as deemed appropriate. The system shall have as its primary goal to ensure that all parents have an equal opportunity to participate in the program of interdistrict choice. The board of education, when disseminating this information shall encourage the parent and student to make at least one visit to the school of choice as part of the application procedure.

(i) Subject to appropriation, the board of education shall develop and administer a school choice transportation reimbursement program for the purpose of providing reimbursement for the transportation of pupils enrolled under the provisions of this section. Pupils eligible for said reimbursement must be eligible to receive free or reduced cost lunches under eligibility guidelines promulgated by the federal government under 42 USC section 1758. The board may limit said reimbursement to a yearly amount. The types of transportation to be reimbursed pursuant to said program shall include, but need not be limited to, the following: (1) transportation by school buses provided by the sending or receiving district; (2) transportation provided by the parent or guardian of the child; (3) transportation provided by public transportation. All eligible pupils who attend a school district contiguous to the school district of residence of such pupil shall be eligible for said reimbursement. If cost-effective transportation alternatives exist for pupils who attend districts not contiguous to the school districts of residence of such pupil, the board may provide a transportation reimbursement. Said reimbursements may be paid to the district in which the pupil is enrolled, the district of residence of the student, or the parent, guardian or person acting as guardian of the student;

provided, however, that said district or parent provide documentation of the transportation expenditure. The board of education shall promulgate regulations for the program to be placed on file with the joint committee on education, arts and humanities of the general court. The board of education shall disseminate information to parents and school systems detailing the availability of said transportation reimbursements. A full description of said school choice transportation reimbursement program shall be submitted to the house and senate committees on ways and means and shall not become effective until ninety days after said submission. Notwithstanding the second paragraph of section one, nothing in this section shall confer upon any student attending a private school any right to transportation or reimbursement therefor.

(j) School committees may establish terms for accepting non-resident students; provided, however, that if the number of non-resident students applying for acceptance to said district exceeds the number of available seats, said school committee shall select students for admission on a random basis; provided, further, that said school committee shall conduct said random selection twice: one time prior to July first and one time prior to November first; provided, further, that no school committee shall discriminate in the admission of any child on the basis of race, color, religious creed, national origin, sex, age, sexual orientation, ancestry, athletic performance, physical handicap, special need or academic performance or proficiency in the English language. The Massachusetts commission against discrimination, established by section fifty-six of chapter six, shall have jurisdiction to enforce the provisions of this section; provided, however, that all students described in subsection (m) shall be entitled to remain in the receiving districts they are attending or have been accepted to attend. Any school committee that accepts non-resident students under the provisions of this section shall notify each district from which it has accepted a non-resident student of its acceptance of that student; provided, however, that a school committee may not publicly release the names of students leaving or entering a district under the provisions of this section. Notwithstanding the preceding provisions of this paragraph, any sibling of a student already enrolled in the receiving district shall receive priority for admission to said district.

(k) Any child accepted to attend a public school in a community other than the one in which he resides pursuant to this section shall be permitted to remain in that school system until his high school graduation, unless there is a lack of funding of the program as authorized by said sections.

(l) Notwithstanding the provisions of this section or any general or special law to the contrary, any school district which admitted children on a private tuition basis prior to June thirtieth, nineteen hundred and ninety-one may continue, on that basis, to admit any child who attended its school system prior to that date, as well as any sibling or step-sibling of such child and any foster child residing in the home of such child.

(m) Any student who, pursuant to the provisions of this section, has been attending or has been admitted to attend a public school of a city or town in which he does not reside and for whom the commonwealth has been paying tuition or, in the case of a student recently admitted, would be required to pay tuition in the coming year, shall be deemed to be a student admitted pursuant to paragraph (j), and shall be subject to all of the provisions of this section; provided, however, that said students shall be allowed to remain in said school notwithstanding any determination of capacity or decision by the receiving district to withdraw made pursuant to this section.

(n) Subject to appropriation, any sending district for which the provisions of subsection (f) result in a reduction in state aid shall be eligible to apply for a school choice reimbursement from the commonwealth. If net school spending in a sending district is greater than said foundation budget as defined in chapter seventy, the amount of said reimbursement shall be the above foundation reimbursement amount for that fiscal year. If net school spending in a sending district is less than said

foundation budget, the amount of said reimbursement shall be equal to one hundred percent of the positive difference, if any, between (i) the amount transferred pursuant to subsection (f), and (ii) the product of the number of students leaving the sending district and the average per pupil expenditure in the sending district for such education as is required by such nonresident student, for the period the child shall attend; provided, however, that if any district has exempted itself from the provisions of said chapter seventy by accepting section fourteen of said chapter seventy, the district shall be ineligible for a reimbursement under this subsection; provided, further, that if any district in which net school spending is greater than the foundation budget becomes a sending district for the first time in fiscal year nineteen hundred and ninety-five or any year thereafter, the reimbursement amount for that district in the first year that it is a sending district shall be the fiscal year nineteen hundred and ninety-four reimbursement amount; the reimbursement amount for the district in its second year as a sending district shall be the fiscal year nineteen hundred and ninety-five reimbursement amount. Said reimbursement application shall be submitted to the department of education on or before October first of each year together with an educational corrective action plan containing information, recommendations and suggestions relative to: (1) areas needing improvement within the school system of the applicant; (2) methods of improvement to be employed; (3) goals and objectives of said improvement; (4) evaluation and control methods to be used; (5) personnel to be engaged in such improvement; (6) results intended to be accomplished within one year from the date of application; and (7) methods of increasing parental involvement to be employed; provided, however, that any community or regional school district that has a previously approved plan need not refile said plan; and, provided further, that approval of said plan by said board shall act as a condition precedent to the distribution of said reimbursement to the applicant community or regional school district. Under no circumstances shall the total amount expended pursuant to subsections (h) and (i) and to reimburse sending districts pursuant to this paragraph, be greater than twenty million dollars. If, in any year, the total amount that would be required to reimburse said cities at said rates would be greater than twenty million dollars, then the reimbursement rates shall be reduced proportionately to those rates at which the total cost does not exceed twenty million dollars.

(o) The commonwealth and the school committee of any town may accept funds from the federal government for the purposes of this section. Any amounts received by the school committee of any town from the federal government, from the commonwealth or from a charitable foundation or private institution shall be deposited with the treasurer of such town and held as a separate account, and may be expended by said school committee without further appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four. Whenever such funds are received after the submission of the annual school budget, all or any portion thereof may be expended by the school committee without further appropriation, but shall be accounted for in the next annual school budget.

If the student attends the public schools of another town and it is anticipated that the student shall need the services of a private day or residential school, an individual education plan team meeting shall be convened by the school district in which the child is attending school. The school district in which the student attends school shall notify the school district where the student resides of the team meeting at least five school days prior to the meeting. Personnel from the district in which the child resides shall be allowed to participate in the team meeting concerning future placement of the child.

SECTION 197. (a) Notwithstanding the provisions of any general or special law to the contrary, any school committee may vote to authorize the sale of advertising on school buses owned, operated, contracted or controlled by the school district.

(b) The school committee shall establish a governing board that will oversee the sale of advertising on school buses. The governing board shall establish a school bus advertisement fund comprised of revenues from the sale of advertising space on school buses. The monies in a school bus advertisement fund shall be kept separate from the General Fund, not subject to reversion, and may be used by the school committee for any lawful educational purposes.

(c) Advertisements must be age appropriate and not contain promotion of any substance that is illegal for minors such as alcohol, tobacco, drugs and gambling.

(d) Advertising approved by the local school board may appear only, (1) on the sides of the bus, (2) below the seat level rub rail and not above the bottom of the side windows; and (3) at least three inches from any required lettering, lamp, wheel well or reflector behind the service door or stop signal arm.

(e) Advertising approved by the local school board shall not, (1) extend from the body of the bus so as to allow a handhold or present a danger to pedestrians, (2) interfere with the operation of any door or window; or (3) be placed on any emergency doors.

(f) Notwithstanding the provisions of any general or special law to the contrary the Massachusetts Tobacco Control Program, upon approval by the local school committee, may rent advertising space on the sides of publicly owned and operated school buses for the purposes of administrating an anti-smoking campaign within the school districts of the commonwealth.

(g) No more than 25 per cent of the exterior area of said bus shall contain advertising.

emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

G. L. (Ter. Ed.), 122, § 18, etc., amended.

Hospital expenses.

Section 18 of chapter 122 of the General Laws, as amended, is hereby further amended by striking out the fifth sentence, as appearing in chapter 618 of the acts of 1947, and inserting in place thereof the following sentence:— There shall be allowed for the support of a person in a hospital such amounts, as are determined to be the equivalent of actual costs to the hospital which renders support and treatment, but in no event to exceed eight dollars per diem.

Approved June 11, 1948.

Chap. 547

AN ACT RELATIVE TO WOODLAWN CEMETERY.

Be it enacted, etc., as follows:

SECTION 1. Section 3 of chapter 395 of the acts of 1894 is hereby amended by adding at the end the following sentence:— Said corporation may, however, enter into agreements with the city of Everett or the Everett Housing Authority for the sale of, and may sell to said city or to said Authority such of its real property as may be devoted to the construction of veterans' housing projects.

SECTION 2. Section 4 of said chapter 395 is hereby amended by inserting after the word "Cemetery", in lines 21 and 22, the following sentence:— The foregoing conditions, however, may be released by the Woodlawn Cemetery Corporation so far as applicable to the land referred to on the crest of Corbett Hill, so called, in said city of Everett as hereinbefore defined so that the same may be used exclusively for the construction of veterans' housing projects.

SECTION 3. This act shall take effect upon its passage.

Approved June 11, 1948.

Chap. 548 AN ACT DESIGNATING THE "STATE EDUCATIONAL AGENCY" AS REQUIRED BY THE UNITED STATES GOVERNMENT IN CARRYING OUT THE PROVISIONS OF THE NATIONAL SCHOOL LUNCH ACT.

Emergency preamble.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is in part to make possible forthwith the carrying out of the National School Lunch Act, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. The board of education is hereby designated as the "State Educational Agency" to represent the commonwealth in dealing with the secretary of agriculture of the United States in carrying out the provisions of the National School Lunch Act as enacted into law on June fourth, nineteen hundred and forty-six.

ACTS, 1948. — CHAP. 549.

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SECTION 2. Pursuant to any power of school committees to operate or provide for the operation of school lunch programs in schools under their jurisdiction, a school committee of any town may establish, maintain, operate and expand a school lunch program for the pupils in any school building under the jurisdiction of said committee, may make all contracts necessary to provide material, personnel and equipment needed to carry out the provisions of this act; and if necessary may appropriate funds to meet the matching requirements and any other provisions of said National School Lunch Act.

Approved June 11, 1948.

AN ACT RELATIVE TO THE PAYMENT OF WAR ALLOWANCES TO DEPENDENT RELATIVES OF CERTAIN VETERANS. *Chap. 549*

Be it enacted, etc., as follows:

Chapter 11 of the acts of 1942 is hereby amended by striking out section 1, as most recently amended by section 9 of chapter 584 of the acts of 1946, and inserting in place thereof the following: — *Section 1.* Any city or town, acting by its veterans' agent, as defined by section one of chapter one hundred and fifteen of the General Laws, may provide a war allowance for the dependent relatives of any person in the military or naval service of the United States whose service therein commenced prior to December thirty-first, nineteen hundred and forty-six; provided, that on September sixteenth, nineteen hundred and forty, or, if after said date and before December thirty-first, nineteen hundred and forty-six, said person entered said service or was recalled thereto or was continued therein after the expiration of a prior enlistment, at the time of his entry into or recall to or continuance in said service to the credit of the commonwealth, said person was a resident of this commonwealth and had been a resident thereof for not less than one year. The dependent relatives of such a person who are eligible to receive such aid shall be the wife, children under eighteen years of age, or any child dependent by reason of physical or mental incapacity, or a brother or sister under eighteen years of age, or a dependent parent, or any one who stood in the relationship of a parent to such person for five years prior to said September sixteenth or, if after said date said person entered said service or was recalled thereto or was continued therein after the expiration of a prior enlistment, for five years prior to his entry into, recall to or continuance in said service to the credit of the commonwealth. The commissioner of veterans' services may authorize the payment of medical and hospital bills that have accrued during the illness of any dependent relative of such a person in case such dependent dies while said person is in said service. The allowance authorized by this section shall cease on the termination of the service by death or discharge.

Approved June 11, 1948.

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Chapter 6

Trust Funds, Grants and Other Special Funds

GIFTS AND TRUST FUNDS

Gifts to a Municipality

Municipal officers and departments may accept gifts or grants of money from governmental or charitable entities, private corporations and/or individuals. Gifts or grants to school departments must be accepted under the provisions of Ch. 71 §37A; gifts to other municipal departments must be accepted under the provisions of Ch. 44 §53A. Expenditure of gifts or grant monies does not require the approval of the appropriating authority. Rather, such monies may be expended without further appropriation, so long as the expenditure is for the purpose(s) of the gift or grant. Expenditure requires, however, approval of the mayor and council in cities and of the selectmen in towns. Expenditure of gift or grant funds by a school department requires approval of the school committee.

The accounting officer should segregate individual gifts and grants in the municipality's accounting records. Interest accruing on a gift or grant account remains with and becomes part of the account only if the donor or grantor expressly so provided in writing at the time of making the gift or grant.

Trust Funds vs. Gifts

An outright gift to a municipality involves the direct transfer of all interest in the gift property to the city or town at the time of making the gift. A gift in trust, on the other hand, entails an *ongoing* gift to support a specified purpose, program or activity if the municipality.

A person making a gift to a city or town generally places some limit on the expenditure of the principal of the gift, perhaps limiting expenditure to the interest, alone.

A person bestowing a gift *in trust* may make an *inter vivos* gift, making the gift effective during the donor's lifetime. Alternatively, the person may bestow a

testamentary gift, giving the money as a bequest in a will and making the gift effective after his or her death. Whether a gift in trust is made as a testamentary or *inter vivos* gift, the person making the gift generally will, in writing, (a) specify the purpose(s) for which the monies may be expended and (b) define the powers and duties of the trustee.

The treasurer should deposit all monies given in trust to a city or town in separate fiduciary accounts and should administer them in a trustee capacity in accordance with the written directions of the donor.

Distinguishing between Trust Funds and Gifts

If a donor's written directions make clear an intent to establish an ongoing fund to support a specified program or activity, then the gift should be treated as a trust. A donor who restricts expenditures to interest accruing on the gift clearly manifests such an intent. However, donors do not always make their intent so clear. Accordingly, treasurers must exercise care in ascertaining a donor's intent. In the case of significant donations, treasurers should request assistance from the municipality's counsel. Ultimately, only donations not intended to establish ongoing funds, but intended to be expended within a limited period of time, should be treated as gifts, pursuant to Ch. 44 §53A.

A Municipality's Authority to Hold Trust Funds

Massachusetts law expressly permits cities and towns to accept gifts and bequests in trust for such purposes as supporting schools, war memorials, libraries, cemeteries, charities, and scholarships. For example:

- A town “may hold real and personal estate in trust for the support of schools....” (40:3)^[1]
- A town may “receive, hold, and manage any...[real or personal property] or gift for the establishment of...[war] memorials... and for the establishment or maintenance of any [library] reading room....” (40:3)^[2]
- “A town in which cemetery commissioners are chosen may receive bequests for maintaining cemeteries or cemetery lots....” (114:25)
- “A town may establish and maintain public libraries for its inhabitants ...and may receive, hold and manage any gift, bequest or devise therefore.” (78:7)
- A board or officer of a city or town “may accept grants or gifts of funds from the federal government, a charitable foundation, a private corporation, or an individual, ...the commonwealth, a county or municipality [for educational or other specified purposes]. (44:53A)

Defining Key Terms

In managing trust funds, a treasurer will encounter numerous legal terms relating to trusts. The following definitions from *Black's Law Dictionary, 7th. Ed.*, will assist in interpreting the meaning of these terms:

- **Bequest** Property, (usually personal property other than money) disposed of in a will.
- **Beneficiary** One designated to receive something as a result of a legal arrangement.
- **Devise** Property, (usually real property) disposed of in a will.
- **Donation** A gift.
- **Donative Trust** A trust requiring no payment of consideration by a beneficiary.
- **Donee** One to whom a gift is made.
- **Donor** One who gives something without receiving consideration from the transfer.
- **Gift** The act of voluntarily transferring property to another without consideration.
- **Settlor** A person who makes a settlement of property; esp., one who sets up a trust.
- **Testamentary** Pertaining to a will or testament.
- **Trust** A fiduciary relationship regarding property and subjecting the person with title to the property to equitable duties to deal with it for another's benefit.
- **Trustee** One who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.
- **Trust Fund** The property held in trust by a trustee.

The Doctrine of Cy Pres

If a treasurer determines that the designated purpose of a trust fund is no longer feasible, the treasurer should consult with the municipality's legal counsel about invoking the *cy pres* doctrine. Under this doctrine, if a trust's purpose cannot be accomplished because circumstances have changed after the trust was created or for any other reason, a court may alter specific provisions of the trust, so long as the alteration enables attainment of the general objective of the person who created it.

Administration of Trust Funds

The General Laws of Massachusetts include a number of provisions governing the administration of trust funds and assigning administrative responsibility to several parties. For example:

Board of Commissioners of Trust Funds

“Any city or town, except Boston, may create a board of commissioners of trust funds, consisting of three persons who shall have the management of all trust funds given or bequeathed for the benefit of the town or the inhabitants thereof, unless the donor in making the gift or bequest shall otherwise provide. In cities the commissioners shall be appointed by the mayor and confirmed by the council. In

towns they shall be elected in the same manner as other town officers.” (41:45)

“The said board of commissioners shall, so far as consistent with the terms of the trusts, manage and control the same, and distribute the income in accordance with the terms of the respective trusts. The board shall keep a record of its doings, and at the close of each financial year shall make a report to the town, showing the total amount of the funds, and their investments, receipts and disbursements on account of the same, setting forth in detail the sources of the receipts and the purposes of the expenditures.” (41:47)

When a town has more than 5,000 residents and has not created a board of commissioners of trust funds, authority over trust funds rests with the town meeting.

The Board of Selectmen as Trust Fund Commissioners

“If a town having less than five thousand inhabitants votes to accept this section, the board of selectmen of such town shall thereafter have all the powers and duties of commissioners of trust funds, as provided in sections forty-five and forty-seven, until such time as the number of inhabitants of said town shall exceed five thousand.” (41:45A)

Role of the Treasurer

“The town treasurer shall be the custodian of all funds and securities of such trust funds, shall invest and reinvest them and expend therefrom monies as directed by the commissioners. The treasurer shall furnish a bond satisfactory to them for the faithful performance of his duties.” (41:46)

The treasurer's bond “shall cover the duties of the treasurer with respect to trust funds...which are in his custody by virtue of his office, and any such funds, for the purposes of said bond, shall be deemed to be public funds.” (41:35)

The Treasurer and the Trust Fund Commissioners

Although the treasurer is the “custodian” of trust funds (41:46), the treasurer must “invest and reinvest them *as directed by the [trust fund] commissioners.*” (Emphasis supplied.) Notwithstanding, Ch. 44 §54 sets out rules and provisions controlling the investment of trust funds. The treasurer should advise the commissioners about the requirements of this statute and should timely notify them of any investment instruction which would contravene it. The treasurer should always be willing to share his or her financial expertise with the trust fund commissioners.

Cemetery Commissioners and Perpetual Care Funds

A town with cemetery commissioners may receive gifts for maintenance of cemeteries and cemetery lots. These gifts must be turned over to the treasurer and maintained in a “perpetual care fund,” separate from other accounts of the town. The treasurer must invest perpetual care monies in accordance with the specific instructions of the donors. If the donors gave no investment instructions, the treasurer must invest the monies as directed by the cemetery commissioners. (114:25)

Library Trustees and Gifts to Libraries

A town that appropriates money for the support of a free public library must elect a board of library trustees. (78:10) The library trustees may accept gifts of money and property for the library's use. Such monies must be turned over to the treasurer for deposit in a separate account. These monies must be administered by the library trustees "in accordance with the provisions of [the] gift...." (78:11)

Municipal Trust Funds when the Principal is not in the Custody of the Community

If a gift of money is made, not to a municipality, but to some person or entity in trust for the benefit of the municipality, the municipality may accept the gift, pursuant to its terms, and use the proceeds for the intended purpose(s).

Investment of Trust Funds in the Custody of the Treasurer

Unless otherwise provided or directed by the donor, trust funds must (a) be placed at interest in savings banks or trust companies, (b) invested in a combined investment fund, such as the Massachusetts Municipal Depository Trust (29:38A), or (c) invested in bonds or notes which are legal investments for savings banks. (44:54) Cities or towns with a fund aggregate in excess of \$250,000 may also invest such funds in securities which are legal for the investment of funds of savings banks, provided that (a) not more than 15% of such trust monies shall be invested in bank or insurance company stocks and (b) not more than 1½% of such monies shall be invested in the stock of any one bank or insurance company.

The Massachusetts Legal List, maintained by the Commissioner of Banks, sets out a list of legal investments for savings banks. (See excerpts from the Massachusetts List of Legal Investments, pages 6-13 through 6-19.)

Many of the banks in Massachusetts provide trust fund investment services. Investment options available range from simple money market accounts to active investment management of stock and bond portfolios consisting of Legal List investments. (See sample investment schedule, pages 6-20 through 6-23.)

Trust fund earnings may only be expended in strict compliance with the terms of the respective trusts. Accordingly, the costs for banking services associated with the investment of any particular trust fund may only be paid from that fund if specifically authorized by the relevant trust instrument.

Suggested Trust Fund Policies

Trust fund commissioners should meet with the local treasurer to draw up a general policy statement that clearly establishes policies and principles for the management, control, and custody of trust funds. Following are example elements of a sound policy statement:

1. All trust funds and gifts shall be held, administered, and invested in accordance

with wills, testaments, or other documents, stating the terms of the respective gifts and bequests.

2. All trust funds and gifts shall be held, administered, and invested in strict accordance with all of the various General Laws governing such funds.
3. A permanent file shall be established and maintained which contains copies of all wills and other documents that elucidate the terms of any gift made to the municipality or trust established for the municipality's benefit.
4. Original stock and bond certificates shall be kept in a safe deposit box.
5. Trust funds and gift monies may be pooled for the purpose of investment, so long as the principal, interest, and expenditures are clearly accounted for separately.
6. Unless otherwise specified by the donor, all income received should be segregated in a separate income account on a regular basis. If so provided in the trust instrument, earned interest shall be added to, and become part of, the income available for appropriation or expenditure.
7. Trust fund commissioners shall review investments at least annually and report to the treasurer, in writing, any changes involving reinvestment of funds. When possible under the terms of relevant wills, the treasurer shall combine and consolidate principal sums and income received for like purposes.
8. A report of gift and trust funds shall be prepared annually. The report shall: (a) contain a summary of all funds, (b) identify the type of each investment, and (c) include a schedule of balances and income. This schedule should state the balances forward and break down (a) all bequests and gifts received, (b) all transfers and expenditures made, and (c) all balances at the end of the period for which the report is made. (See sample Trust Fund Reports, pages 6-24 & 6-25.)
9. The treasurer shall apprise trust fund commissioners of changes in the general laws relating to trust funds. The treasurer shall also make sure that trust funds have been properly accepted.

Special Permanent Funds

Ch. 44 §53 prescribes that, unless otherwise provided by some general law or special act, all monies received by the treasurer must be deposited in the general fund and not subsequently expended without further appropriation. Gift and trust funds, as well as cemetery and library funds, discussed above, may be deposited in separate accounts and expended without appropriation since specific, general laws, so provide. (See citations above.) The following list enumerates and discusses some of the additional, special, permanent funds expressly permitted by Massachusetts law. The treasurer is the custodian of these funds, which must be accounted for separately by the accounting officer. The treasurer may invest these special funds in combination with trust funds, so long as the governing statute expressly permits.

Stabilization Fund

For the purpose of stabilizing its tax rate, a municipality, by the majority vote of its appropriating authority, may vote monies into a stabilization fund. Any year's

appropriation may not exceed 10% of the previous year's levy, unless the Emergency Finance Board approves a larger amount. The aggregate amount in the fund at any time may not exceed 10% of the equalized valuation of the city or town. All interest earned on fund monies becomes part of the fund. The treasurer, as custodian, may invest fund monies in "savings banks, co-operative banks or trust companies organized under [Massachusetts law], or invest the [monies] in such securities as are legal for the investment of funds of savings banks under the laws of the commonwealth or in federal savings and loan associations situated in the commonwealth." Ch. 40 §5B, which authorizes stabilization funds, does not expressly allow fund monies to be deposited into the Massachusetts Municipal Depository Trust; however, the legislation establishing the MMDT (29:38A) was drafted sufficiently broadly to permit investment of stabilization funds into the trust.

Pension Reserve Fund

In order to offset the anticipated future cost of funding the contributory retirement systems, municipalities may appropriate monies into a pension reserve fund. Any year's appropriation may not exceed 5% of the previous year's levy, and the aggregate amount in the fund at any time may not exceed 5% of the equalized valuation of the city or town. All interest earned on fund monies becomes part of the fund. The treasurer, as custodian, may invest fund monies "in national banks or invest the proceeds by deposit in savings banks, cooperative banks or trust companies organized under the laws of the commonwealth, or invest the same in such securities as are legal for the investment of funds of savings banks under the laws of the commonwealth or in federal savings and loan associations situated in the commonwealth or may participate in the PRIT Fund in accordance with Ch. 32 §22 (8)." (40:5D)

Unemployment Compensation Fund

To provide for the anticipated costs of funding reimbursements to the Commonwealth for unemployment compensation benefits under the provisions of Chapter 151A, municipalities may appropriate monies into an unemployment compensation reserve fund. Any year's appropriation may not one tenth of 1% of the equalized valuation of the city or town, and the aggregate amount in the fund at any time may not exceed 1% of that equalized valuation. All interest earned on fund monies becomes part of the fund. The treasurer, as custodian, "may deposit or invest fund monies in such manner as may be legal for other city, town or district funds under the laws of the commonwealth including, without limitation, the Massachusetts Municipal Depository Trust." (40:5E)

Scholarship Fund or Education Fund

Municipalities, through acceptance of Ch. 60 §3C, may establish a scholarship fund to provide educational financial aid to deserving city and town residents and to establish a local educational fund to provide supplemental educational funding for local educational needs or to provide funding for existing adult literacy programs. Communities establishing such funds may designate a place on their property tax bills and/or motor vehicle excise bills, or upon a separate form enclosed with those bills, whereby the taxpayers can voluntarily check off, donate and pledge an amount

to be deposited into the scholarship fund and/or education fund. Donations increase the overall amount due. The treasurer, as custodian, must invest such funds at the direction of the board of commissioners of trust funds or other trust fund authority. All interest earned on fund monies becomes part of the fund. The scholarship committee or education fund committee, established under the act, shall select the recipients of and amounts of financial aid from the scholarship fund and educational fund. The scholarship committee may distribute monies from both the interest and principal of the fund, without further appropriation, and must notify the treasurer, at least annually, of the amount that will be authorized for distribution in order that the monies may be made available in a timely manner. (60:3C)

Elderly and Disabled Taxation Fund

Municipalities, through acceptance of Ch. 60 §3D, may establish an elderly and disabled taxation fund to defray the real estate taxes of elderly and disabled persons of low income. Communities establishing such funds may designate a place on their property tax bills and/or motor vehicle excise bills, or upon a separate form enclosed with those bills, whereby the taxpayers can voluntarily check off, donate and pledge an amount to be deposited into the elderly and disabled taxation fund. Donations increase the overall amount due. The treasurer, as custodian, must invest such funds at the direction of the board of commissioners of trust funds or other trust fund authority. All interest earned on fund monies becomes part of the fund. The taxation aid committee, established under the act, must adopt rules and regulations to carry out the provisions of the act and to identify the recipients of aid from the fund. The fund, together with accrued interest, may be expended without further appropriation.

Law Enforcement Trust Fund

Proceeds from the sale of property seized from illegal drug-related activities may be deposited to a Law Enforcement Trust Fund and expended to defray certain qualified law enforcement costs as outlined in Ch. 94C §47. The police chief may authorize expenditures without further appropriation.

Other Special Permanent Funds:

- Ambulance receipts reserved fund (40:5F)
- Beach & pool receipts reserved fund (40:5F)
- Bond proceeds fund (44:20)
- Certain insurance proceeds fund (up to \$20,000) (44:53)
- Conservation fund (40:8C)
- County dog fund (140:147A,172)
- Golf course receipts reserved fund (40:5F)
- Health claims trust fund (32B:3A)
- Highway & water pollution grants fund (44:53)
- Law enforcement trust fund (94c:47)

- Lost books/industrial arts supplies fund (44:53)
- Municipal buildings trust fund (40:13)
- Off-street parking receipts fund (40:22B,22C)
- Parking meter fees fund (40:22A)
- Recycling commission fund (40:8H)
- Sale of real estate fund (44:63)
- Skating rink receipts reserved fund (40:5F)
- Waterways improvement fund (40:5G & (60B:2(i)))
- Weights & measures violations civil citations fund (98:29A)
- Wetlands protection fund (131:40)
- Workmen's compensation insurance fund (40:13A)

Accounting for Trust Funds

Treasurers should carefully examine the terms of each gift given in trust to the municipality. They should also thoughtfully study all legislative acts whereby the municipality establishes a trust fund or funds. Such preparation will assist treasurers to make only proper expenditures from trust funds.

In addition, treasurers should diligently maintain reliable records of all monies received as trust property. When acquiring trust funds, the treasurer should record them as a receipt in the cash book. To provide an adequate audit trail of trust fund disbursements, the treasurer should process them by warrant. Upon purchasing securities with trust funds, the treasurer should record the transaction as a payment, entering the purchase by number, name, type, rate, maturity and par value. When depositing trust monies into a savings account, the treasurer should record the account number with the payment notation. Treasurers' trust fund records should include a subsidiary ledger that documents all income and expense information about each trust fund, separately. The records should clearly identify expendable and non-expendable monies within each trust fund. The treasurer should timely report all interest earned on trust funds to the accounting officer upon receiving notice of the amount of that interest. If the account has a permanent dividend order, the treasurer should record the amount of the accrued interest when notified by the bank. Finally, the treasurer should regularly reconcile all trust fund records with the accounting officer.

FEDERAL AND STATE GRANTS

The federal and state governments give monetary assistance to cities and towns through numerous grant programs. Two particularly well known examples include Community Development Block Grants and Chapter 90 Highway Grants. The Commonwealth distributes monies to cities and towns for transportation purposes through the Chapter 90 grant program, funded by the Legislature with the enactment of transportation bond bills. The federal government distributes Community Development Block Grants to promote the development of viable urban communities

within the commonwealth, pursuant to sections 300, *et seq.*, of the Omnibus Budget Reconciliation Act of 1981.

Accounting for Grants

Upon a municipality's receiving a grant, its finance officials should obtain a copy of the grant document and familiarize themselves with its accounting and financial reporting requirements. Subsequently, they must set up whatever bank accounts and subsidiary records that are mandated by grant agreement.

In administering a grant, the finance officers must maintain the necessary accounting and fiscal records to properly record the receipt, expenditure, and current balances of the funds received from the grantor. Upon the culmination of the grant program or activity, they should maintain records showing the ultimate disposition of all grant monies.

Treasurers, in their role as custodians of all funds, including grants, should pay particular attention to depository and investment requirements. Grant agreements generally include a requirement to maintain a separate accounting for the grant program. In order for the treasurer to pool grant monies for investment purposes, the accounting officer must maintain a separate accounting of those monies. If so required by a grant agreement, the treasurer must segregate grant monies, depositing them into separate checking accounts.

Interest earned on grant funds stays with and becomes part of the grant only if expressly specified in the grant agreement. Otherwise, these monies must be deposited into the municipality's general fund.

Overall, grantees must be vigilant in complying with all grant provisions and in documenting their compliance. Otherwise, upon a final audit, the municipality might be required to rebate misapplied or unsubstantiated amounts.

REVOLVING ACCOUNTS

The General Laws also permit cities and towns to establish revolving accounts, whereby revenues from a specific service are deposited into the account and subsequently expended, without appropriation, to support the particular service.

The Departmental Receipts Revolving Fund, authorized by Ch. 44 §53E½, constitutes a sort of hybrid revolving fund, because the appropriating authority retains some control over spending purposes and levels. The legislation stipulates that each departmental revolving fund must be re-authorized each year at annual town meeting or by city council action and that a limit on the total amount that may be spent from each fund must be established at that time. The aggregate of all revolving funds may not exceed 10% of the amount raised by taxation by the city or town in the most recent fiscal year, and no more than 1% of the amount raised by taxation may be administered by a single fund. Wages or salaries for full-time employees may be paid from the revolving fund only if the fund is also charged for all associated fringe benefits.

Massachusetts law permits a variety of other, particular revolving funds for specific, municipal programs. The more general departmental revolving fund may be implemented in addition to or in conjunction with these other statutory revolving funds, provided that the departmental revolving fund does not conflict with provisions of the other revolving funds. Examples of existing, statutory revolving funds include:

- Adult/continuing ed./school property revolving fund (71:71E)
- Arts lottery council money revolving fund (10:58)
- Community school programs revolving fund (71:71C)
- Culinary arts program revolving fund (71:17A)
- METCO reimbursement revolving fund (71B:12,12A)
- Non-resident students' tuition revolving fund (71:71F)
- Off duty or special work detail revolving fund (44:53C)
- Overlay account revolving fund (59:25,70A)
- Parks and recreation revolving fund (44:53D)
- Performance bond forfeitures revolving fund (41:81U)
- Police special details revolving fund (44:53C)
- Reimbursement conservation land debt revolving fund (132A:11)
- School athletic fund revolving fund (71:47)
- School day-care receipts revolving fund (71:26C)
- School E&D revolving fund (70:11)
- School lunch fund revolving fund (548 of Acts of 1948)^[3]
- School rental receipts revolving fund (40:3)
- Tuition for state wards revolving fund (76:12B)
- Vocational ed. program receipts revolving fund (74:14bB)
- Zoning/planning board consultants revolving fund (44:53G)

[\[1\]](#) For the purposes of Ch. 40, Section 1 of that chapter states, “Except as otherwise expressly provided, cities shall have all the powers of towns and such additional powers as are granted to them by their charters or by general or special law, and all laws relative to towns shall apply to cities.”

[\[2\]](#) *Ibid.*

[\[3\]](#) As amended

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