



December 10, 2001

John J. Welch, Ed.D. Superintendent
63 Chestnut St.
Ludlow, MA 01056

Re: Payment of Prior Year's Bills
Our File No.2001-772

Dear Dr. Welch:

This is in reply to your letter concerning the payment of a bill of a prior fiscal year (FY2000) for which there was a sufficient appropriation balance, but which the town did not encumber. An upcoming town meeting to consider unpaid bills of prior fiscal years will decide how to fund this account as well as other unpaid bills. You asked whether the town accountant could refuse to pay the bill if the school department had sent her notice to encumber it, and whether the town could transfer from the school department's fiscal 2002 budget to fund the payment.

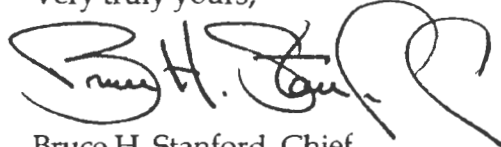
Under education reform (G.L. Ch.70 §11), an unspent balance up to 5% of a school budget is automatically encumbered to the extent by which the school district has fallen short of its minimum spending obligations under Ch.70. More generally, where a town has failed to encumber funds against the balance of a departmental appropriation for an outstanding contract or purchase order, it can correct the oversight only so long as it has not certified its free cash. Once its free cash is certified, a town cannot go back and create the encumbrance that it should have made, because the unspent balance of the appropriation has become part of its free cash. If it then established and paid the prior year's bill from an encumbrance, it would in effect be spending the same money twice. In terms of what a town must do in order to pay a prior year's bill for which there is no encumbrance, it does not matter whether the department or the town accountant was responsible for the failure properly to encumber the funds.

Where there was a sufficient appropriation balance to pay for the goods or services for which the contract was made when the department entered into the contract, the subsequent failure to encumber the appropriation would not be a defense to the vendor's right to payment. The liability would still be an enforceable obligation of the town. If the vendor sued and got a court judgment against the town, the amount of the judgment could be raised without appropriation and included in the tax rate (G.L. Ch.59 §23). It is of course obviously not in the town's interest to require a vendor with a clearly legitimate claim to sue the town in order to get paid. But if there is no encumbrance for a bill that belongs to a prior fiscal year, the town needs to appropriate money to create a funding source to which the bill can be charged. The appropriation requires only a majority vote, since there was originally a sufficient appropriation for the contract. See G.L. Ch44 §64, which requires a special town meeting to appropriate by a nine-tenths vote to pay a prior year's bill for which there was not a sufficient appropriation.

How to fund such an appropriation is up to the special town meeting. It can transfer from a departmental operating budget, including the school department's budget, from an available fund, or raise the money in the levy, provided the tax rate has not been set and it can accommodate the appropriation within its Proposition 2½ levy limit.

Please do not hesitate to contact us again if we may be of further assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bruce H. Stanford". The signature is stylized with large, flowing loops and a prominent "B" at the beginning.

Bruce H. Stanford, Chief
Property Tax Bureau

Copy: Mary Ann Harris
Town Accountant