



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
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TOWN OF SOUTH HADLEY
GENERAL OFFICE

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August 14, 2019

Carlene Hamlin, Town Clerk
Town of South Hadley
116 Main Street
South Hadley, MA 01075

Re: **South Hadley Annual Town Meeting of May 8, 2019 -- Case # 9445**
Warrant Articles # 23 and 26 (Zoning)
Warrant Articles # 7, 9, 12, 14, 15, 17, 18 and 22 (General)

Dear Ms. Hamlin:

Articles 7, 12, 14, 15, 17, 18, 22, and 26 - We approve Articles 7, 12, 14, 15, 17, 18, 22 and 26 from the May 8, 2019 South Hadley Annual Town Meeting. Our comments regarding Articles 7 and 12 are provided below.

Article 23 - The Attorney General’s deadline for a decision on Article 23 is extended for an additional 60 days under the authority conferred by G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000. The agreement with Town Counsel for a 60-day extension is attached hereto. We will issue our decision on Article 23 on or before **October 25, 2019**.

Article 9 - We take no action on Article 9 because it is a vote to accept the provisions of G.L. c. 44, § 53F ¾, to establish a special revenue fund known as the PEG Access and Cable Related Fund. Votes to accept statutes are not by-law amendments and are not subject to review and approval by the Attorney General pursuant to G.L. c. 40, § 32. However, we note that such votes to accept statutes need to be filed with the Secretary of State pursuant to G.L. c. 4, § 5. Also, the Department of Revenue/Division of Local Services, requests that such votes be filed with that Office. The Town should consult with Town Counsel with any questions.

Article 7 - Article 7 amends the general by-laws to add a new, unnumbered Section, “Revolving Funds.” General Laws Chapter 44, Section 53E ½, requires revolving funds to be established by by-law. Section 53E ½ authorizes municipalities to establish revolving funds for “any fees, charges or other receipts from the departmental programs or activities supported by the revolving fund,” to be accounted for separately from other monies in the town, and authorizes expenditures from such fund without further appropriation, subject to the provisions of Section 53E ½. According to the Department of Revenue/Division of Local Services (DOR/DLS), the purpose of a departmental revolving fund is to enable the department to separately account for money received from a specific program or activity and to make expenditures from that separate account for that specific program or activity.

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

The DOR/DLS has published several informational guidelines to provide information regarding municipal revenues and special funds. In particular, DOR/DLS has published Bulletin 2017-01B, “Authorization of Departmental Revolving Funds and Model By-law/Ordinance:” [<http://www.mass.gov/dor/docs/dls/publ/bull/2017/2017-01b.pdf>] and an “Overview of Statutory Treatment of Municipal Revenues:” [<https://www.mass.gov/files/documents/2017/09/09/stattreatmurevenues.pdf>].

We approve the by-law adopted under Article 7. However, the Town should ensure that receipts designated for each revolving fund are not already reserved under other funds or statutes, and are properly included in the designated revolving fund, and consult with Town Counsel with any questions. In addition, the Town should ensure that any deposits into a revolving fund are properly from “fees, charges or other receipts” associated with a specific departmental program or activity and that the funds are expended in connection with that specific program or activity, not for the general use of the department, and consult with Town Counsel with any questions.

In addition, we offer comments on the Buttery Brook Park revolving fund. The Buttery Brook Park fund states that receipts from gifts and donations will be deposited into the revolving fund. However, it is unclear whether the “donations” referred to are actually a fee for programs and services, or if the donations are a true gift. General Laws Chapter 44, Section 53A, pertains to the acceptance and expenditure of grants and gifts, and requires:

An officer or department of any...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 towns with the approval of the board of selectmen...

Further, Section 53A provides that “[n]otwithstanding 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.” The Town should ensure that any donations deposited in the Buttery Brook Park revolving fund comply with the requirements of G.L. c. 44, § 53A and § 53E ½, and consult with Town Counsel with any questions.

Article 12 - Article 12 amends the general by-laws, Section 18-5, "Elected Officers", subsection 4, pertaining to the Board of Health, by striking "three (3)" and inserting "five (5)" so that as amended, Section 18-5 (A)(4) provides: "The officers of the Town elected by the voters shall be: Five (5) members of the Board of Health, each elected for three years." We approve this amendment. General Laws Chapter 41, Section 1, authorizes a Town to elect "Three or more members of the board of health for the term of one or more years if the town provides for such board." However, the Town should ensure that it also complies with G.L. c. 41, § 2, which sets forth the process for increasing the membership of an elected board, and provides in relevant part as follows (with emphasis added):

Where the town elects a new board or officer to perform the duties of an existing board or officer, the office of such existing board or officer shall terminate upon the qualification of the new board or officer. Where official ballots are used, the establishment of a new board or office, or the fixing of the term of office of town officers where such term is optional, or the increase or reduction of the number of members of a board, shall be determined at a meeting held at least sixty days before the annual town election. In towns not using official ballots the matter may be determined by vote at the annual meeting. Such vote shall continue in effect until rescinded. If a town votes to increase the number of members of any board, such increase shall be made by adding one or more to each class, to hold office according to the tenure of the class to which they are severally chosen, as will within three years effect it, and such vote to increase shall remain in force until the increase under it is accomplished.

The Town should consult with Town Counsel with any questions regarding the process of increasing the membership of the elected Board of Health from three members to five members.

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

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

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cc: Town Counsel Lisa Mead