

Agenda

#4



February 26, 2004

William L. Ryan, Superintendent  
Acton Boxborough Regional School District  
16 Charter Road  
Acton, MA 01720

Walter M. Foster III, Chairman  
Acton Board of Selectmen  
472 Main Street  
Acton, MA 01720

Donald R. Wheeler, Chairman  
Boxborough Board of Selectmen  
29 Middle Road  
Boxborough, MA 01719

Don + Bill  
have called a  
meeting with Town +  
School Counsel for  
Monday to discuss  
this ltr.

Gentlemen and School Committee and Board Members:

I am replying to your inquiry relative to premiums received in April 2003 on the sale of notes for school construction. We understand that the notes were payable in fiscal years 2004 and 2005.

As you have recited, the premium net of costs of issuance was approximately \$997,000. The District's budget for FY04 applied one-half of the premium to reduce the capital assessment to the towns. Since each town had voted a debt exclusion for the construction project, the reduced assessment had the effect of reducing the amount added to the levy limit to the net interest cost of the notes, as set forth in our *Bulletin* 2003-11B dated May 28, 2003. The balance of the premium remains on the District's balance sheet.

Subsequently, Chapter 46 of the Acts of 2003 (the "Municipal Relief Act") was enacted and approved on July 31, 2003. Section 33 codified the substance of the *Bulletin*, but provided that the additions to the levy limit were "Effective with the fiscal year 2005 tax rate approval process..."

The District and the Towns propose that since one-half of the premium was used to reduce the capital assessment in FY04, "one year earlier than called for by the Municipal Relief Act," the District "use the balance of the premium in the current fiscal

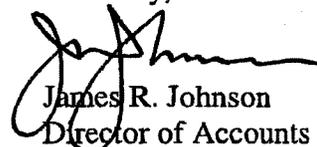
year." I understand this to mean use in the FY04 operating budget. The proposal concludes by requesting that "...the Department [of Revenue] will not require the Member Towns to offset their respective shares of the excluded debt service on account of the Notes in fiscal 2005 by the application of one-half of the Premium." I understand this to mean that the capital assessment will be based on the gross amount of the interest due in FY05, and that this gross amount would be used by the towns to add to the levy limit in the FY05 tax rate approval process.

I am unable to approve the request. The administration of the municipal finance law has consistently treated the tax levy and the levy limit for each fiscal year as a separate matter. The actions taken by the towns in submitting the tax rate recapitulation for FY04 reflected the information available at the time. I do understand that a town preparing its tax rate recapitulation and its debt exclusion form DE-1 based on its own debt service obligations and not on capital assessments from a regional school district could have elected to remove the reduction of the increase to the levy limit relative to the note premiums following enactment of the Municipal Relief Act prior to submission of the tax rate recapitulation. However, I conclude that this result is one among many effects of a town being a member of a regional school district, and not sufficient to alter the principle that each fiscal year's tax levy stands on its own.

While I have concerns as to shifting of monies between the operating and capital assessments, my principal concern remains that the proposal would not comply with the provisions of General Laws Chapter 44 §20 added by Chapter 46 §33 of the Acts of 2003, which states: "Effective with the fiscal year 2005 tax rate approval process, additions to the levy limit for a debt exclusion are restricted to the true interest cost incurred to finance the excluded project. Premiums received at the time of sale shall be offset against the stated interest cost in computing the debt exclusion."

At the same time, I call to your attention that the District's balance sheet as of June 30, 2003 discloses that the District has retained investment income on two school construction projects of \$609,556. We feel that there is no provision in G. L. Chapter 44 or Chapter 71 to maintain such balances; investment income should close to fund balance at the end of each fiscal year. Accordingly, we will likely certify the so-called "excess and deficiency" balance of the District at an amount in excess of the five percent threshold contained in G. L. Chapter 71 §16B ½, which would necessitate the District using at least a portion of the E&D fund in computing the FY05 operating assessments. We are prepared to make this certification shortly, but would entertain discussion of alternative disposition of the prior year investment income.

Sincerely,

  
James R. Johnson  
Director of Accounts

✓ copy: Richard A. Manley, Esquire