



August 7, 2009

John J. Sanguinet
Interim Town Administrator
Town of Wareham
54 Marion Road
Wareham, MA 02571

Re: Health Trust Funds – Self Insured Communities
Our File No. 2009-943

Dear Mr. Sanguinet:

You have asked whether the town's FY2009 decision not to fund the full 75% share of its health insurance contribution was a permitted practice given that the health insurance trust fund had more than sufficient funds to cover claims. We understand the town was using the saved funds to avoid layoffs. The covered employees continued to pay their 25% of costs into the trust fund.

The municipal group insurance claims trust fund is authorized in Massachusetts General Laws Chapter 32B, §3A, which provides in pertinent part:

A ... town ..., when providing ... health care coverage as authorized by this chapter, and subject to the adequacy of a claims trust fund as hereinafter described, may, in lieu of or in addition to entering into the insurance policies, agreements, or contracts described in this chapter, enter into an administrative services ... contract ... to organize, arrange, or provide for the delivery or payment of health care coverage or services, whereby the funds for the payment of claims of eligible persons, including appropriate service charges of the insurance carrier, third party administrator or other intermediary, shall be furnished by the respective subdivision from the claims trust fund for the payment by such intermediary to the health care vendors or persons entitled to such payment in accordance with the terms and provisions of said contract. ...

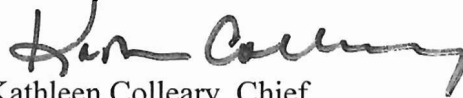
Funds made available by appropriations by the ... town ... for purposes of this chapter on the basis of the contributory share of the subdivision as set forth and applicable therein shall, upon authorization by the subdivision, be transferred from said appropriation account by the treasurer and shall be deposited from time to time by the treasurer in a separate fund to be known as the claims trust fund. ... The treasurer shall take measures that will assure a sufficient balance at all times in said fund to make prompt payment for incurred and unpaid claims and other related liabilities. The subdivision insofar as practicable shall prepare annually or sooner a schedule for the treasurer which shall be an estimate of the amounts of anticipated monthly disbursements to be made from said fund and shall as frequently as necessary authorize disbursements therefrom in accordance with the terms and conditions of the contracts authorized by this section.

Where an annual or earlier accounting of administrative service charges, claims paid, and claims incurred and unpaid, under a contract authorized by this section to the subdivision, discloses that payment from the fund has resulted in the contributions of the subdivision and its employees and retirees toward a previously established total monthly premium or rate has been shared on a ratio inconsistent with the share of the contributions as provided from time to time by applicable sections of this chapter, the subdivision shall adjust future contributions toward the total monthly premium or rate to compensate for the inconsistency. Payment to the subdivision by the employees, retirees and surviving spouses of their contribution toward the total monthly premium or rate shall be to the extent and manner as required in the applicable sections of this chapter. ... (emphasis added)

Although the statute does not specifically state that employee contributions be deposited in the Section 3A trust fund, GL c. 32B, §§7 & 7A require that the town withhold from each covered employee's pay the employee's contribution to health insurance, and pay the deductions along with the town's share to the insurance carrier as their respective shares of premium. Since the town self-insures, it is acting as its own carrier, and we believe it must also deposit employee contributions to the group insurance claims trust fund as well as its share, albeit maintaining an accounting of the contributions made by both. We have interpreted GL c. 32B, §3A as requiring that the town contribute a specific percentage of the previously determined premium or rate amount, at least by year end. During the year the amount of the town's appropriation for health insurance needed in the trust fund as a cushion to cover estimated and known claims from time to time is considered within the sound discretion of the treasurer to determine. If the fund grows too large, a premium holiday or reduction may be employed. If the fund becomes deficient, premium increases may be required, along with additional town appropriations to cover them, if necessary, to assure that the town/employee ratio of contributions remains as previously agreed or determined.

We hope this addresses your concerns.

Very truly yours,



Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC/gab