

MURTHA CULLINA LLP

ATTORNEYS AT LAW

CITYPLACE 1
185 ASYLUM STREET
HARTFORD, CONNECTICUT 06103-3469TELEPHONE (860) 240-6000
FACSIMILE (860) 240-6150
www.murthahlaw.comDWIGHT A. JOHNSON
(860) 240-6024
DJOHNSON@MURTHALAW.COM

June 14, 2004

Thomas F. Harrison, Esq.
Chairman, Board of Finance
Town of Avon
60 West Main Street
Avon, CT 06001

Re: Responses to Questions of Mr. Vir Santos

Dear Mr. Harrison:

You have asked me to respond to three questions raised by Mr. Vir Santos in his e-mail of June 8, 2004 to you and other members of the Avon Board of Finance. Although Mr. Santos raises some interesting issues in his e-mail, I believe that he misinterprets Connecticut law as to the flexibility accorded to the State's municipalities in developing their budgets.

Mr. Santos's questions and my responses are as follows:

Question 1

Where does the Town derive its (statutory) authority to exclude certain items of revenue from the annual budget? This question is in reference to the BOE Special Program Fund and the increase in Conveyance Fees.

Answer

As the Connecticut Supreme Court said in a leading case in 1979, a municipal taxing authority "has considerable discretion in the composition of the municipal budget." Caulfield v. Noble, 178 Conn. 81, 94 (1979). This reflects both the effect of Connecticut's Home Rule Act, General Statutes Sections 7-187 - 7-201, and the practicalities of putting together a municipal budget.

With respect to the former, when enacted in 1957, the Home Rule Act significantly increased the powers of chartered municipalities by, among other things, granting them the

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power: "To manage, regulate and control the finances and property, real and personal, of the town, city or borough. . . ." General Statutes Section 7-194. This general grant of authority was in addition to the extensive list of more specific powers already contained in the statutes. See, for example, General Statutes Section 7-148.

With respect to the practicalities of budget development, it must be recognized that budgets are composed of estimates of revenues that will be received and expenses that will be incurred in the future. Necessarily there is uncertainty associated with the process, and that uncertainty increases with the length of the period between the preparation of a budget and its submission to a town's voters. In the case of Avon, Section 9.1.1(b) of the Town Charter requires each office and agency of the Town, including the Board of Education, to submit its proposed expenditure requests and anticipated revenues (other than tax revenues) no later than February 15 of the calendar year, for a budget to take effect on July 1 of that year.

Between those submissions on February 15 and the start of the new budget year on July 1, substantial changes can take place in projected revenues and expenses; for example, the State may enact legislation that provides additional funding to municipalities, projected tax receipts may increase or decline as the economy changes, and projected expenditures may fluctuate dramatically as union contracts are negotiated or insurance premiums are modified. Budgeting authorities must make decisions as the budget-making process advances as to what, if any, adjustments should be made based on new information that becomes available. They must do so, moreover, while recognizing that they cannot as a practical matter revisit each of the hundreds of revenue and expense line items making up the budget that are based on estimates made prior to February 15.

Because of these and other considerations, it appears to be within the discretion of the Board of Finance not to adjust its proposed budget for 2004-05 to reflect changes in real estate conveyance fees authorized by the General Assembly in May of this year, even if that decision may result in revenues that are more than needed to support projected expenses. As the Connecticut Supreme Court said in Caulfield v. Noble, 178 Conn. at 95:

. . . the mere fact that in setting the amount to be levied by taxation, the Town has levied an amount greater than its actual requirement, does not allow a taxpayer to challenge the mill rate, unless the amount levied is grossly excessive so as to show an improper purpose in making the levy.

Mr. Santos's question with respect to the Special Program Fund of the Board of Education raises accounting issues that I am not qualified to address. I agree with his general position that projected revenues and expenditures associated with the Special Program Fund for the coming year should be reflected in the Board of Education's portion of the Town budget

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submitted to the voters. However, I cannot comment on the extent to which the items of revenue and expense associated with the Fund are properly reflected in the proposed budget.

Question 2

When the Town ends up with a surplus of revenues at the end of the year, where does the Town derive its authority to transfer unexpended cash balances into a surplus account? Neither the Town's Charter nor the General Statutes (based on a layman's research and interpretation) contain any provision for the disposition of surplus funds at the end of the year.

Answer

The allocation of funds to surplus accounts is another area in which municipalities have substantial discretion. Mr. Santos argues that Connecticut municipalities do not have statutory authority to transfer end-of-year surpluses into a surplus account, citing Section 7-344 of the General Statutes and a 1942 decision of a Connecticut Superior Court. Holmes v. Beckwith, 11 Conn. Supp. 215 (1942).

Mr. Santos is correct that the 1942 lower court decision did conclude that the predecessor to Section 7-344 required that any available surplus at the end of a municipality's fiscal year be used by the municipality to reduce taxes imposed for the following year. However, that decision, and its reading of Section 7-344, is now of questionable validity in light of the Supreme Court's 1979 decision in Caulfield v. Noble. In the latter decision, the Supreme Court ruled that the Town of New Canaan's board of finance acted properly under its charter "in withholding the fiscal 1976 revenue surplus and in not applying it to reduce the amount of estimated expenditures for fiscal 1977." Caulfield at 94 (footnote omitted).

The Supreme Court based its ruling upon Connecticut's Home Rule Act, which did not exist in 1942, noting the substantial budgeting discretion that the Home Rule Act provided to municipalities. In addition, the Supreme Court specifically questioned the 1942 Superior Court's conclusion that Section 7-344 required boards of finance to utilize surplus funds from a prior fiscal year to reduce taxes in a subsequent year. Although not needing to base its decision on its reading of Section 7-344, the Supreme Court questioned the Superior Court's 1942 interpretation of the statute, stating instead that by use of the word "may", the statute "appears to impose only a discretionary duty upon a board to appropriate a surplus of revenue." Caulfield at 92 (emphasis added). In other words, Section 7-344 appears to provide boards of finance with the authority either to take into account or to disregard for budget-making purposes a surplus from a prior year.

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Finally, I note that most, if not all, of the 169 towns in the State of Connecticut maintain surplus funds of the sort maintained by the Town of Avon. I am not aware of a successful challenge to the establishment and maintenance of those funds since 1942.

Question 3

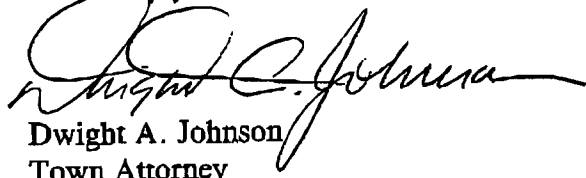
IF in fact (a big IF that depends on the answer to question #2) the Board of Finance (or the Town Council) has no authority to transfer a surplus of revenues into a surplus account, where does the Town derive its authority to withhold accumulated surplus funds from the calculation of the amount of the annual property tax levy?

Answer

In light of my answer to Question 2, this question is moot.

Please feel free to call me if you have any questions or would like to discuss this matter further.

Very truly yours,



Dwight A. Johnson
Town Attorney

c: Richard Hines, Chairman, Town Council
Peggy Roell, Chair, Board of Education