



The Commonwealth of Massachusetts Department of Education

350 Main Street, Malden, Massachusetts 02148-5023

Telephone: (781) 338-3000

October 10, 2006

By Telecopier and Mail

Nicholas A. Fischer, Superintendent
Fall River Public Schools
417 Rock Street.
Fall River, MA 02720

RE: Governance—Authority of School Committee Regarding Gifts

Dear Superintendent Fischer:

This letter responds to your request to provide a written opinion of the Department of Education regarding the authority of school committees over gifts to public schools and school districts. I received from you a copy of the opinion dated August 28, 2006 provided to you by legal counsel for Fall River Public Schools regarding a proposed gift from the Community Foundation of Southeastern Massachusetts ("CFSEMA"). You also provided me a copy of the Letter of Agreement between the Durfee High School Education Enrichment Fund and the CFSEMA and CFSEMA's Fiscal Agent Policy. I have discussed your request with Jeff Wulfson, Associate Commissioner for School Finance; Rhoda E. Schneider, General Counsel; and Bruce A. Assad, legal counsel for Fall River Public Schools. We have also consulted with the Division of Local Services at the Department of Revenue regarding some related issues that arise from the Letter of Agreement and the Fiscal Agent Policy.

With respect to the authority of the school committee over gifts, school committees have general authority over funds appropriated and funds received through grants or gifts. G.L. c. 71, § 34, gives general authority over funds "appropriated by the vote of the legislative body of the city or town" to school committees. School committees have the authority "to determine expenditures within the total appropriation." G.L. c. 71, § 34.

Similarly, G.L. c. 44, § 53A, requires the "approval of the school committee" for the expenditure of "any grant or gift given for educational purposes." (Emphasis added.) This includes "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" G.L. c. 44, § 53A. The statutes make clear that the

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school committee is authorized to accept monetary gifts and that these funds should be deposited with the municipal treasurer and held in a separate account. While a school committee may delegate some of its authority over grants and gifts to school district officials, the school committee must first consider the issue and decide whether to do so.

Thank you for also forwarding the Letter of Agreement and the Fiscal Agent Policy. It is unclear from these documents whether the Durfee High School Education Enrichment Fund is a private entity. We recommend clarifying the legal status of the Enrichment Fund. In many municipalities, independent non-profit entities have been established for the purpose of raising funds for public schools. These entities are distinct from their associated school districts both legally and operationally.

The legal status of the Enrichment Fund is unclear in the documents provided. Some characteristics of the documents seem to indicate that the Enrichment Fund is a public entity. For instance, nothing in the Letter of Agreement identifies the Enrichment Fund as a legal entity distinct from the school district.¹ Additionally, the superintendent, the district's chief financial officer, the principal, and the vice-principal of the school have signed the Letter of Agreement in their official capacities and on behalf of Fall River Public Schools as opposed to the Enrichment Fund. Further, the Letter of Agreement indicates that the Enrichment Fund was established at the request of Fall River Public Schools.

If the Enrichment Fund is a private entity, donors to the fund may be misled by the role of school officials as officers of the fund into believing that they are making a gift or a grant to the Fall River Public Schools. A gift to the Fall River Public Schools would be in the custody of the city treasurer and spent at the discretion of the school committee.

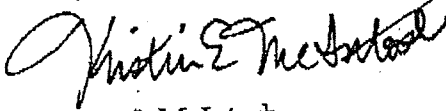
We also recommend that the school district consult with their attorney and the State Ethics Commission as to whether the participation of school district officials as officers of a private fund that benefits the Fall River Public Schools may raise any conflict of interest issues. The State Ethics Commission can be reached at (617) 371-9500. Additional information regarding the State Ethics Commission can be found at <http://www.mass.gov/ethics/Q&A.html>.

¹ Both you and Craig Dutra at CFSEMA orally indicated that the Durfee High School Education Enrichment Fund is part of CFSEMA and is not a public entity or a non-profit operating independently of CFSEMA. Based upon our conversations, it is also my understanding that CFSEMA wishes to make a gift to Fall River Public Schools through its fund, the Durfee High School Education Enrichment Fund, from grant funds that CFSEMA receives.

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I believe this responds to your request. If you need any further information, feel free to contact me at (781) 338-3400.

Very truly yours,



Kristin E. McIntosh
Deputy General Counsel

C: Bruce A. Assad, Esq.
Rhoda E. Schneider, Esq.
Jeff Wulfson, Associate Commissioner
Christopher Hinchey, Esq., DOR