

TOWN OF WAYLAND  
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December 30, 2010

Geoffrey MacDonald  
Business Administrator  
Wayland Public Schools  
41 Cochituate Road  
Wayland, MA 01778

RE: Principal Discretionary Accounts

Dear Geoffrey:

You have sought my opinion concerning the custody and expenditure of funds in the above-referenced accounts. The existence of these accounts was brought to light as a result of a recent defalcation by an employee of the Wayland Public Schools. This letter confirms our recent conversation about this matter.

During the Fiscal Year 2010 Town Audit, it was revealed in an audit finding dated November 7, 2010 that the Principals of the Wayland Public Schools (Wayland High School, Wayland Middle School, Happy Hollow School, Loker School and Claypit Hill School) expend funds in so-called "Principal Discretionary Accounts" for school related purposes. In effect, the funds are gifts from various sources which were donated for the principals' use for expenses related to the school in his/her charge. The funds are expended by the respective Wayland Public Schools Principals, without a town meeting appropriation or approval by the School Committee. They are held in several bank accounts which are not in the custody of the Town Treasurer. The Town's Federal taxpayer identification number is not associated with these accounts. In the aggregate, there was approximately \$102,000. in such accounts as of June 30, 2010.

As a general rule, all funds received by a town department (including the school department), must, upon receipt, be paid into the town treasury. See M.G.L. c. 44, §53. There are certain exceptions to this rule. Discretionary funds to be expended by

public school principals, without a town appropriation or approval by the school committee, are not among the exceptions.

An officer or department (including a school department) of any town, 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 state, a county or municipality or any of their agencies, and in the case of any grant or gift given for educational purposes, may expend donated funds for the purposes of such grant or gift with the approval of the school committee. Notwithstanding the provisions of M.G.L. c. 44, §53, any amounts so received by an officer or department of a town shall be deposited with the treasurer of the town and held as a separate account and may be so expended, without a town meeting appropriation. If the express written terms or conditions of the grant agreement or gift so stipulate, interest on the grant or gift funds may remain with and become a part of the grant or gift account and may be expended as part of the grant by such officer or department receiving the grant or gift, without an appropriation. Any grant, subvention or subsidy for educational purposes received from the federal government may be expended by the school committee of a town, without including the purpose of such expenditure in, or applying such amount to, the annual or any supplemental budget or appropriation request of the school committee. See M.G.L. c. 44, §53A. As gifts for school related purposes, the funds held in the Principal Discretionary Accounts must be accepted, held and expended accordingly.

Therefore, it is my opinion that the funds held in such Principal Discretionary Accounts may not be expended by the principals of the respective schools unless such funds are (1) accepted as a gift or gifts by vote of the Wayland School Committee; (2) approved for expenditure by vote of the Wayland School Committee; and (3) deposited into the town treasury for the establishment of a gift account or accounts to be held in the custody of the Town Treasurer.

Thank you for your attention to this matter.

Very truly yours,

Mark J. Lanza

Mark J. Lanza  
Town Counsel

MJL/ms

cc Frederic E. Turkington, Jr.  
Town Administrator