

**Reading Municipal Light Department (RMLD) Board of Commissioners**  
**Policy Committee Agenda**

**Tuesday, July 17, 2012**

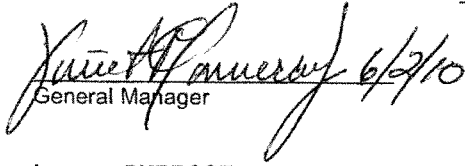
**7:00 p.m.**

**General Manager's Conference Room**

- 1. Call Meeting to Order**
- 2. RMLD Policy Number 19 Board of Commissioners (Attachment)**
- 3. Motion to Adjourn**



**BOARD OF COMMISSIONERS**

  
General Manager

Per Board Vote Date May 24, 2010  
Chairman/Date

**I. PURPOSE**

- A. To establish the role of the RMLD Board and Commissioners.
- B. To establish administrative controls for certain Commissioner activities.
- C. This policy may not be changed unless it is advertised in the local newspapers in the four-town service territory once a week for two consecutive weeks. These newspapers are Reading Daily Times Chronicle, The Wilmington Town Crier, The North Reading Transcript and The Lynnfield Villager. The notice of this change will also be posted in the Town Halls in the four-town service territory. Any changes that involve grammar or minor content needed for clarification need not be advertised.

**II. GOVERNING LAWS**

M.G.L., Chapter 164 and other applicable federal and state statutes and regulations.

**III. RESPONSIBILITIES**

- A. Board Chairman and Vice Chairman:
  - 1. Chairman is responsible for calling regular, emergency, and Executive Session meetings of the RMLD Board as needed.
  - 2. Chairman presides over RMLD Board meetings, approves the agenda and recognizes all speakers, including other Commissioners.
  - 3. Chairman nominates Board members to represent the Commission at appropriate functions, events and meetings. Final decision is by a majority of the Board members. A majority of the Board is at least three of the five members.
  - 4. Chairman nominates Board members to Board Committees. Final appointment is by a majority vote of the Board members.
  - 5. If the Chairman is unable to attend a Board meeting, then the Vice Chairman will serve as the Chairman of the Board Meeting. If the Chairman and Vice Chairman are unable to attend a Board meeting, then the Secretary of the Board will assume the duties of the Chairman and will appoint a Commissioner to serve as Secretary for that meeting.
  - 6. The Board will not address a new issue past 10:45 PM and will end all Board meetings by 11:15 PM.
- B. Board Secretary:
  - 1. Final review of Board minutes.
  - 2. Certifies, as required by law, votes of the Board.
  - 3. Signs, upon direction of a majority of the Board members, power supply contracts and legal settlements on behalf of the Board. Alternatively, the General Manager or any Commissioner may be authorized by a majority vote of the Board to perform this function.

### III. RESPONSILITIES (Continued)

#### C. Commission as a whole, by majority vote:

1. Responsible for approving overall goals, objectives and policy setting for the Department to be discharged by the General Manager within the constraints of M.G.L., Chapter 164 and other applicable federal and state statutes and regulations.

The Commission is elected by the voters of the Town of Reading, accountable to the Town of Reading and responsible to the ratepayers of the entire RMLD service area.

2. Selects the General Manager and establishes the rate and manner of compensation.

The General Manager serves as the equivalent of the Chief Executive Officer and the Chief Operating Officer for the Board with the ultimate authority and responsibility for the operation and the management of the RMLD, under the direction and control of the Commissioners and subject to M.G.L., Chapter 164.

Before the end of the General Manager's contract year, the Board will give the General Manager a written performance appraisal based on the General Manager's performance during the previous fiscal year and adjust the General Manager's salary based on that appraisal. During this process, the Board will set the General Manager's goals and expectations, in writing, for the next fiscal year, upon which the General Manager will be evaluated.

Except for actions contrary to decisions or written policies made by the Board as a whole, the General Manager is authorized to take whatever actions are required to operate and manage the utility.

The General Manager is the only designated representative for the Board regarding collective bargaining negotiations. The General Manager may utilize other RMLD management personnel as needed to carry out these responsibilities.

3. The Accounting/Business Manager is appointed by the Board.
4. The Board will appoint counsel.
5. The Commissioners will meet quarterly with the Accounting/Business Manager to discuss the quarterly budget variances report on the Operating Budget. This meeting will be held during a Board meeting in Open Session. If any issues to be discussed are being considered in Executive Session, then the discussion will proceed during the next Executive Session.

The Accounting/Business Manager will also meet with a member of the RMLD's Audit Committee and the Town Accountant semi-annually to discuss the RMLD's financial issues. These meetings may be held more frequently if the RMLD Accounting/Business Manager believes that necessary.

Also on a quarterly basis, coinciding with the Accounting/Business Manager's presentation in Open Session to the Commissioners, the General Manager will give an update on the expenditures on Outside Services, which includes the legal, engineering, audit, and other consulting services. The General Manager is required to give the Commissioners a full report on the expenditures for each of the outside services including the dollars expended, cost to complete, and a projected end date. If any legal issues are being considered in Executive Session then the explanation of that legal issue will be given in closed session.

When the Accounting/Business Manager questions a payment on an invoice, the Accounting/Business Manager shall bring his concerns to the Commissioners for discussion and resolution at the next available Board meeting. The issue will be discussed in Open Session unless there is a need to go into Executive Session (i.e., invoices concerning legal matters, etc.).

**III. RESPONSIBILITIES (Continued)**

6. Serves as an appeal body for customers on matters arising from the RMLD's operations.
7. The RMLD Board will appoint one Commissioner to serve on the Town of Reading Audit Committee. Reappointment of this position will be done annually and coincide with the Board restructuring, which occurs at the first meeting after the annual Town of Reading election. The Commissioner on the Town of Reading's Audit Committee will ensure that the selected auditing firm is qualified to perform a financial audit of a municipal electric utility. The RMLD Board of Commissioners accepts the audited financial statements and management letter and shall require the General Manager to submit a written action report on any item commented on by the auditor's Management Letter.
8. Annually selects Commissioners to serve as Board Chairman, Vice Chairman and Secretary. The Chairman, Vice Chairman, and Secretary will be elected by a majority vote of the Board. A special restructuring of the Board may be held with a vote of four members.
9. Approves, after allowing a 30-day period for input from the Citizens' Advisory Board, as provided for in the Twenty-Year Agreement, on the following topics:
  - a. Annual Capital and Operating Budgets - Upon approval of an annual operating budget, the RMLB will make a presentation to the Reading Finance Committee and Reading Town meeting. Upon request, the RMLB shall make a presentation of the annual operating budget to the Finance Committee and/or Town Meeting of any of the other towns serviced by the RMLD.
  - b. Significant Expansion or Retirement of the RMLD's Transmission, Distribution, General Plant, or Generation;
  - c. Power Contracts and Agreements and their Mix;
  - d. Cost-of-Service and Rate Making Practices and;
  - e. Other issues that may come before the Board.
10. Approves:
  - a. The annual report (including audited financial statements) of the RMLD.
  - b. All correspondence on RMLD letterhead that is written by any Commissioner to other elected Boards, Committees or ratepayers.
  - c. All collective bargaining agreements. Also establishes the goals and objectives for the General Manager to meet in bargaining new or amended collective bargaining agreements.
  - d. All presentations made by the RMLD to other elected Boards or Committees.
  - e. Settlement of litigation.
  - f. The appointment of Commissioners to Board Committees.
  - g. Electric rates.
11. Approves, in conjunction with the General Manager, the payroll and weekly accounts payable warrants.
12. Commissioners may attend (consistent with approved RMLD budgets) meetings, conferences, training sessions and similar functions as appropriate for enhancing policy-making skills. Attendance at APPA's national conferences and NEPPA's annual conference and annual business meetings are presumed to be appropriate.

**III. RESPONSIBILITIES (Continued)**

- 12. Attendance of similar functions sponsored by the Town of Reading or the Commonwealth of Massachusetts for elected officials are also presumed to be appropriate.

Attendance for all other meetings, conferences, training sessions and similar functions shall be administered in the same manner as for RMLD management employees, as outlined in Policy 5, Employee, RMLD Board of Commissioners, Citizens' Advisory Board Overnight/Day Travel Policy. In the event a Commissioner disagrees with the resultant decision(s), he/she may request the Board as a whole, by a majority vote, to approve attendance (subject to any conditions deemed appropriate by the Board). Any Commissioner attending meetings, conferences, training sessions and similar functions as appropriate for enhancing policy-making skills are required to make a full report at the next available Commissioner's meeting.

It is the policy of the Board that no Commissioner will have a personal or economic interest or benefit, directly or indirectly, from attendance in meetings, conferences, training sessions and similar functions. Further, it is the responsibility of each Commissioner to make a full public disclosure of any personal interest or benefit in advance.

- D. Commissioners serve as Trustees of the RMLD Pension Trust with all rights and obligations conferred upon them by the Trust, as amended by the Trust from time to time. Commission, as a whole and by majority vote, as Pension Trustees:

- 1. Acknowledges that the Town of Reading Audit Committee will select the firm that performs the annual financial audit of the RMLD Pension Trust. The RMLD Board of Commissioners accepts the audited financial statements based on the recommendation of the RMLD's Audit Committee.
- 2. Selects the firm that performs actuarial study of the RMLD Pension Trust.
- 3. Selects all professional services associated with the Pension Trust other than the annual audit.
- 4. Performs any other responsibilities as specified in RMLD Policy #22, Pension Trust Investments.

- E. Commissioners will do the following relative to the RMLD Other Post Employment Benefits Liability Fund Trust

- 1. Establish a separate fund, to be known as the Other Post Employment Benefits Liability Trust Fund (Fund).
- 2. Establish a funding schedule for the Fund.
- 3. Appropriate amounts recommended by the funding schedule to be credited to the Fund.
- 4. Appoint a custodian of the Fund.
- 5. Review the funding schedule every three years.

- F. Board Committees:

- 1. Serve as a mechanism for the Board to review and consider specific issues. - Committees can recommend, but not approve unless specifically delegated, a course of action to the Board.

**RMLD Board of Commissioners Committees**

**Responsibilities**

General Manager Committee

Review GM evaluation process.

Audit (Including Town of Reading Audit)

Recommend audit findings to the Board. One member of Audit Committee meets at least semi-annually with the Accounting/Business Manager on RMLD financial issues.

<b>RMLD Board of Commissioners Committees</b>	<b>Responsibilities</b>
	Town of Reading Audit Committee - Sit on the Town of Reading Audit Committee. Select the firm that performs annual financial audit of RMLD pension trust and triennially reviews OPEB trust fund.
Power & Rate Committee	Recommend power contracts to Board. Recommend rate changes to the Board.
Budget Committee	Recommend Operating and Capital Budgets to Board. Recommend actuaries and actuary findings to the Board. Make recommendation to the RMLD Board for legal counsel.
Account Payables	Review and approve payables on a weekly basis. This position is rotational. It requires three primary signers and one back up. No Commissioner may serve more than three consecutive years on this Committee and must take a year leave before returning to this Committee.
Payroll	Review and approve payroll. This position is rotational. It requires primary signer and one back up. No Commissioner may serve more than three consecutive years on this Committee and must take a year leave before returning to this Committee.
Joint Committee – Payment to the Town of Reading Two RMLD Commissioners Two Citizens' Advisory Board Members One Reading Selectman	Recommend to the RMLD Board payment to the Town.
Policy Committee	Recommend changes of Board policies to RMLB.

#### IV. POLICY ELEMENTS

- A. It is the policy of the RMLD Board:
1. To operate in accordance with the spirit, as well as the letter of all laws affecting its business and its employees.
  2. All Commissioners and employees are required to act with the highest level of integrity, business ethics and objectivity in any RMLD transaction or where a Commissioner or employee represents the Board or the RMLD. No Commissioner or employee is allowed to misuse the authority or influence of his or her RMLD position.
  3. To operate in a businesslike and efficient manner in all aspects of operating and managing the RMLD.
  4. To be supportive of a good working relationship between Management and Unions as detailed in the Labor Relations Objective section of the Labor Relations Guide for Managers; to initiate communication and interaction with respect to RMLD business with all RMLD employees only through the General Manager; to provide union employees separate access to the Board as constrained within the collective bargaining agreements.
  5. To hold regular open and public meetings to allow customers to provide direct input on any open session matter before the Board.
  6. To affirmatively and courteously respond to all requests for public information, subject to the constraints of Policy 12, Board Document Dissemination and the Massachusetts Public Records Law. All requests will be arranged through the General Manager.
  7. Not to contribute, in any form, to civic, charitable, benevolent or other similar organizations.
  8. To maintain "cost of service" electricity rates; to manage the RMLD with the goal that its residential rates are lower than any investor owned electric utility in Massachusetts and lower than any electric utility whose service area is contiguous with the RMLD's.

**IV. POLICY ELEMENTS**

9. To utilize technology, training, personnel, and flexible work and administrative processes to maintain a competitive and municipally owned electric utility serving the best interests of all ratepayers, to direct and manage the RMLD in the best interests of the RMLD, the Town of Reading, and its customers.



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MEMORANDUMBy Telecopier

To: Leonard Rucker, General Manager  
Linda Bernat, Assistant Manager  
Reading Municipal Light Department

From: Kenneth M. Barna, Diedre T. Lawrence, Karla J. Doukas

Re: Process for Payment of Payroll Warrants

Date: February 14, 2000

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INTRODUCTION

On behalf of the Reading Municipal Light Department ("RMLD"), you have asked us to render an opinion on the process that RMLD must follow for the payment of payroll and other light plant expenses. On June 16, 1997, the Department of Revenue ("DOR") issued an opinion on this very matter, in which the DOR concluded that the signature of both the Manager and a designated commissioner are required to authorize the payment of warrants for the light plant.

We have researched all relevant statutes and caselaw, and we have reviewed the opinion issued by the DOR as well as the Reading Town Charter with regard to the powers of the municipal light board. Based on our research and our knowledge of the mechanics of municipal light plants, we respectfully disagree with the DOR opinion and conclude that only the Manager's signature is required to authorize the payment of warrants for payroll and other

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expenses on behalf of RMLD. We believe that the DOR opinion is not binding on RMLD. The DOR has no authority over, municipal light plants. *but so they over Towns*

This Memorandum is being rendered pursuant to G.L. c. 164, § 56.

DISCUSSION

**1. Authority and Responsibilities Under G.L. c. 164**

Municipal light plants operate pursuant to authority found in G.L. c. 164, §§ 34-69, not under the laws governing towns and other town departments. The Supreme Judicial Court ("SJC") has recognized G.L. c. 164 as the primary and, in most instances, exclusive statutory authority governing municipal light plant operations. See, e.g., Municipal Light Commission of Taunton v. City of Taunton, 323 Mass. 79, 84 (1948); MacRae v. Concord, 296 Mass. 394 (1937). G.L. c. 164, § 56 expressly assigns the plant manager the obligation to attest to expenses submitted for payment. Here, the statute states, "The manager shall at any time, when required by the mayor, selectmen, municipal light board, if any, or department, make a statement to such officers of his doings, business, receipts, disbursements, balances, and of the indebtedness of the town in his department." G.L. c. 164, § 56 [emphasis added]. Although G.L. c. 164, § 56 refers to G.L. c. 41, it does not invoke all of the requirements of G.L. c. 41. Section 56 only keeps intact the power of town accountants under G.L. c. 41, §§ 55 - 61. As described below, the statutes governing the powers of town accountants do not require the signatures of light plant commissioners or otherwise divest the Manager of any of its authority granted under G.L. c. 164, § 56 over the management of the plant. Accordingly, because G.L. c. 164, § 56 designates the Manager as the person responsible to account for receipts and disbursements, and other financial

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matters, we conclude that only the Manager is required to sign warrants for payroll and other expenses. ✓

In further support, the special statutes creating municipal light plants and the statutory scheme of G.L. c. 164 grant light plant Managers and light plant Commissions exclusive and unrestricted managerial power. See, e.g., Municipal Light Commission of Peabody v. City of Peabody, 348 Mass. 266, 268 (1964); Municipal Light Commission of Taunton, 323 Mass. at 84; Capron v. Taunton, 196 Mass. 41 (1907). In particular, G.L. c. 164, § 56 places the day-to-day operations of the plant into the hands of the Manager, including the hiring of employees, collection of bills, and keeping of accounts. The statute provides in pertinent part:

The mayor of a city, or the selectmen or municipal light board, if any, of a town acquiring a gas or electric plant shall appoint a manager of municipal lighting who shall, under the direction and control of the mayor, selectmen or municipal light board, if any, and subject to this chapter, have full charge of the operation and management of the plant, the manufacture and distribution of gas or electricity, the purchase of supplies, the employment of attorneys and of agents and servants, the method, time, price, quantity and quality of the supply, the collection of bills, and the keeping of accounts .... ✓

The Court of Appeals in Golubek v. Westfield Gas & Elec. Bd., recognized that this provision expressly allocates the administrative functions of operating the plant to the Manager and not to the Commission. 32 Mass.App.Ct. 954, 955 (1992). In this regard, the court concluded that G.L. c. 164, § 56 only grants the Commission the power to give the Manager general directions. Id. at 955-56. Consequently, when a Commission undertakes a responsibility specifically granted to the Manager, the commission exceeds its authority. Id. } \*

As stated above, G.L. c. 164, § 56 expressly subjects the Manager to the attestation process. Thus, under Golubek, only the signature of the Manager is required for payment on a

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warrant.

2. The Manager's Authority Under G.L. c. 41

The court's decision in Golubek also stands for the proposition that the Manager is the appropriate person to attest to payrolls and bills under G.L. c. 41, § 41. That statute provides that:

No treasurer or other fiscal officer of any town or city shall pay any salary or compensation to any person in the service or employment of the town or city unless the payroll, bill or account for such salary or compensation shall be sworn to by the head of the department or the person immediately responsible for the appointment, employment, promotion, or transfer of the persons named therein...

G.L. c. 41, § 41. This provision allows either the department head or person directly responsible for the employees to attest to the payroll. Golubek clearly establishes that the Manager is responsible for hiring employees under G.L. c. 164, § 56. 32 Mass.App.Ct. at 955. Moreover, the Manager's duties and the lack of the Commission's direct administrative authority over RMLD also establish the Manager as the department head. Thus, the Manager's signature is sufficient, and in fact all that is required, to release the payment of payroll expenses under G.L. c. 41, § 41. Given that the Manager is the department head of RMLD, only his signature is required under G.L. c. 41, § 56. That statute states in relevant part:

The selectmen and all boards, committees, heads of departments and officers authorized to expend money shall approve and transmit to the town account as often as once each month all bills, drafts, orders and pay rolls chargeable to the respective appropriations of

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which they have the expenditure. The town accountant may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive, and in such case he shall file with the town treasurer a written statement of the reasons for such refusal....

G.L. c. 41, § 56. Nowhere does this statute require the signatures of any Commissioner. At best, it only would require their approval. Such approval by the light plant "shall be given only after an examination to determine that the charges are correct and that the goods, materials or services charged for were ordered and that such goods and materials were delivered and that the services were actually rendered to or for [the light plant]." G.L. c. 41, § 56.

The Commissioners initially grant their approval for such expenses when they vote on the budget, which includes employee salaries. Municipal light plants, such as RMLD, are not regulated by Town Meeting or town officials as are other town departments. See Municipal Light Comm'n of Peabody, 348 Mass. at 273. G.L. c. 164, § 57 provides, in relevant part, that RMLD's Manager is to submit, each year, to the Municipal Light Board:

an estimate of the income from sales of ... electricity to private customers and of the expense of plant meaning the gross expenses of operation, maintenance and repair, the interest on the bonds, notes of certificates of indebtedness issued to pay for the plant, an amount of depreciation equal to three per cent of the cost of the plant exclusive of land and any water power appurtenant thereto, or such smaller or larger amount as the department of public utilities may approve, the requirements of the sinking fund or debt incurred for the plant, and the loss, if any, in the operation of the plant during the preceding year, and of the cost, as defined in section fifty-eight, of the ... electricity to be used by the town.

The appropriations necessary to authorize the Town Treasurer to use RMLD funds for the "expense of plant," as defined in G.L. c. 164, § 57, therefore, are made by vote of the RMLD

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Board upon the budget submitted by RMLD's Manager, and not by Town Meeting vote pursuant to the provisions G.L. c. 44. Id. After such expenses are incurred, the implied approval of the Commissioners should satisfy the requirements of G.L. c. 41, § 56. Even the DOR concedes that the commissioners need not approve each and every requisition: the DOR concluded that the statutory requisites would be satisfied if the Commissioners designate the manager to initiate payment of the light plant payroll.

### 3. Role of the Selectmen

In any event, the auditor, treasurer, or selectmen cannot deny payment under this section for lack of the commissioner's "signature." Payment only may be denied in the case of fraud, illegal or excessive expenses. See G.L. c. 164, § 56; G.L. c. 41, § 56. The Selectmen's role in the warrant process for a municipal light plant is set forth as follows:

...the selectmen...shall approve the payment of all bills or payrolls of such plants before they are paid by the treasurer, and may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive; and in that case the...selectmen, shall file with the...town treasurer a written statement of the reasons for the refusal; and the treasurer shall not pay any claim or bill so refused.

Although the payment of bills and payrolls of the light department is subject to the prior approval of the Selectmen, the nature or exercise of that power must be consistent with the very restricted role that chapter 164 permits the municipality to play in the affairs of its light department.

Chapter 164 effectively separates light departments from the Selectmen's general authority over the appropriations for town departments under G.L. c. 41, § 56. See, e.g., Taunton, 323 Mass. at

84. Thus, the Selectmen may not make independent evaluations of the necessity or wisdom of

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any such payments, or in any way exercise a business judgment with respect to such payments. See Municipal Light Comm'n of Peabody, supra. Any other interpretation would render the SJC decisions in Taunton and Peabody, and the authority conferred by G.L. c. 164, § 56 upon the commission and manager a nullity. Under this statutory framework, the Selectmen's function clearly is limited to evaluating a request for payment for evidence of fraud or illegality. They are not authorized to mandate procedures for payment more stringent than the statute provides.

In addition, the Selectmen's authority to disapprove payment also is subject to the procedural prerequisite that it be accompanied by a written statement of reasons. Specifically, the statute employs the mandatory "shall" in describing the accountant's obligation to provide such a statement. See City Bank and Trust Co. v. Board of Bank Incorporation, 364 Mass. 29, 31 (1963); Brennan v. Election Commissioners of Boston, 310 Mass. 784, 786 (1942); 1A Sands, Sutherland Statutory Construction, §24.04 (4th ed. 1972). Thus, the Selectmen cannot withhold their approval of the warrant without providing a statement of reasons showing illegality or fraud. The failure to obtain the signatures of a majority of the Commissioners or a designated Commissioner is not sufficient under the statute.

#### 4. School Departments Differ From Municipal Light Plants

Finally, the DOR's comparison of municipal light plants to school departments in reaching its conclusion is misplaced. Municipal light departments and school departments differ in several important respects. First, unlike with schools, towns have no inherent authority to operate light plants. The authority of a municipality to operate an electric light plant is conferred generally by G.L. c. 164, § 34, which provides that a city or town, "may, in accordance with this

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chapter, construct, purchase or lease and maintain within its limits, one or more plants for the manufacture or distribution of gas or electricity...for municipal use or for the use of its inhabitants." See also G.L. c. 164, § 35 (city may not acquire such plant until authorized by vote of its Council or Commission, as specified in the statute). Under G.L. c. 164, § 55, a municipality which has established or votes to establish a light plant "may elect a municipal light board..." G.L. c. 164, § 55. Municipalities were divested, early on, of control over the management of light plant operations. Capron v. Taunton, 196 Mass. 41 (1907); Whiting v. Mayor of Holyoke, 272 Mass. 116 (1930).

Under the statutory scheme of Chapter 164, municipal light departments such as RMLD operate and are managed as commercial enterprises, separate and independent from general town governmental departments and subject to regulatory oversight by the Department of Telecommunications and Energy ("DTE").<sup>1</sup> Taunton, 323 Mass. at 84. As such, municipal light plant officials act under the legislative mandate of G.L. c. 164 and not as agents of the towns. Id. Municipal light plants are "quasicommercial" entities created by special act; municipalities themselves have no inherent rights to own and operate a business in the absence of special legislation and the enabling statutes, found at G.L. c. 164, §§34 et. seq. See e.g., MacRae, 296 Mass. at 396; Spauldina v. Peabody, 153 Mass. 129, 137 (1891). Thus, without G.L. c. 164, a town would not have the right to operate a municipal light plant. MacRae, 296 Mass. at 397.

Second, unlike schools, municipal light plants are financially distinct entities. See Middleborough v. Middleborough Gas & Elec. Dept., 422 Mass. at 588. Municipal light plants

Town has  
no right to  
RMLD



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RATES NOT TAXES

generate revenues from rates, not taxes and the SJC distinguishes these two types of income.

Income from sales to private customers is not subject to the appropriations procedures of G.L. c. 84 or the control of the Selectmen. Municipal Light Comm'n of Peabody, 348 Mass. at 271.

Although school departments have some degree of autonomy with respect to fiscal matters, the relationship between towns and school departments is much more intertwined. See generally Board of Ed. v. Boston, 386 Mass. 103 (1982).

Accordingly, simply because school departments retain some measure of freedom, that freedom does not equate to that possessed by municipal light plants, nor does it support the proposition that the light plant commissioners should be considered department heads. School departments and light plants operate under two distinct statutory schemes.

5. Reading Town Charter

NOT Authority by

We also note that the Reading Town Charter does not require the signatures of any of the Commissioners to authorize payment of RMLD's warrants. Section 3-5 expressly gives the municipal light board authority over "all real estate, facilities, personnel and equipment of the Town pertaining to the production and transmission of electrical power." That section also acknowledges the powers given to municipal light boards under G.L. c. 164, § 34 et seq. The Town Charter in no way abridges, nor could it, those powers or the powers of the Manager. As such, the Manager remains the "department head," that person in charge of the day-to-day operations of the plant, especially with regard to the administration of accounts, payroll, and

<sup>1</sup> The DTE's supervisory authority over municipal light plants also indicates that the DOR has no authority to dictate the warrant procedures to be followed by RMLD or any other municipal light plant.

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other light plant finances. Accordingly, RMLD would not need to seek a modification to the Town Charter to give the Manager the sole authority to sign warrants.

CONCLUSION

In sum, we conclude that only the Manager's signature is required to obtain payment of payroll and other expenses. Our conclusion is supported by G.L. c. 164, § 56, as well as the specific requirements under G.L. c. 41.

Please let us know if you have any questions on this matter.

Massachusetts Department of Revenue Division of Local Services  
Mitchell Adams, Commissioner Joseph J. Chessey, Jr., Deputy Commissioner



June 16, 1997

Gary D. Suter, Town Accountant  
120 Prescott Street  
West Boylston, MA 01583

Re: Approval of Municipal Light Department Expenditures  
Our File No. 97-506

Dear Mr. Suter:

You have asked for a legal opinion concerning the necessary signatures on the municipal light department's "weekly warrant". We assume the expenditures on this warrant include both payroll and other bills payable. While not completely free from doubt, we conclude that the signature of the light department manager and a majority of the municipal light board on bills payable vouchers would be required for the town accountant to draw a warrant and for the board of selectmen to approve it, under G.L. Ch. 164, §56 and G.L. Ch. 41, §56. With respect to light department payrolls, however, we think the board may designate one of its members to sign, as permitted by G.L. Ch. 41, §41, along with the light manager. Such a designation does not limit the responsibility of each light board member in the event of an improper payment.

In pertinent part, G.L. Ch. 164, §56 and G.L. Ch. 41, §56 require only the board of selectmen to approve warrants prepared by the town accountant:

...All accounts rendered to or kept in the gas or electric plant ... shall be subject to the inspection of the selectmen. The ... selectmen ... may require any person presenting for settlement an account or claim against such plant to make oath before ... them, in such form as ...they may prescribe, as to the accuracy of such account or claim. The ... selectmen ... shall approve the payment of all bills or payrolls of such plants before they are paid by the treasurer, and may disallow and refuse to approve for payment in whole or in part, any claim as fraudulent, unlawful or excessive; and in that case the ... selectmen ... shall file with the ... town treasurer a written statement of the reasons for the refusal; and the treasurer shall not pay any claim or bill so disallowed. This section shall not abridge the powers conferred on a town accountants by sections fifty-five to sixty-one, inclusive, of chapter forty-one. ... G.L. Ch. 164, §56 (emphasis added).

... The town accountant shall examine all such bills, drafts, orders and pay rolls and, if found correct and approved as herein provided, shall draw a warrant upon the treasury for the payment of the same, and the treasurer shall pay no money from the treasury except upon such warrant approved by the selectmen... G.L. Ch. 41, §56.

Gary D. Suter  
Page 2

[In the original act authorizing municipal light departments the light manager was given sole authority to expend and approve warrants for payment of light department bills. St. 1891, Ch. 370, §8 ("... and the payment of all bills incurred [by the light department] shall be intrusted ... to one officer ... Such officer shall be known as manager ...). In 1893 towns were authorized to elect light boards which were empowered to appoint light managers. St. 1893, Ch. 454, §10. By St. 1905, Ch. 410, §3 the pertinent statute provided that "[a]ll bills chargeable to the plant or the appropriations therefor shall be paid by the treasurer on requisition by the manager or municipal light board, if any." This language remained in St. 1914, Ch. 742, §113 but was eliminated and replaced with the current clause by St. 1929, Ch. 266.]

Nothing in Chapter 164 currently provides for any specific approval of warrants by the municipal light board or the municipal light manager. However, G.L. Ch. 41, §56 also provides:

... all boards, committees, heads of departments and officers authorized to expend money shall approve and transmit to the town accountant ... all bills, drafts, orders and pay rolls chargeable to the respective appropriations of which they have the expenditure. Such approval shall be given only after an examination to determine that the charges are correct and that the goods, materials or services charged for were ordered and that such goods and materials were delivered and that the services were actually rendered to or for the town as the case may be; ... (emphasis added).

We believe the municipal light board should be considered the head of the municipal light department. G.L. Ch. 164, §55 provides that the light board in a town which has established such an elected body, "shall have authority to construct, purchase or lease a gas or electric plant in accordance with the vote of the town and to maintain and operate the same." However, G.L. Ch. 164, §56 requires that the light board act through a light manager which it must appoint, but who will be under the direction and control of the board. The light manager is an officer authorized to make contracts for the day to day operation of the plant and is therefor authorized to expend money. See Golubek v. Westfield Gas & Electric Light Board, 32 Mass. App. Ct. 954, 955 (1992); Capron v. Taunton, 196 Mass. 41, 43-44 (1907).

This organizational structure is similar to that of a school committee/superintendent in which the school committee retains statutory authority to establish educational policy and to allocate and transfer funds for specific spending purposes. Based on such retained authority, we have indicated that a majority of the school committee must sign requisitions for payment of bills under G.L. Ch. 41, §56, as well as the superintendent and principals when they have been given separate statutory authority to make contracts for the school department. We therefore conclude that the municipal light board as well as the light manager must sign payrolls and bill requisitions in order to initiate expenditures.

Under G.L. Ch. 4, §6, when joint authority is given to a group of officers, a majority of the entire group must vote in order to take action. Thus, a majority of the light board must sign to initiate payment of light department expenditures. An exception to this requirement has been given to municipal commissions, committees or board of trustees when signing a payroll. G.L. Ch. 41, §41 authorizes such a body to designate one of its members to make oath to a payroll. It is not

Gary D. Suter  
Page 3

completely clear whether such authority would apply to a municipal light board, given that in some cases the light department is considered a municipal department but not in others. We note also that G.L. Ch. 41, §41 is not incorporated in Chapter 164 as is the case with G.L. Ch. 41, §56, which is incorporated by reference under G.L. Ch. 164, §56. Nevertheless, we believe the mechanism provided in G.L. Ch. 41, §41 provides sufficient protection of light department funds in light of the other safeguards otherwise provided in G.L. Ch. 164, §56 and G.L. Ch. 41, §56. Thus, to the extent the light board specifically votes to designate one of its members to make oath to the payroll, we think the signature of that designee, when combined with that of the light manager, is sufficient to initiate payment of the light department payroll.

We hope this addresses your concerns. If we may be of further service, please do not hesitate to contact us again.

Sincerely,



Joseph J. Chessey, Jr.  
Deputy Commissioner

