



Informational Guideline Release

Bureau of Accounts
Informational Guideline Release (IGR) No. 17-15
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Supersedes IGR 91-201 and Inconsistent Prior Written Statements

PROCEEDS FROM RENTAL OF MUNICIPAL REAL ESTATE

(G.L. c. 40, § 3)

This Informational Guideline Release (“IGR”) informs local officials about changes made by the Municipal Modernization Act that allows municipalities to establish revolving funds for monies derived from the rental or leasing of municipal property not under the control of the school committee.

Topical Index Key:

Special Funds

Distribution:

Accountant/Auditors
Treasurers
Mayors/Selectmen
Managers/Administrators/Exec. Secys.
Finance Directors
School Superintendents
City Solicitors/Town Counsel

Supersedes IGR 91-201 and Inconsistent Prior Written Statements

PROCEEDS FROM RENTAL OF MUNICIPAL REAL ESTATE

(G.L. c. 40, § 3)

SUMMARY:

These guidelines explain amendments to [G.L. c. 40, § 3](#), which governs the ownership, sale and lease of municipal real estate, that were made by the Municipal Modernization Act and took effect on November 7, 2016.

Under the amendments, a city or town that rents or leases a public building or property, or space within a building or property, other than a building or property under the control of the school committee, may now deposit any monies received from the rental or lease into a separate revolving fund. Monies in the fund may be spent without appropriation to pay expenses associated with keeping the rented premises in the condition required of a landlord, which could include custodial costs, utilities and ordinary repairs. Previously, only monies received from the rent or lease of a surplus school building, or surplus space within a school, were credited into such a revolving fund under [G.L. c. 40, § 3](#).

These guidelines are in effect and supersede Informational Guideline Release (IGR) No. 91-201, *Rental of Surplus School Buildings and Space*, and any inconsistent prior written statements or documents.

GUIDELINES:

A. SURPLUS SCHOOL BUILDINGS OR SPACE

1. Rental Approvals

Cities and towns, with the approval of their local school committees, may lease unused school buildings and surplus space within school buildings still in use. If the building is still in use, Department of Elementary and Secondary Education (DESE) approval is also needed to lease the space. DESE approval is not required if the entire building is no longer being used for school purposes.

In either case, both legislative body authorization and school committee approval are required to rent the unused school building or surplus space. This means the school committee can veto the decision of the city or town to rent unused school buildings or surplus space within a school building being used. It also means the school committee cannot rent out surplus buildings or space against the wishes of the city or town.

School committees must approve the terms of all leases for unused school buildings or surplus space in school buildings. If the school building is no longer in use, the initial term of the lease cannot exceed 10 years, although renewal options are allowed with the school committee's approval.

2. Revolving Fund Revenues

The town accountant or city auditor **must** credit all rent or lease payments from tenants or lessees with leasehold interests in each unused school building or surplus school space to a separate revolving fund. However, any interest earned on those monies belongs to the general fund.

This revolving fund is not used to account for the charges or fees paid by third parties for the hourly, temporary or other short-term use of school property outside school hours for educational, recreational, civic, philanthropic and social activities, in accordance with policies or regulations established by a school committee. This also includes fees and charges paid for use of school property for physical fitness programs, adult and continuing education, and school parking lot fees. Those receipts are credited to the use of school property revolving fund under local acceptance [G.L. c. 71, § 71E](#), if the city or town has accepted the statute. Otherwise they belong to the general fund. [G.L. c. 44, § 53](#).

3. Expenditure and Accounting

During the term of the lease, the school committee may spend monies in the account in the fiscal year they are received without appropriation for the maintenance of the rented facility or space. Any balance in the account not spent for those purposes during the fiscal year must be closed out to the general fund at year-end, unless the city or town has accepted a local acceptance provision that allows carry-over of the funds. (See attached "Sample Articles and Votes.") If accepted, any remaining surplus revenue in the revolving fund is carried forward from year to year and the school committee may spend the revenues in the fund without appropriation for the upkeep and maintenance of any facility under its control.

B. OTHER MUNICIPAL BUILDINGS AND PROPERTY

1. Rental Approvals

Cities and towns may rent or lease all or part of municipal buildings and properties not being used for municipal purposes. The board or officer able to rent unused property on behalf of the city or town and the required authorizations, approvals or other procedures to do so depends on many factors, including the type of property, the board or officer with custody and control of the property, applicable statutes, charter provisions or other authority. Municipal counsel should be consulted when considering any leasing or other disposition of municipal property.

2. **Revolving Funds and Revenues**

Cities and towns that rent or lease any public building or property, or space within a building or property, other than those under control of a school committee, **may** deposit monies received from the rental or lease into a separate revolving fund. Unlike the revolving fund for the proceeds of school rentals, however, a revolving fund for this purpose is discretionary. The payments may continue to be treated as general fund revenues. [G.L. c. 44, § 53](#).

A vote of the local legislative body is required to establish a revolving fund for a particular rental or lease of municipal property. A separate vote should be made for each rental or lease of a building or space. (See attached “Sample Votes”). Alternatively, the municipality could adopt a by-law or ordinance that sets out the rentals or leases for which a revolving fund will be established.

If voted for a particular rental or lease, the board, committee or department head in control of the property should notify the town accountant or city auditor to establish the separate revenue fund. The accountant or auditor must then credit all rent or lease payments from tenants or lessees with leasehold interests in the building or space to the fund. Any interest earned on those monies belongs to the general fund.

This revolving fund is not used to account for charges or fees paid by third parties for the hourly, temporary or other short-term use of municipal property for educational, recreational, civic, philanthropic and social activities. Examples are the use of a library conference room for a private organization’s monthly meeting or senior center for a training program presented by a governmental agency. Those monies belong to the general fund. [G.L. c. 44, § 53](#). However, they may be included within certain departmental revolving funds as user fees or charges received in connection with departmental activities. [G.L. c. 44, § 53E½](#).

3. **Expenditure and Accounting**

During the term of the lease, the board, committee or department head in control of the building or property may spend monies in the account in the fiscal year they are received without appropriation for the maintenance of the rented facility or space. Any balance in the account not spent for those purposes during the fiscal year must be closed out to the general fund at year-end, unless the city or town has accepted a local acceptance provision that allows carry-over of the funds. (See attached “Sample Articles and Votes.”) If accepted, any remaining surplus revenue in the revolving fund is carried forward from year to year and the board, committee or department head may spend the revenues in the fund without appropriation for the upkeep and maintenance of any facility under its control.

SAMPLE ARTICLES AND VOTES
(Sample should not be used without the advice of municipal counsel.)

ESTABLISH REVOLVING FUND

Legislative Body Vote

ARTICLE/ORDER. To see if the city/town will establish a revolving fund for the deposit of proceeds from the rental and lease of the [identified municipal building/property] starting in fiscal year ____, which begins on July 1 ____.

MOTION: Moved/ordered that the city/town establish a revolving fund for the deposit of proceeds from the rental and lease of the [identified municipal building/property] starting in fiscal year ____, which begins on July 1 ____.

CARRY-OVER AND EXPENDITURE LOCAL OPTION

Legislative Body Vote

ARTICLE/ORDER. To see if the city/town will accept the provisions of [General Laws Chapter 40, Section 3](#), which leaves any balance remaining in a revolving fund established for the rental or lease of a municipal building or property/surplus school building or surplus space within a school building in the revolving fund and allows the expenditure of the fund for the upkeep and maintenance of any facility under the control of the [board, committee or department head in control of] the building/property, starting in fiscal year ____, which begins on July 1, ____.

MOTION. Moved/ordered that the city/town accept the provision of [General Laws Chapter 40, Section 3](#), which leaves any balance remaining in a revolving fund established for the rental or lease of a municipal building or property/surplus school building or surplus space within a school building in the revolving fund and allows the expenditure of the fund for the upkeep and maintenance of any facility under the control of the [board, committee or department head in control of] the building/property, starting in fiscal year ____, which begins on July 1, ____.