



December 17, 2002

Terry Plantier Eucker
Deirdre Cabral
Massachusetts Department of Environmental Protection
436 Dwight Street
Springfield MA 01103

Re: Wetlands Protection Revolving Fund
Our File No. 2002-510

Dear Ms. Eucker & Ms. Cabral:

This is in reply to your letter requesting an opinion regarding the purposes for which monies may be spent from the Wetlands Protection Revolving Fund. Specifically, you asked that we review a list of various expenses and advise whether local conservation commissions may finance them with monies from that fund. We apologize for the delay in providing a written response.

As you know, under the Wetlands Protection Act, persons filing notices of intent to conduct certain activities on protected wetlands must pay a filing fee "[t]o defray state and local administrative costs" in connection with the Act. Thus, a portion of the fee is paid to the city or town and the balance to the state Department of Environmental Protection (DEP). G.L. Ch. 131 §40. With respect to the fees retained locally, the statute specifically provides that they may be spent by conservation commissions without appropriation "for the purpose of defraying the costs of administering and enforcing" the Act with the approval of the selectmen, city or town manager, or mayor. Ch. 43 §218 of the Acts of 1997.

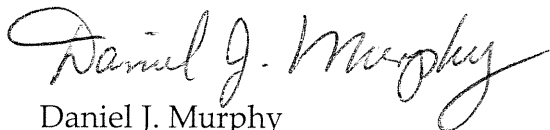
We think it is clear from the quoted language that these fees are paid by applicants primarily to provide DEP and local conservation commissions with adequate resources to review projects, issue regulatory decisions and complete other required activities under the Act. Thus, we believe the conservation commission may only use monies in the revolving fund for those expenses directly related to its administration or enforcement duties under the statute, not for commission activities generally. This would typically include expenditures for professional and clerical staff salaries, specialized supplies, materials or equipment, and consultants to the extent incurred in processing notices of intent, issuing regulatory decisions or enforcing the Act, *i.e.*, those expenses that are difficult to budget on an annual basis because they fluctuate with demand. Expenses that support regular commission operations and activities, such as office furniture, ordinary supplies, telephone and Internet service, annual subscriptions, publications or conferences, general travel expenses, computers, and other general purpose capital items ordinarily budgeted separately, would not be permissible uses.

Terry Plantier Eucker
Deirdre Cabral
Massachusetts Department of Environmental Protection
Page Two

Applying these standards to the expenses you list, the funds may be used for any in-house training, travel to and attendance at external training programs, workshops or conferences, equipment or materials related specifically and directly to Wetlands Protection Act administration and enforcement. Fund monies could not be used, however, for training in governmental functions that must be performed by public officials generally, such as open meeting and public records law responsibilities, nor membership in organizations dealing with matters generally within the purview of conservation commissions. With respect to mileage and other expenses incurred in performing site inspections associated with the review of notices of intent or enforcement activities, they may be charged to the fund, but only to the extent permissible under the travel policy set by the particular city or town. Again, the purpose of the fund is to provide resources to pay for administrative and enforcement expenses that could be paid from the commission's annual appropriations, but are difficult to budget due to fluctuating demand. It does not, in our view, authorize the commission to pay expenses that would not otherwise be allowed.

If you have any further questions, please do not hesitate to contact me again.

Very truly yours,



Daniel J. Murphy
Chief, Property Tax Bureau

DJM/KC