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May 5, 2014

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

VIA EMAIL & REGULAR MAIL

Wayne Hamilton, Business Administrator
Township of Monroe Municipal Complex
1 Municipal Plaza
Monroe Township, New Jersey 08831-1900

Re: Use of Surplus Funds Generated from MTUD

Dear Mr. Hamilton:

You have asked us to review the legal implications of a request that the Township use surplus funds from the Monroe Township Utility Department ("MTUD") to fund capital improvements for the Monroe Township School District ("District") and/or service the District's debt. We have researched the applicable law and find that such use of surplus funds is not allowed.

The Monroe Township School District is a separate independent governmental unit governed by its duly elected Board of Education. The District is subject to the State Education Law, N.J.S.A. 18A et. seq., which was enacted by the Legislature pursuant to the State's Constitutional mandate, Article VIII, Section IV of the New Jersey Constitution, to provide "a thorough and efficient" free public school system. The District develops its own budget, which is subject to voter approval when the 2% levy cap is exceeded. Thus, the Township's budgeting process is separate and distinct from the school district's budgetary process.

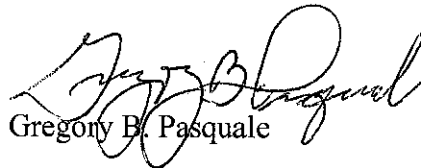
In developing its budget, the Township is constrained by Municipal Law, Title 40, and the Local Budget Law, N.J.S.A. 40A:4-1 et. seq. Municipal Law only allows the transfer of "unappropriated" surplus funds from a municipality to its school district. N.J.S.A. 40:48-17.1. Transferred funds must be identified in the annual municipal budget. Thus, such a transfer cannot be made until the fiscal year after the surplus has been realized.

The MTUD surplus, however, is not an “unappropriated” surplus. Specifically, N.J.S.A. 40A:4-62 restricts the spending of funds generated by “the operation of publicly owned or operated utility” to the operation and upkeep of the utility. When the operation of the utility results in a surplus, N.J.S.A. 40A:4-35 provides that the Township may include some or all of the surplus as “miscellaneous revenue” in the Municipal budget. When the operation of the MTUD results in a deficit, however, the Township is required to include an appropriation for that deficit in its budget. Id. Thus, the monies generated by the MTUD are allocated funds and may not be transferred to the School District.

Finally, even if the transfer of MTUD funds were allowed under the law, which it is not, the School District could not use the funds for capital improvements. N.J.S.A. 18A:22-45 specifically restricts the use of transferred surplus funds to: i) the service of bonded debt; ii) the payment for bonded projects in lieu of issuing bonds for the project; iii) the retirement of bonds; and iv) the payment of the School Board’s general fund expenses not to exceed \$50,000.00.

Very truly yours,

SHAIN, SCHAFFER & RAFANELLO, P.C.


Gregory B. Pasquale

GBP:dal

cc: The Honorable Richard Pucci, Mayor (via email)
The Honorable Gerald W. Tamburro, Council President (via email)
George Lang, Finance Officer (via email)
Sharon Doerfler, Clerk (via email)