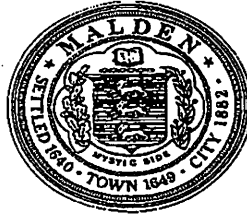


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TO: Honorable Members of the Malden City Council
FROM: Kathryn Fallon, City Solicitor
RE: Order to render opinion on Billboard Mitigation Operating Account
DATE: 5/11/21

As you are aware, I am asked to render an opinion on the above referenced matter, which presents itself on the Council docket this evening as an entry seeking to Order me to render "an opinion on the compliance of the City of Malden's current process of directing revenue away from the General Fund and into the 'Billboard Mitigation Operating' account #2838-134-5725". A prior request was made to the Legal Department on 2/25/21, which required request for and review of records from other Departments, specifically, the City Clerk's and Controller's offices, in order to provide adequate analysis and input. Request was made for contractual and permitting history, records relative to the billboard development agreements, and the legislative records of the Council.

Review was undertaken of applicable laws and guidance. In that the request involves financial procedures, conferences with the City Controller were held to ascertain and conduct review of the facts in order to offer input. Based on this review, it is concluded that these funds are derived from billboard development agreements which have existed for decades, upon information and belief, originating in 2004. It is my understanding based on discussions with the Controller that these funds were initially accepted as a gift via legislative action by the Council, because this account would not have been created if not for a vote of the Council. However, request for such legislative documentation yielded no results. It is likely the funds were accepted and the contract and account approved by the Council years ago, however, the City Clerk could not locate records of legislative action involving such acceptance or approval.

Therefore, it is my opinion that the funds received from the billboard development agreements should be deposited into the general fund, in the absence of any specific vote under MGL c. 44, §53A, or approved home rule legislation authorizing a deviation from MGL c. 44, §53.¹ This opinion is supported by the absence of any documentation evidencing legislative action taken, authorizing the contract, accepting the funds, authorizing their deposit into a specified account such as the Billboard Mitigation Operating Account, or their use for a specified purpose. Because this account currently exists, as stated, the question presented for opinion is in essence a financial process or protocol question more properly raised to the Controller. Accordingly, in the absence of verifiable proof that these funds were accepted as gifts by the Council, the Controller has determined that the conservative approach is to close the account in question, and has also inactivated the Billboard Mitigation Operating Account in the general ledger and expects to close it out at the end of this fiscal year.

¹ As a general rule all money received by the City should be deposited into the general fund. MGL c. 44, § 53 provides "[A]ll moneys received by any city... except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city...treasury". One of the exceptions to this general rule is set forth in G.L. c 44 § 53A that states that the City "...may accept grants or gifts of funds from... a private corporation...and...may expend such funds for the purposes...with the approval of the mayor and city council..."