

## Re: Legal Opinion for the Senior Center Project

Senior Center Building Committee <seniorcenterbuildingcommittee@colchesterct.gov>

Tue 11/29/2022 6:25 PM

To: Rosemary Coyle <rcoyle@colchesterct.gov>

Cc: Marilyn Turner <msturner@snet.net>; msrmlodzinski@gmail.com <msrmlodzinski@gmail.com>; Madelyn Starkey <madelynstarkey@comcast.net>; Gerie Transue <gkwer1945@gmail.com>; Kevin Hastings <kevin-hastings@comcast.net>; Joe Ruiz <jruiz@zciinc.com>; nadeaus@gmail.com <nadeaus@gmail.com>; Ron Silberman <ron@aslockco.com>; Dawn Lepage <dlepage@colchesterct.org>; Patty Watts <seniorcitizens@colchesterct.gov>; First Selectman <selectman@colchesterct.gov>; Art Shilosky <artshilosky@yahoo.com>; David Stein <dstein@silverpetrucelli.com>; Chris Nardi <cnardi@silverpetrucelli.com>; Mark Garilli <markg@csgroup-llc.com>; Jonathan Gumbotz <jonathang@csgroup-llc.com>

Rosemary:

That is certainly good news. I have scheduled a Building Committee meeting for 6:00 on Thursday, before the Selectmen's meeting. At our meeting, we are going to motion to request that Andreas sign a contract between the Town of Colchester and BRD Builders to construct the building.

I also spoke with Bob O'Brien of Shipman/Goodwin who is representing the Building Committee, and he informed me that he was going to contact Andreas as the contract documents between the Town and the DECD are complete and he will set-up a time for Andreas to sign them.

Please call me if you have any questions.

Thanks again.

Tony

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**From:** Rosemary Coyle <rcoyle@colchesterct.gov>

**Sent:** Tuesday, November 29, 2022 5:46 PM

**To:** Senior Center Building Committee <seniorcenterbuildingcommittee@colchesterct.gov>

**Subject:** Fwd: Legal Opinion for the Senior Center Project

Looks like you're all set. It's on the BOS agenda to give the Bendas money to the SC project. I will be on the BOS meeting at 7PM on Thursday.

Rosemary

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**From:** Ritter, Matthew D. <MRitter@goodwin.com>

**Sent:** Tuesday, November 29, 2022 5:42 PM

**To:** Rybacki, Glenn G. <GRybacki@pullcom.com>; Deborah Bates <dBates@colchesterct.gov>

**Cc:** Andreas Bisbikos <abisbikos@colchesterct.gov>; Rosemary Coyle <rcoyle@colchesterct.gov>; Denise Turner <dturner@colchesterct.gov>; Jason LaChapelle <jLaChapelle@colchesterct.gov>

**Subject:** RE: Legal Opinion for the Senior Center Project

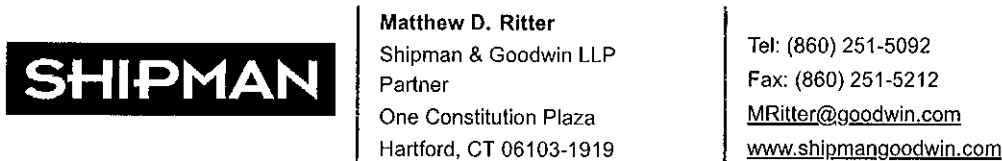
Thanks, Glenn.

Glenn and I had a chance to connect today and we agree that the donation to the Town for the Senior Center project is not a "grant" as contemplated by the language contained in the bond resolution. Therefore, the \$500,000 donation is not included in the \$9.5 million appropriation approved at referendum. However, the \$2.5 million grant from the State is included in the \$9.5 million appropriation.

In addition, I want to clarify that the donation to the Town is also exempt from the supplemental appropriation provisions contained in the Town Charter because I believe it is similar enough to a grant to remain excluded from the town meeting/referendum requirements. The \$500,000 donation is funds being received by the Town and it does not involve an appropriation of Town funds. There is no specific language in the Town Charter governing gifts or donations to the Town, so the grant provisions are the most comparable to the current example.

It may seem a little odd that on one hand the \$500,000 is not a grant pursuant to the bond resolution but is similar enough to a grant for Town Charter purposes but that seems to be the correct approach in this instance given the fact pattern and the specific language of the two documents.

Thanks, Matt



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**From:** Rybacki, Glenn G. <GRybacki@pullcom.com>  
**Sent:** Tuesday, November 29, 2022 2:15 PM  
**To:** Ritter, Matthew D. <MRitter@goodwin.com>; Deborah Bates <dBates@colchesterct.gov>  
**Cc:** Andreas Bisbikos <abisbikos@colchesterct.gov>; Rosemary Coyle <rcoyles@colchesterct.gov>; Denise Turner <dturner@colchesterct.gov>; Jason LaChapelle <jLaChapelle@colchesterct.gov>  
**Subject:** RE: Legal Opinion for the Senior Center Project

\*EXTERNAL EMAIL\*

Matt:

The Resolution contains the following language: "The amount of bonds or notes authorized to be issued shall be reduced by the amount of grants received by the Town for the project." Absent any additional actions taken by the Town, grants received for the project would be applied to the project and would reduce the amount of bonds that could be issued.

I agree with you that private donations are a twist. Without having the certified proceedings and knowing what was or may have been said or presented, I would not believe that the Resolution's language contemplated anything other than grants. If it did, it likely would have included language similar to "and any other funds or monies". We can and should discuss this.

Regards,

Glenn

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**Glenn G. Rybacki, Esq**  
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T 860 424 4391 • [grybacki@pullcom.com](mailto:grybacki@pullcom.com)

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**From:** Ritter, Matthew D. <[MRitter@goodwin.com](mailto:MRitter@goodwin.com)>  
**Sent:** Tuesday, November 29, 2022 11:20 AM  
**To:** Deborah Bates <[dBates@colchesterct.gov](mailto:dBates@colchesterct.gov)>; Rybacki, Glenn G. <[GRybacki@pullcom.com](mailto:GRybacki@pullcom.com)>  
**Cc:** Andreas Bisbikos <[abisbikos@colchesterct.gov](mailto:abisbikos@colchesterct.gov)>; Rosemary Coyle <[rcoyle@colchesterct.gov](mailto:rcoyle@colchesterct.gov)>; Denise Turner <[dturner@colchesterct.gov](mailto:dturner@colchesterct.gov)>; Jason LaChapelle <[jLaChapelle@colchesterct.gov](mailto:jLaChapelle@colchesterct.gov)>  
**Subject:** RE: Legal Opinion for the Senior Center Project

Hi Deborah –please see my analysis below. Thanks everyone and as always please let me know if you have any questions, Matt

Glenn – please see one question on my end below with respect to the bond resolution.

Issue #1.

Section C-1111a. (C) and (D) of the Town Charter specifically exclude grants from the supplemental appropriation process set forth in the Town Charter. See highlighted sections below:

C. The Board of Selectmen shall call a Town Meeting to consider the approval of any supplemental appropriation in an amount that is equal to or exceeds two percent (2.0%) and less than three percent (3.0%) of the budget to which the supplemental appropriation is being made (either the Board of Selectmen Budget, excluding debt service and capital expenditures, or the Board of Education Budget). No such Town Meeting shall be called unless the Board of Finance has recommended such supplemental appropriation. This requirement does not pertain to appropriations of grant monies or matching funds received by the Town.

D. The Board of Selectmen shall call a Special Budget Referendum for approval of any supplemental appropriation for any Town Department in an amount that is equal to or exceeds three percent (3.0%) of the budget to which the transfer is being made (either the Board of Selectmen Budget, excluding debt service and capital expenditures, or the Board of Education Budget). No such referendum shall be called unless the Board of Finance recommends such supplemental appropriation. The requirement does not pertain to appropriations of grant monies or matching funds received by the Town.

I consider a donation to the Town to be akin to a grant and believe these sections of the Town Charter are controlling. Therefore, the Board of Selectmen is able to accept the donation and the funds can be appropriated to the project without the need for town meeting or referendum approval. I would also note that these funds, as noted below by bond counsel,

Issue #2. Jason LaChapelle has a similar question: Per the meeting last night, I would like to hear our town attorney's legal opinion on what "Special Appropriation" in our charter actually means. Does "Special Appropriation" refer to the ENTIRE amount appropriated for a single use from town coffers (i.e: The Senior Center Building project) minus the amount from grants? Can that amount then be split into smaller pieces in order to avoid hitting the 2% and 3% thresholds in our charter?

Answer: I agree with bond counsel that you cannot split the special appropriation into smaller amounts to avoid the Town Charter provisions governing "special appropriations." Therefore, if additional funds are needed for the project, the Town will have to comply with Sections C-1111a. listed above. However, any grant monies received are exempted from these provisions as noted above.

Glenn – does the original bond resolution require the Town to apply any grants received for the project to the \$9.5 million appropriation?

In this instance, the Town has authorization to appropriate \$9.5 million towards the projects with the authorization to bond the \$9.5 million. Thus, it is a separate and distinct appropriation from a supplemental appropriation that is adding additional funds towards the project but is not authorizing the issuance of bonds or notes to pay for the project (See C-1109.a. A. of the Town Charter).

**From:** Deborah Bates <dBates@colchesterct.gov>

**Sent:** Monday, November 28, 2022 10:47 AM

**To:** Ritter, Matthew D. <MRitter@goodwin.com>

**Cc:** Andreas Bisbikos <abisbikos@colchesterct.gov>; Rosemary Coyle <rcoyle@colchesterct.gov>; Denise Turner <dturner@colchesterct.gov>; Jason LaChapelle <jLaChapelle@colchesterct.gov>; Deborah Bates <dBates@colchesterct.gov>

**Subject:** Fw: Legal Opinion for the Senior Center Project

\*EXTERNAL EMAIL\*

Good Morning Matt,

Tonight, the Board of Selectmen and the Board of Finance have a joint meeting to review the senior center project.

When you have a moment, are you able to forward your legal opinion regarding the two question Andreas sent you in his November 22<sup>nd</sup> email to the board today? Please see below:

I look forward to hearing from you soon.

All the best,

Debbie Bates  
Board of Selectmen

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**From:** Rybacki, Glenn G. <GRybacki@pullcom.com>

**Sent:** Tuesday, November 22, 2022 7:27 PM

**To:** First Selectman <selectman@colchesterct.gov>; MRitter@goodwin.com <MRitter@goodwin.com>

**Cc:** Deborah Bates <dBates@colchesterct.gov>; Denise Turner <dturner@colchesterct.gov>; Jason LaChapelle <jLaChapelle@colchesterct.gov>; Rosemary Coyle <rcoyle@colchesterct.gov>; Andrea Migliaccio <BOFChair@colchesterct.gov>; Art Shilosky <aShilosky@colchesterct.gov>; John Thomas <jthomas@colchesterct.gov>; Mike Egan <megan@colchesterct.gov>; Mike Hayes <mhayes@colchesterct.gov>; Tim Vaillancourt <tVaillancourt@ColchesterCT.gov>; Tony Tarnowski <tar51214@att.net>; Debbie Kratochvil <dkratochvil@colchesterct.gov>

**Subject:** RE: Legal Opinion for the Senior Center Project

Andreas and All:

My apologies for misunderstanding the questions asked.

First, let me summarize what has been authorized. What controls the scope of the project and what the appropriation may be expended on is contained in the Resolution that was passed. The Town is not restricted to the ballot question. The ballot question is a short statement meant to simplify the referendum ballot and what the voters actually approve (or disapprove) is the Resolution. The scope of the project is contained in the first section of the Resolution as follows:

- a. That the Town of Colchester appropriate NINE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$9,500,000) for costs related to the Senior Center Building Project, including the design and construction of a new Senior Center on Lebanon Avenue between Louis Lane and Mill Street, substantially as described in the Conceptual Design prepared by Silver Petrucelli Architects and presented January 21, 2021. The building committee established for the project shall be authorized to determine the scope and particulars of the project and to reduce or modify the project, and the entire appropriation may be expended on the project as so modified or reduced. The appropriation may be spent for design and construction costs, testing and permitting costs, equipment, furnishings and fixtures, materials, land and easement acquisition, site improvements, utilities, engineering fees, project management costs and fees, legal fees, net interest on borrowings and other financing costs, and other expenses related to the project or its financing.

As this provision details, the scope of the Project in this case is not just the design and construction of the senior center, but also a broad list of expenses related to the senior center Project

Below are my responses to your specific questions:

1. Can the Board of Selectmen authorize additional financial funds to pay for the project outside the design and construction phase (ex. including FF&E & Bond Issuance Costs) based on the language to the referendum question?  
The Town can always appropriate funds outside the Resolution to be expended on project costs such as FF&E and bond issuance costs. In this instance, the Resolution is not a prohibition on any additional appropriations for project costs.
2. Can the Town create a reserve account to utilize any additional funds as a last resort mechanism to address inflationary costs?  
The Town could make use of a reserve fund such as that provided in Connecticut General Statutes Chapter 108. Subject to the statutes, the Town would set this up, fund it and appropriate from it (Matt would probably be best for this).
3. Is there anything in place that would prohibit the Town of Colchester from utilizing donated money? With no town policy in place, who has the authority to authorize that expenditure?  
There is nothing that I am aware that would prohibit the Town from accepting donated funds. Matt should weigh in on authorizing its use, particularly for donations that are specified for a particular purpose.
4. Would the Undesignated Fund Balance appropriation and Capital Reserve appropriation register as one holistic appropriation or two separate appropriations when each appropriation will be utilized to address a different concern?  
Appropriations generally have to identify the source of funds. I am not aware of any prohibition of identifying two or more sources of funding, so the Town could make either one or two appropriations. However, if the sources in a single authorization have different requirements for appropriation, all of those requirements would need to be satisfied. Matt may wish to weigh in on this.
5. Jason LaChapelle has a similar question: Per the meeting last night, I would like to hear our town attorney's legal opinion on what "Special Appropriation" in our charter actually means. Does "Special Appropriation" refer to the ENTIRE amount appropriated for a single use from town

coffers (i.e: The Senior Center Building project) minus the amount from grants? Can that amount then be split into smaller pieces in order to avoid hitting the 2% and 3% thresholds in our charter?

I believe this refers to Supplemental Appropriations as detailed in Charter Section 1111. It does not appear that the Charter contains any specific definition or prohibitions. As a general rule, an appropriation should be able to stand on its own and not be split up based on dollar amounts to avoid procedural thresholds. Matt may have more to add here.

I hope this helps, but please do not hesitate to contact me if there should be any additional questions or concerns.

Regards,  
Glenn

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**Glenn G. Rybacki, Esq**  
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**From:** First Selectman <[selectman@colchesterct.gov](mailto:selectman@colchesterct.gov)>

**Sent:** Tuesday, November 22, 2022 10:41 AM

**To:** [MRitter@goodwin.com](mailto:MRitter@goodwin.com); Rybacki, Glenn G. <[GRybacki@pullcom.com](mailto:GRybacki@pullcom.com)>

**Cc:** Deborah Bates <[dBates@colchesterct.gov](mailto:dBates@colchesterct.gov)>; Denise Turner <[dturner@colchesterct.gov](mailto:dturner@colchesterct.gov)>; Jason LaChapelle <[jLaChapelle@colchesterct.gov](mailto:jLaChapelle@colchesterct.gov)>; Rosemary Coyle <[rcoyle@colchesterct.gov](mailto:rcoyle@colchesterct.gov)>; Andrea Migliaccio <[BOFChair@colchesterct.gov](mailto:BOFChair@colchesterct.gov)>; Art Shilosky <[aShilosky@colchesterct.gov](mailto:aShilosky@colchesterct.gov)>; John Thomas <[jthomas@colchesterct.gov](mailto:jthomas@colchesterct.gov)>; Mike Egan <[megan@colchesterct.gov](mailto:megan@colchesterct.gov)>; Mike Hayes <[mhayes@colchesterct.gov](mailto:mhayes@colchesterct.gov)>; Tim Vaillancourt <[tVaillancourt@ColchesterCT.gov](mailto:tVaillancourt@ColchesterCT.gov)>; Tony Tarnowski <[tar51214@att.net](mailto:tar51214@att.net)>; Debbie Kratochvil <[dkratochvil@colchesterct.gov](mailto:dkratochvil@colchesterct.gov)>

**Subject:** Legal Opinion for the Senior Center Project

Hi Matt & Glenn,

Last night the Board of Selectmen and the Board of Finance had a spirited conversation regarding the inflationary construction costs of the Senior Center and the possible options that the Town has. The project is about 900K to 1M over due to inflationary costs.

We are seeking legal opinions from both attorneys on the following questions:

1. Can the Board of Selectmen authorize additional financial funds to pay for the project outside the design and construction phase (ex. including FF&E & Bond Issuance Costs) based on the language to the referendum question?
2. Can the Town create a reserve account to utilize any additional funds as a last resort mechanism to address inflationary costs?

"SHALL THE TOWN OF COLCHESTER APPROPRIATE AND AUTHORIZE THE BOARD OF SELECTMEN TO EXPEND A SUM NOT TO EXCEED \$9,500,000 FOR COSTS RELATED TO THE DESIGN AND CONSTRUCTION OF A NEW SENIOR CENTER AND AUTHORIZE THE ISSUANCE OF BONDS AND NOTES TO FINANCE THE PORTION OF THE APPROPRIATION NOT DEFRAYED FROM GRANTS?"

There are specific regulations and guidelines that the Town has in place due to the Town Charter & Town Policies. A proposal I laid out yesterday was to utilize \$575K from an Endowment from Stephen Bendas Estate, \$250K from Undesignated Fund Balance, and \$95K from Capital Reserve.

3. Is there anything in place that would prohibit the Town of Colchester from utilizing donated money? With no town policy in place, who has the authority to authorize that expenditure?
4. Would the Undesignated Fund Balance appropriation and Capital Reserve appropriation register as one holistic appropriation or two separate appropriations when each appropriation will be utilized to address a different concern?
5. Jason LaChapelle has a similar question: Per the meeting last night, I would like to hear our town attorney's legal opinion on what "Special Appropriation" in our charter actually means. Does "Special Appropriation" refer to the ENTIRE amount appropriated for a single use from town coffers (i.e: The Senior Center Building project) minus the amount from grants? Can that amount then be split into smaller pieces in order to avoid hitting the 2% and 3% thresholds in our charter?

Sincerely,

Andreas Bisbikos  
First Selectman

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## 11/28 BoS / ARPA Field Study Meeting

Michael Dubreuil <dubreuilm@gmail.com>

Tue 11/29/2022 12:36 PM

To: First Selectman <selectman@colchesterct.gov>

Cc: Deborah Bates <dBates@colchesterct.gov>; Denise Turner <dturner@colchesterct.gov>; Jason LaChapelle <jLaChapelle@colchesterct.gov>; Rosemary Coyle <rcoyle@colchesterct.gov>

All,

I zoomed into the joint BoS/ARPA meeting on the Phase 1 study. I chose not to publicly comment; but I can tell you I was very pleased with the meeting.

A bit of background, I've been a baseball coach for about 5 years in town. I've been a bit of a thorn in the side of our elected individuals pushing for field maintenance and irrigation.

Something occurred to me last night: we've been trying to put the cart before the horse. Everyone knows that grass needs water; so we pushed irrigation. However, I know as a lawn care nut that the foundation for good grass is actually good soil. In fact, with the right soil you can use less water!

I'm excited to hear about the "rehabilitation" and the plans for it. From my knowledge that will be years of fertilizer and minerals to improve the soil quality. We definitely have to consider how this will proceed in the future (see Note #1).

I also really liked the idea from Rosemary to use the wells to offset water costs. It can be difficult to use ARPA funds to offset routine costs in the future. By using ARPA money to install wells we can offset the future costs of water from the public water company.

One commenter said that the public watching thinks this is another delay toward irrigation. I would say that may be true for people who don't understand grass... but this turf maintenance consultant knows that good grass starts with good soil. To be fair though, it was a little disjointed and good communication of the plan is key to getting community support. (I also don't completely understand each phase.) So it would be nice for a plan to be published. From my understanding of the plan, what I see is:

A.) This part already happened: a proposal for an irrigation system to cover the fields with water.

B.) Start Phase 1 of the field study immediately. Tom Irwin advisors will perform an analysis of the soil conditions. They provide recommendations for the nutrients to improve soil conditions. They also analyze the water needs. They provide a lawn nutrition plan to improve field conditions by improving the foundation, the dirt.

C.) Then Tom Irwin Advisors reviews the proposed irrigation system. They offer advice for changes. The town sends the updated irrigation system plans out for bid (or if it's possible to modify current bids.) Tom Irwin can advise on how much water will be required; providing a watering schedule/plan.

D.) Then two construction projects happen simultaneously in 2023 (irrigation MUST happen in 2023):

1. The irrigation system is installed.
2. The appropriate number of wells are drilled



E.) The town executes the "rehabilitation" program or field nutrition plan to improve the soil conditions in the future years.

I think another key is that there is some sort of "water house" that has inputs from the wells and the public water main, and then has outputs to the fields. This way we have control if we're using well water or we need to switch over to the public water supply. I can foresee that in an emergency situation, we need to switch from the wells to the public water supply.

Anyway, great work! I love it and can't wait to see it executed.  
- Michael Dubreuil

NOTE #1:

As someone who dabbles in real lawn care I am familiar with some of the tools that can be used. For example, many people in our state will send samples of their lawn dirt to UCONN for advice. For a small fee (about \$10) the UCONN Soil Nutrient Analysis Laboratory will test your soil and give you a report on what nutrients should be applied and in what quantities. It would be great if we had a person in Public Works who was trained to do this in each field, send the dirt for analysis at UCONN, and inform the public works director what nutrients are needed each year. I hope we can ask Ian about this type of training or maybe their company does this for a nominal fee.

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