

# Newburyport Bank

The Honorable Monica Mezzapelle  
Treasurer  
New Hampshire State Treasury  
25 Capitol Street, Room 121  
Concord, NH 03301

May 2, 2022

Re: Legal Opinion Furnished by an Out-of-State Bank Pursuant to New Hampshire RSA 6:8, 1-a

Dear Treasurer Mezzapelle,

As indicated in the subject caption, this opinion is being submitted by Newburyport Five Cents Savings Bank (“Newburyport Bank”) pursuant to Chapter 65, the Laws of 2021, and New Hampshire RSA 6:8 1-a.

Newburyport Bank is a Massachusetts chartered savings bank and an indirect wholly owned subsidiary of Newburyport Five Cents Bancorp, MHC, a Massachusetts chartered mutual holding company. It operates five branches in the Commonwealth of Massachusetts and five branches in the State of New Hampshire.

I am the Executive Vice President and Chief Legal Officer of Newburyport Bank. I am admitted to the practice of law in the Commonwealth of Massachusetts and before the Supreme Court of the United States of America. I am currently a member in good standing of both bars.

I am submitting this opinion regarding the issue of reciprocity as addressed in the New Hampshire law, specifically whether public officials in the Commonwealth of Massachusetts may deposit public funds in state banks or similar financial institutions chartered in states other than the Commonwealth of Massachusetts. While there appears to be no general reciprocity allowing banks and financial institutions in foreign states to be depositories for Massachusetts public funds, my interpretation of Massachusetts General Laws, Chapter 44, Sections 55 and 55A covering the deposit of public funds suggests that there is limited reciprocity for New Hampshire banks and financial institutions similarly situated to Newburyport Bank. Accordingly, in my reasoned opinion, a bank or financial institution chartered and headquartered in New Hampshire having branches in the Commonwealth of Massachusetts could be the depository for public funds from Massachusetts public officials.

My opinion is based on the following analysis of the Massachusetts municipal finance law found at MGL Chapter 44, Sections 55 and 55A.



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JOURNEY WELL

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Section 55 of Chapter 44 provides general authority for the deposit of public funds by officials of state governmental units. Included within this authority are certain limitations and prohibitions regarding both the deposit and the investment of these funds. Subsection 2 of Section 55 lists the types of financial institutions that officials may use to deposit these funds, which are limited to "...trust companies, national banks, savings banks or cooperative banks..." This section does not specify that these institutions be chartered in the Commonwealth of Massachusetts. The absence of this limitation, however, is likely not sufficient to claim that reciprocity therefore exists in Massachusetts.

An analysis of Section 55A of Chapter 44 does provide additional guidance in this regard. This section limits, in certain circumstances, the liability of public officials who deposit or invest public funds that are subsequently lost as the result of the bankruptcy, closing, or liquidation of the institution holding those funds. Unlike the broader language regarding the types of financial institutions authorized to hold these funds, Section 55A limits its "hold harmless" provisions to only those public officials who deposit funds or make investments in good faith and in the exercise of due diligence in:

*"..in a trust company, co-operative bank, or savings bank, if the trust company or bank is organized or exists under the laws of the commonwealth or any other state or may transact business in the commonwealth and has its main office or a branch office in the commonwealth, a national bank, federal savings bank, or federal savings and loan association, if the bank or association may transact business and has its main office or branch office in the commonwealth..."* (Emphasis added)

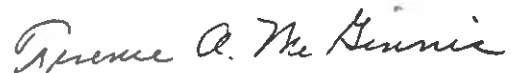
One of several "canons" of statutory interpretation is the principle that sections of a particular law should be read consistently and as a whole in the event of any ambiguity and when the sections of that law deal with the same specific subject. (For a more thorough discussion of this general principle, see *Heine v Lee County*, 221 So. 3d 1254, 1258.)

Based on the foregoing analysis, it is my opinion that there is limited reciprocity in the Commonwealth of Massachusetts that would allow a bank chartered and headquartered in New Hampshire and operating branches in Massachusetts to be the depository for public funds from Massachusetts public officials. For this reason, I have concluded that Newburyport Bank would be able to accept deposits and investments of public funds from New Hampshire public officials without violating the provisions of New Hampshire RSA 6:8 1-a.

This opinion is for the sole benefit of Newburyport Bank and may not be relied upon by any other party.

If there are any questions, I can be reached at (978) 225-8944

Sincerely yours,



Terence A. McGinnis  
Executive Vice President &  
Chief Legal Officer



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