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Office of The Attorney General
State of Connecticut

June 12, 2014

Hon. Denise L. Nappier
State Treasurer
Office of the State Treasurer
55 Elm Street
Hartford, CT

Dear Treasurer Nappier:

You have asked for a formal opinion with regard to the applicability of certain provisions of Conn. Gen. Stat. § 7-374c, which governs the issuance of municipal pension deficit funding bonds, to bonds that the City of West Haven (City) is proposing to issue to refund its previously issued pension deficit funding bonds.

We understand that the City has requested to use the definition of "actuarially recommended contribution" set forth in Conn. Gen. Stat. § 7-374c(a)(2) for bonds issued after July 1, 2006. The application of that definition to pension deficit funding bonds issued prior to July 1, 2006 requires approval of both the Treasurer and the Secretary of the Office of Policy and Management. Conn. Gen. Stat. § 7-374c(a)(2). You indicate that there are several questions on which you seek advice to assist in evaluating whether to approve the City's request.

Specifically, you have requested an opinion as to three questions: (1) Does the language in § 7-374c(a)(2) requiring compliance with the provisions of § 7-374c(c)(3) include all of the requirements in that subsection? (2) Should the Treasurer and the Secretary approve the municipality's request to apply the post-2006 "actuarially required contribution" definition, will all requirements under § 7-374c(c)(3) apply to any refunding bonds issued after such approval is granted? and (3) May proceeds from the sale of refunding bonds issued pursuant to § 7-374c(g) be used for purposes other than funding a pension fund deficit?

With respect to the first two questions, we understand the focus of your concern to be whether approval of the City's request would subject the City to the requirement in Conn. Gen. Stat. § 7-374c(c)(3) that "sufficient funds to meet the actuarially required contribution . . . shall be deemed appropriated an amount sufficient to meet such requirement, notwithstanding the provisions of any other general statute or of any special act, charter, special act charter, home-rule ordinance, local ordinance or local law." We note that the City has expressed to you and the Secretary its view that this requirement would apply to it in the event its request is approved.

As explained below, although we cannot opine with certainty how a court would rule on the question, the better construction is that all of § 7-374c(c)(3), including the "deemed appropriated" requirement, would apply to refunding bonds. As to the third question, we conclude that § 7-374c(g) would permit the use of the proceeds from the refunding bonds for purposes authorized by Conn. Gen. Stat. § 7-370c as well as for the refunding of the pension deficit funding bonds.

The Applicability of § 7-374c(c)(3) to Refunding Bonds

The General Assembly enacted § 7-374c of the General Statutes to authorize municipalities to issue pension deficit funding bonds to fund past unfunded pension benefit obligations and sets forth certain requirements for their issuance. Of particular significance to the questions posed, § 7-374c(c)(3) requires that, as long as any pension deficit funding bonds or any refunding bonds issued pursuant to § 7-374c are outstanding, the municipality is required to appropriate sufficient funds to meet the "actuarially required contribution" to the pension plan. The apparent purpose of this provision is to ensure that municipalities that have issued bonds for funding a pension deficit adequately fund its pension plans going forward.

The term "actuarially required contribution" is defined by the statute. In 2006, the legislature amended the definition to mean

> the annual required contribution of the municipal employer to the pension plan of the municipality, as established by the actuarial valuation and determined by an enrolled actuary in a method and using assumptions meeting the parameters established by generally accepted accounting principles, provided the amortization schedule used to determine such contribution shall be fixed and shall have a term not longer than the longer of ten years, or thirty years from the date of issuance of

> the pension deficit funding bonds. In the event that the funding ratio of the pension plan, as determined immediately succeeding the deposit of the proceeds of the pension deficit funding bonds in such pension plan, is reduced by thirty per cent or more, the maximum permitted term of such amortization schedule shall be reduced by the same percentage.

Conn. Gen. Stat. § 7-374c(a)(2). This definition applies to any pension deficit funding bonds issued on or after July 1, 2006, or to any such bonds issued before July 1, 2006, if the municipality seeks and receives the approval of the Treasurer and Secretary of OPM. *Id.* Further, if a municipality received approval from the Treasurer and the Secretary to apply this definition for pension deficit funding bonds issued prior to July 1, 2006, the municipality must also comply with the provisions of § 7-374c(c)(3).

In addition to mandating municipalities to make actuarially required contributions as discussed above, § 7-374c(c)(3) imposes several other requirements on municipalities. It provides in full:

> ***As long as the pension deficit funding bonds or any bond refunding such bonds are outstanding***, the municipality shall (A) for each fiscal year of the municipality commencing with the fiscal year in which the bonds are issued, appropriate funds in an amount sufficient to meet the actuarially required contribution and contribute such amount to the plan, and (B) notify the secretary annually, who shall in turn notify the Treasurer, of the amount or the rate of any such actuarially recommended contribution and the amount or the rate, if any, of the actual annual contribution by the municipality to the pension plan to meet such actuarially recommended contribution. On an annual basis, the municipality shall provide the secretary and the Treasurer with: (i) The actuarial valuation of the pension plan, (ii) a specific identification, in a format to be determined by the secretary, of any changes that have been made in the actuarial assumptions or methods compared to the previous actuarial valuation of the

> pension plan, (iii) the footnote disclosure and required supplementary information disclosure required by GASB Statement Number 27 with respect to the pension plan, and (iv) a review of the investments of the pension plan including a statement of the current asset allocation and an analysis of performance by asset class. ***With respect to a municipality which issues pension deficit funding bonds on or after July 1, 2006, in any fiscal year for which such municipality fails to appropriate sufficient funds to meet the actuarially required contribution in accordance with the provisions of this subdivision there shall be deemed appropriated an amount sufficient to meet such requirement, notwithstanding the provisions of any other general statute or of any special act, charter, special act charter, home-rule ordinance, local ordinance or local law.***

Conn. Gen. Stat. § 7-374c(c)(3) (emphasis added). The final provision of this subsection creates a mechanism by which a municipality that fails to appropriate sufficient funds to meet the actuarially required contribution will be deemed to have appropriated such an amount by operation of the statute.

The questions you pose turn on the interpretation of this "deemed appropriated" provision and its applicability to bonds issued to refund previously issued pension deficit funding bonds. It is plain from the statutory language that all of the requirements of § 7-374c(c)(3), including the "deemed appropriated" provision, apply to a municipality that has issued pension deficit funding bonds on or after July 1, 2006 or that issued such bonds prior to July 1, 2006 and has received the approval of the Treasurer and the Secretary to use the post-2006 actuarially required contribution definition. What is much less clear is whether the "deemed appropriated" provision applies to refunding bonds. The lack of clarity stems from the fact that both the "deemed appropriated" provision in § 7-374c(c)(3) and § 7-374c(a)(2), which makes § 7-374c(c)(3) applicable to pension deficit funding bonds issued prior to July1, 2006, both refer only to pension deficit funding bonds and not to refunding bonds.

As with all questions of statutory interpretation, "[w]hen construing a statute, [a court's] fundamental objective is to ascertain and give effect to the apparent intent of the legislature." *State v. Webster*, 308 Conn. 43, 51 (2013). "In seeking to determine that meaning, General Statutes § 1-2z directs [the court] first to consider the text of the statute itself and its relationship to other statutes." *Id.* (ellipsis and brackets omitted). "If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." *Id.* "When a statute is not plain and unambiguous, [the court] also look[s] for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter." *Id.* at 51-52.[1]

Permitting a municipality, by issuing refunding bonds, to avoid the "deemed appropriated" provision that would otherwise apply to pension deficit funding bonds would appear to frustrate the legislature's purpose in enacting the statute. The legislature crafted a complex set of interrelated provisions: A municipality can take advantage of the definition of actuarially required contributions for post-2006 pension deficit funding bonds as well as for pre-2006 bonds if approved by the Treasurer and the Secretary. As part of the means of ensuring that a municipality adequately funds their pension plans going forward, the legislature required that the municipality appropriate adequate funds to satisfy the actuarially required contribution, and if it does not, such funds would nonetheless be "deemed appropriated." To conclude that the "deemed appropriated" provision would no longer apply to the municipality if it chooses to issue refunding bonds – when the statue makes clear that the actuarially required contributions must continue to be made as long as refunding bonds remain outstanding – would seem to be at odds with the purpose of this complex statutory framework. Statutes, of course, should be construed to further, not thwart, their intended purpose, and where one construction frustrates that purpose and an alternative does not, the latter, where possible, is preferred. *Chatterjee v. Comm'r of Revenue Servs.*, 277 Conn. 681, 691-92 (2007).

However, our conclusion that the "deemed appropriated" provision applies to refunding bonds cannot be expressed with certainty. First, the statute defines "pension deficit funding bonds" as "any obligation issued by a municipality to fund, in whole or in part, an unfunded past benefit obligation." Conn. Gen. Stat. § 7-374c(a)(10). It expressly excludes "any bond issued by a municipality

[1] The legislative history of § 7-374c provides no substantive guidance to the questions addressed in this opinion.

pursuant to and in accordance with the provisions of subsection (g) of this section to pay, fund or refund prior to maturity any if its pension deficit funding bonds previously issued...." *Id.* Subsection (g) is the provision that authorizes a municipality to issue refunding bonds "to pay, fund or refund prior to maturity any of its pension deficit funding bonds...." *Id.*, § 7-374c(g). As a matter of plain meaning, the legislature defined the phrase "pension deficit funding bonds" as used in the statute as excluding refunding bonds. Courts are ordinarily bound by statutory definitions. *State v. Acordia, Inc.*, 310 Conn. 1, 21-22 (2013).

Second, within § 7-374c(c)(3) itself, the legislature at one point refers to both pension deficit funding bonds and refunding bonds, but in the "deemed appropriated" provision refers only to pension deficit funding bonds. Specifically, § 7-374c(c)(3) begins "[a]s long as the pension deficit funding bonds or any bond refunding such bonds are outstanding," the municipality must satisfy the actuarially required contribution and other reporting requirements. By contrast, the "deemed appropriated" provision that follows only refers to pension deficit funding bonds and not to refunding bonds. Where the legislature uses a word or phrase in one place but omits it in another, particularly within the same subsection of the statute, the choice is typically deemed deliberate. *Pico v. Town of Voluntown*, 295 Conn. 141, 149 (2010). Unless a contrary intent is evident, a court must interpret a statute as written and usually will not supply language the legislature omitted. *Okeke v. Comm'r of Public Health*, 304 Conn. 317, 329 (2012).

Nevertheless, an interpretation of § 7-374c that concludes that the "deemed appropriated" provision applies to refunding bonds would clearly be defensible and, in our view, is the better construction of the statute. Such a construction would be consistent with and materially advance the legislature's purpose of ensuring that municipalities that have issue pension deficit funding bonds fund their pension plans adequately and avoid the need for such bonds in the future. However, in light of the language the legislature chose to use – particularly the failure to include a reference to refunding bonds in the "deemed appropriated" provision in § 7-374c(c)(3) – we cannot opine with certainty how a court, if faced with the question, would construe that provision. We therefore recommend that, if greater certainty is required, legislation be sought to clarify whether the provision should apply to refunding bonds.

Use of Proceeds from Refunding Bonds

You ask whether the proceeds from the sale of refunding bonds issued pursuant to § 7-374c(g) may be used for purposes other than funding a pension fund deficit. Section 7-374c(g) provides:

> A municipality may authorize and issue refunding bonds to pay, fund or refund prior to maturity any of its pension deficit funding bonds in accordance with the provisions of section 7-370c, provided . . . the weighted average maturity of such refunding bonds shall not exceed the weighted average maturity of the outstanding pension deficit funding bonds being paid, funded or refunded by such refunding bonds. The municipality shall notify the secretary, who shall in turn notify the Treasurer, of its intention to issue refunding bonds pursuant to this subsection, not less than fifteen days prior to the issuance thereof, and shall provide the secretary with a copy of the final official statement, if any, prepared for the refunding bonds, not more than fifteen days after the date of issue of such bonds.

Under this provision, a municipality may issue refunding bonds to refund, prior to maturity, its pension deficit funding bonds. The issuance of such refunding bonds must comply with § 7-370c, which in turn authorizes a municipality, by resolution of its legislative body, to issue refunding bonds

> for the purpose of paying, funding or refunding prior to maturity all or any part of such municipality's bonds, notes or other obligations, the redemption premium, if any, with respect thereto, the interest thereon, the costs with respect to the issuance of such refunding bonds and the payment of such refunded bonds, notes or other obligations.

Conn. Gen. Stat. § 7-370c.[2]

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[2] Section 7-374c(g) establishes a different weighted average maturity requirement for refunding pension deficit funding bonds than is provided in § 7-370c.

You do not specifically indicate what other purposes may be contemplated for the refunding bonds proceeds. However, § 7-374c(g) does not expressly restrict the use of the proceeds of refunding bonds issued pursuant to it to refunding the pension deficit funding bonds exclusively. Be referencing § 7-370c, which authorizes the use of refunding proceeds for paying, funding or refunding any of the municipality's bonds, notes or other obligations, § 7-374c(g) would permit the use of the proceeds from the refunding bonds for purposes authorized by § 7-370c as well as for the refunding of the pension deficit funding bonds.

We trust this is responsive to your questions.

Very truly yours,

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