

BURKE, WARREN, MacKAY & SERRITELLA, P.C.

MEMORANDUM

TO: Elaine Ramesh, Village of Barrington Hills

FROM: Burke Warren MacKay & Serritella, P.C.

RE: Special Fund to Pay for Repairs or Replacements to Cuba Road Bridge

DATE: February 14, 2011

At your request, we have researched whether there is any limitation on the Village establishing a fund to pay for the future repair or replacement of the Cuba Road Bridge.

There is no restriction on the ability of the Village to establish such a fund, in fact, case law in Illinois has long recognized the ability of a municipality to create a special fund to pay for proper municipal expenses (*Simpson v. City of Highwood*, 372 Ill. 212 (1939)).

While the establishment of a special fund for the repair or replacement of the Cuba Road Bridge by an ordinance duly adopted by the Board of Trustees is clearly recognized in Illinois, to the extent the funding of such special funds comes from the levy of ad valorem real estate taxes, the Board of Trustees may not bind future Boards to levy taxes for such fund. Typically the establishment of such a fund is made in connection with the issuance of bonds or some other municipal indebtedness or is funded specifically from municipal receipts other than ad valorem real estate taxes, such as when a fund is established in connection with a municipal waterworks where the water charges or some portion of those charges are specifically allocated to expansion or upgrade of the waterworks system.

Once a special fund is established by ordinance, those funds can be used solely for the use specified in the ordinance unless subsequently modified by an ordinance duly adopted by the Board, unless otherwise restricted by State statute. You should note however that money may be borrowed from one municipal fund for the use of another fund provided that the borrowing must be repaid within the fiscal year in which is borrowed. (65 ILCS 5/8-1-13-1-3.1)

cc: Robert Kosin