May 5, 1989

Board of Directors
Municipal Assistance Corporation
for the City of New York
Suite 8901
One World Trade Center
New York, NY 10048

Gentlemen:

You have requested our views, as Financial Advisor to the Municipal Assistance Corporation, on the impact of proposed legislation (Senate Bill 3795) currently pending in the New York State Senate.

As we understand it, S.3795 would mandate that any amounts held in any of the Corporation's funds, including its Capital Reserve Funds and debt service funds, in excess of the requirements of each such fund, be paid to the City of New York on an annual basis. Excluded from this requirement are the "surplus" amounts from these funds that are being made available by the Corporation under existing agreements with the Governor and Mayor made in 1984 and 1986. The bill would, however, preclude making available the "surplus" amounts that have been proposed to be made available by the corporation to the improvement of the City's school buildings to implement recent State legislation.

Under the Corporation's General Bond Resolutions, the amounts retained in the Capital Reserve Funds are the next calendar year's debt service on the Bonds outstanding under the respective Resolutions. Currently, surplus amounts in such funds may, but need not, be transferred to the respective debt service funds also established by the Resolutions. Importantly, all amounts contained in the Capital Reserve Funds and debt service funds are pledged for the benefit of the bondholders solely to the payment of debt service on the Corporation's bonds.
Beyond the adverse impact that would be generated by altering the mechanics of long-established and pledged funds, there is a concern as to how investors and rating services would perceive the effects of the bill. Removing the discretion of the Corporation's directors, public officers of the State, may cause investors to view the Corporation as significantly constrained in the management of its $7.6 billion of outstanding debt, which could affect the perception of the Corporation's creditworthiness. Moreover, it could affect the positive market evaluation of the Corporation's independence and the insulation of its operations from those of the City and the State, which would not be beneficial to either the City or the State.

We hope that these views are of assistance in your evaluation of the potential effects of S.3795.

Sincerely,

John S. Tamagni

JST:AMM
April 24, 1989

Municipal Assistance Corporation
for The City of New York
Suite 8901
One World Trade Center
New York, New York 10048

You have requested our opinion with respect to certain legislation presently being considered by the New York State Legislature entitled "An Act to amend the public authorities law, in relation to excess moneys of the municipal assistance corporation" (S-3795).

Subdivision 3 of Section 3036 of the New York State Public Authorities Law (the "PAL") has since initially enacted in 1975 and presently provides:

The corporation shall create and establish a special fund (herein referred to as capital reserve fund).... All moneys held in the capital reserve fund, except as hereinbefore provided, shall be used solely for the payment of the principal of bonds secured by such capital reserve fund of the corporation, as the same mature or otherwise become due, the purchase of such bonds of the corporation, the payment of interest of such bonds of the corporation or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity. If the amount contained in the capital reserve fund exceeds the amount required to be contained in such fund pursuant to this subdivision three of this section plus any additional amounts required to be contained in such fund pursuant to the terms of issuance of any bonds or notes, such excess moneys may be withdrawn by the corporation.... (underscoring added)

Subdivision 2 of Section 3036-a of the PAL has similar language.
Subdivision 7 of Section 3036 of the PAL provides:

"The corporation shall create a debt service fund and an operating fund and may create and establish such other fund or funds as may be necessary or desirable for its corporate purposes."

Pursuant to the provisions of Subdivision 3 of Section 3036 and Subdivision 2 of Section 3036-a of the PAL, the Corporation has in each of its two bond resolutions provided for the establishment of the applicable capital reserve fund (referred to as the Capital Reserve Fund with respect to the bond resolution adopted July 2, 1975 (the "First Resolution") and the Capital Reserve Aid Fund with respect to the bond resolution adopted November 25, 1975 (the "Second Resolution").

Both such resolutions have similar provisions in the pertinent parts thereof, i.e., paragraph 2 of Section 606 of each such resolution, with the only distinction being the name of the fund into which an excess is to be deposited, i.e., the Debt Service Fund with respect to the First Resolution and the Bond Service Fund with respect to the Second Resolution.

Section 605 of each resolution with respect to each of the Debt Service Fund and the Bond Service Fund, respectively, provide that amounts in such fund may only be used to pay, including through purchase or redemption, the principal of and interest or redemption premium on the bonds secured pursuant to such resolution.

S-3795, if enacted into law, would amend Subdivision 3 of Section 3036 and Subdivision 2 of Section 3036-a of the PAL by deleting the discretionary word "may" and providing that "excess moneys shall annually be withdrawn from the capital reserve fund by the corporation and be paid to the municipality...."

Subdivision 7 of Section 3036 of the PAL is also proposed to be amended by providing that amounts in any of the debt service fund, the operating fund or the other funds created by the corporation as "necessary or desirable for its corporate purpose" which are in "excess of the amounts required to be contained in such funds for performance of their purposes and are in excess of the amounts required to be contained in such funds pursuant to the terms of issuance of any bonds or notes" are similarly to be transferred to the municipality.

The question arises as to whether the cited provisions of S-3795 would run afoul of (i) New York State Constitution, Article 1, §6, which provides that the State may not deprive a party to a contract of an essential contractual attribute without due process of law, Patterson v. Carey, 41 N.Y.2d 714
(1977) or (ii) Article I, Section 10 of the Federal Constitution by impairing either an important security provision relied upon by the holders of the corporation's debt, United States Trust Co. of New York v. New Jersey, 431 U.S. 1 (1977) or the State's own contract with such holders set forth in Section 3015 of the PAL to "not limit or alter the rights hereby vested in such corporation to fulfill the terms of any agreements made with said holders thereof, or in any way impair the rights and remedies of such holders until such notes and bonds... are fully paid and discharged", which provision has been included in Section 906 of each resolution (the "State Covenant").

We are of the opinion that a court of final jurisdiction would determine the cited provisions of S-3795 to be unconstitutional:

(1) under New York State Constitution, Article I, §6, provided that the court holds the Corporation's establishment, maintenance, use and discretionary control of its reserves and other funds constitute an essential contractual attribute of the particular obligation of the Corporation which gives rise to the action (the "Obligation"); and

(2) under the Federal Constitution, Article I, Section 10, as an impairment of the Obligation and the State Covenant, provided the Court holds such establishment, maintenance, use and discretionary control of such reserves and other funds constitute an important security provision relied upon by the holders of the Obligation.

We are further of the opinion that compliance by the Corporation with the provisions of S-3795 requiring that excess amounts in the capital reserve funds be paid over to the municipality rather than deposited in the Debt Service Fund or Bond Service Fund, as applicable, would constitute a default by the Corporation in the performance of an agreement contained in each of the First Resolution or Second Resolution, as applicable, giving rise to an "event of default" under Section 1202 of each such resolution.

The foregoing is limited to the extent that the enforceability of the cited provisions of the PAL or any part thereof is subject at all times to the proper exercise of the State's reserve police power.

Very truly yours,

Orrick, Herrington & Sutcliffe

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