To: The Financial Control Board  
Re: The Disposition of Bond Anticipation Notes Held by the Municipal Assistance Corporation

Date: May 15, 1979

STAFF MEMORANDUM

BACKGROUND

Pursuant to Section 6.19(h) of the Agreement to Guarantee, executed last November as part of the City's four year financing program, the Municipal Assistance Corporation for the City of New York (MAC) and the City were required to provide for the disposition of approximately $1 billion of bond anticipation notes (BANs) then held by MAC. That requirement has been satisfied through a series of agreements that have been submitted for Control Board review and approval.

The first such agreement, dated as of March 30, 1979, provided for the issuance by the City of $20 million principal amount of general obligation serial bonds in exchange for a like principal amount of BANs. In addition to satisfying, in part, the requirements of the Agreement to Guarantee, this transaction also fulfilled certain requirements of the Bond Purchase Agreement that had been signed by MAC in connection with the financing program. The bonds issued under this agreement bear interest at a rate of 8% per annum and will be paid in installments over a period ending October 1, 2002. The agreement was formally submitted to the Control Board on March 29, 1979 together with modification No. 79-6 to the Financial Plan, reflecting the issuance of the $20 million of bonds. On March 30, the Control Board approved the Financial Plan modification, the agreement and the issuance of the bonds.
A related agreement, dealing with the remaining BANs held by MAC, was also formally submitted to the Control Board on March 29. Under the related agreement, an additional $621.2 million of BANs were to be exchanged for a like principal amount of City bonds, $27.3 million of the BANs were to be redeemed during the current fiscal year and the remaining $345.3 million of BANs held by MAC were to be redeemed over a ten year period pursuant to a schedule contained in the agreement. The agreement noted that new legislation was required in order to implement the ten year redemption schedule and provided that the agreement was to become null and void unless the necessary legislation was enacted by May 1, 1979. The submission to the Control Board included proposed Financial Plan Modification No. 79-7, which was intended to reflect the transactions contemplated by the agreement.

This submission was not formally considered by the Control Board, pending a decision by the City as to whether it would attempt to obtain the necessary State legislation. New legislation was not sought and, by May 1, it again became necessary for the City and MAC to consider how they would dispose of the remaining $993.81 million of BANs held by MAC. On May 14, 1979 the City formally presented to the Control Board a new submission dealing with this issue.

THE MAY 14 SUBMISSION

The May 14 submission formally withdraws from Control Board consideration the agreement and Financial Plan modification that had been pending since March 30. In place of those documents, the submission presents a new agreement between MAC and the City (the "Exchange Agreement"), and a revised Modification No. 79-7, reflecting the transactions contemplated by the Exchange Agreement. The submission requests Control Board approval of the Modification, the Exchange Agreement and the issuance of bonds in accordance with the terms of the Exchange Agreement.

The Exchange Agreement provides for the disposition of the remaining $993.81 of BANs held by MAC as follows:

- $654.65 million of BANs are to be exchanged by MAC for a like principal amount of general obligation serial bonds issued by the City (the "Exchange Bonds"). The Exchange Bonds will bear interest at 8% per annum and will be paid over a twenty-eight year term ending September 15, 2007. However, during their entire term the Exchange Bonds are subject to call by the City on 30 days notice.

- $189.16 million of BANs are to be redeemed by the City in three installments. The first payment, consisting of $52.575 million in principal together
with accrued interest at 6% per annum is to be made on June 11, 1979. The second and third payments will be made on December 1, 1979 and December 1, 1980. Those payments will consist of $60.0 million and $76.585 million of principal, respectively, together with accrued interest. The BANs redeemed on those dates will bear interest at a rate of 6% until May 15, 1979, the date of the Exchange Agreement, and 8% thereafter (this is estimated to be the approximate average cost of MAC's outstanding debt).

$150.0 million of BANs will initially be held by MAC and either exchanged at a later date for bonds comparable to the Exchange Bonds or presented for cancellation without payment on June 30, 1981. These BANs were originally issued in connection with several Mitchell-Lama projects where the City is considering refinancing existing mortgages. If the City proceeds with a mortgage refinancing, the corresponding BANs will be cancelled; however, current arrangements give the City the option to bond out any BANs where refinancings are not effected.

The Financial Plan Modification presented as part of the May 14 submission reflects only the effects of the transactions contemplated by the Exchange Agreement and does not otherwise modify the Financial Plan as approved by the Control Board on February 14, 1979. There is currently pending before the Control Board a Financial Plan modification covering FY1979, reflecting the results of operation for the first three quarters of the current fiscal year. However, analysis of that modification is not yet complete and it is not anticipated that the Control Board will act on that submission until early June. The scope of Modification No. 79-7 was therefore limited in order to permit prompt action on the submission.

As indicated above, during the time they are outstanding the Exchange Bonds are subject to call, in whole or in part, by the City. Exercise of this right could materially change the redemption schedule for the Exchange Bonds, thereby changing the effect of debt service payments as set forth in Modification No. 79-7. The Exchange Agreement itself requires that the exercise of a call be consistent with the Financial Plan. However, in order to avoid any uncertainty as to whether the exercise of a call in any given instance will require the submission and approval of a Financial Plan modification, in its May 14 submission the City provided certain specific assurances relating to the Financial Plan review process.

The May 14 submission states that at least thirty days prior to the giving of notice in connection with the exercise of any call
of the Exchange Bonds, the City will advise the Control Board of its intention to exercise the call and will either submit a Financial Plan modification reflecting the effect of the call or certify that the exercise of the call is consistent with the Financial Plan then in effect. These arrangements provide appropriate assurances that any changes in the Exchange Bond redemption schedule that have a material effect on the Financial Plan will be subject to prior review and approval by the Control Board in the context of a Financial Plan modification.

THE FINANCIAL PLAN EFFECT OF THE TRANSACTIONS

Introduction

During fiscal 1978 and 1979, the City levied real estate taxes at a constant rate of $8.75 per hundred dollars of total assessed value of City real estate. The Financial Plan recently submitted to the Control Board by the City projects that this constant real estate tax rate will be maintained during the four fiscal years, ending with fiscal 1983, covered by the Plan. One of the principal objectives of the transactions contemplated by the May 14 submission is the creation of a flexible means by which the City can maintain this constant real estate tax rate during at least the period covered by the proposed Financial Plan.

Under the State Constitution, the maximum amount of real estate tax revenues which the City may levy during any year for operating purposes is limited to 2.5% of the average full value of taxable real estate during the most recent five years, less payments of principal and interest on certain short-term indebtedness. In addition, the City may levy real estate taxes without limit as to amount in order to pay principal and interest on its indebtedness.

The maximum permissible tax collections in any year, as well as the resulting tax rate, are thus dependent on the average full value of taxable real estate and on debt service to be paid by the City during the year. To the extent that the City intends, as a matter of policy, to maintain a constant real estate tax rate during any year, it must insure that the maximum permissible tax levy for that year equals or exceeds the total levy to be collected at the constant rate. As a practical matter, the only variable that the City can control in order to implement this policy is the aggregate debt service payable during the year in question.

It should be noted that both the debt service on the Exchange Bonds and the principal and interest payments on the BANs to be
redeemed will constitute debt service costs of the City which may be paid from real estate taxes levied "outside" the 2 1/2% constitutional limit. This has become an important consideration because the City's debt service has been steadily declining since the 1977 fiscal year. As a result, absent some measure of debt-service payments on City debt held by MAC, the City would not be able to support its real estate tax at the current $8.75 rate beyond the current fiscal year.

This condition has arisen largely because the City has not been able to do all of its own borrowing for the past four years, relying to a substantial degree on the borrowing capacity of MAC. However, the debt service on MAC bonds must be paid from sales taxes and other revenues that would otherwise be available for general City operations rather than from real estate taxes levied "outside" the 2 1/2% limit. To the extent that the City makes debt service payments to MAC, as contemplated in the Exchange Agreement, these amounts (which can be paid from taxes levied "outside" the 2 1/2% limit) become available for MAC debt service funding and thus reduce the amount of the MAC "take-out" that would otherwise be required. The effect of such a transaction is to permit some portion of MAC's debt service costs to be provided for through real estate taxes levied "outside" the 2 1/2% limit, and to permit the City some degree of flexibility in maintaining its real estate tax rate.

Analysis of the Transactions

According to the City's most recent projection of real estate tax trends and debt service trends for 1980-1983, the minimum amount of debt service the City needs to pay on BANs held by MAC and the Exchange Bonds ("BAN-Related Debt Service") in order to maintain the $8.75 real estate tax rate is as follows:

1980 -- $121.0 million
1981 -- $140.5 million
1982 -- $143.7 million
1983 -- 90.8 million

These projections assume modest annual growth in taxable assessed value (approximately 1% per year, until 1983, when the projected growth rate rises to 1.7%), and roughly comparable modest increases in full value and the amount available for operations within the 2 1/2% limit. They also assume issuance of all the debt projected in the City's May 11 Four Year Financial Plan submission. The drop-off of payments projected to be needed in 1983 is largely attributable to an expected increase in other types of City long-term debt service in that year.
In the event that the City experiences no growth in the assessed or full value of its real property during these years, the amount of BAN Related Debt Service needed to maintain the tax rate would be reduced by approximately $20-25 million in each of 1981, 1982 and 1983. On the other hand, if the City issues less debt than now projected during the four-year period, thus reducing non-BAN Related Debt Service, the need for such payments to MAC to maintain the tax rate would increase.

The actual schedules of payments to MAC provided for in the Exchange Agreement and related agreements (both principal and interest on the BANs to be redeemed, as well as debt service on the Exchange Bonds, and debt service on the $20 million of City bonds previously exchanged for BANs on March 30, 1979) substantially exceeds the amounts required to maintain the tax rate in 1980 and 1981 ($213.1 million and $221.8 million to be paid, compared to $121 million and $140.5 million projected to be needed, respectively), and provides a more modest cushion in 1982 and 1983 ($158.2 million and $94 million to be paid, compared to the estimated $143.7 million and $90.8 million needed, respectively).

This heavy "front-loading" of payments in the early years is primarily the result of two factors: (i) the requirement that approximately $135 million of BANs still outstanding as of June 30, 1979, be redeemed by June 30, 1981, rather than be converted into Exchange Bonds, and (ii) the structure of the Exchange Bonds themselves, which provide for high levels of maturing principal through fiscal 1983, followed by a considerably lower, flatter debt service schedule from 1984 through the final maturities in 2008. The payment schedule during these latter years ranges from $35.5 million in 1984, gradually decreasing to $25.5 million in 2008. (This assumes that the final $150 million of BANs retained by MAC are ultimately cancelled without payment pursuant to the Agreement, rather than converted into additional bonds. If the full $150 million were bonded, the annual debt service payments would be increased by approximately $13.5 million for each year through fiscal 2008).

This level of payments after 1983 represents a substantial drop-off from the $94.8 million to be paid (and the $90.8 million projected to be needed to maintain the tax rate) in 1983. As a result, the City may well seek to utilize the call feature of the Exchange Bonds by fiscal 1984 (or conceivably sooner, in the event that the amounts needed to maintain the tax rate exceed projections for 1982 or 1983).

Utilization of the call provision in the Exchange Bonds in order to increase the City's payments to MAC in a given year would, of course, have to be reflected in a modification of the City's four-year Financial Plan submitted to and approved by the Control Board prior to the City's exercise of the call. Consequently, the Control
Board will be assured of an opportunity to assess the full impact of the exercise of such a call on the City's property tax revenue base, debt service expenditure projections and the City's long-range fiscal outlook as a result of its use.

It should be noted that as long as the City maintains its commitment to keep the real estate tax rate at the $8.75 level, as reflected both in the four-year Financial Plan now in effect and in the Financial Plan submission for 1980-83 submitted to the Control Board on May 11 the amount of budget relief available through City debt service payments to MAC is limited to the amount needed to maintain the tax rate. Additional payments above this level (such as the excess payments scheduled in 1980 and 1981 above the level required to maintain the rate) are simply a "wash." That is, these excess payments (projected to amount to $92.1 million and $81.3 million in 1980 and 1981, respectively) will indeed flow to MAC and thus further reduce the MAC "take-out" by that amount (a budget saving); but, with a constant tax rate, they will not result in any increase in aggregate real estate tax revenues.

Thus, the City would not be able to convert such "excess" debt service payments to MAC into additional budget relief unless it sought to use them as the basis for actually increasing the property tax rate above the $8.75 level -- contrary to the Mayor's present commitment and the assumptions underlying the Financial Plan. Such a change in City policy would also have to be embodied in a Financial Plan modification requiring Control Board approval.

Given the City's most current assumptions for the 1980-83 period (and assuming no use of the call provision during that time), the following will be the outlook as of the end of the 1983 fiscal year:

- MAC will still hold Exchange Bonds in the aggregate principal amount of at least $312.8 million (or as much as $456.7 million, depending on how much, if any, of the last $150 million of MAC-held BANs are ultimately converted into bonds);

- The City's 1983 expense budget will have benefitted from approximately $90 million of real estate tax revenues which would otherwise have been lost to a falling real estate tax rate absent the City's BAN-related debt service payments to MAC in at least that amount;

- The City's scheduled debt-service payments to MAC on the Exchange Bonds will drop to a level of approximately $35.5 million (or as much as $49 million, depending on disposition of the last $150 million of BANs) in 1984, decreasing very gradually each year throughout until 2008;
As a result, as the 1984 fiscal year approaches, the City will need to devote increasing attention to the question of the extent to which it may seek to accelerate its payments to MAC through use of the call provision. Given the unpredictable nature of many of the relevant variables (e.g., amount and terms of future City debt to be issued, trends in assessed and full value of real estate, changes in the "equalization rate," etc.), it is almost impossible to project accurately the extent to which debt service payments to MAC will be needed in order to maintain the tax rate more than three or four years into the future. Indeed, given these variables, the estimates even for 1980-83 may be subject to material change during the four year period.

Nevertheless, given the current assumptions as to the 1980-1983 period, it does appear that MAC will continue to hold a sufficient principal amount of outstanding Exchange Bonds ($300 to $450 million) to permit the City, through the use of the call provision, to maintain the real estate tax rate (and the accompanying budget relief) for a number of years.

Assuming reasonably stable assessed value and full value trends for the period following 1983, and taking into account probable debt service levels during the period, it would appear that the need for debt service payments to MAC on the Exchange Bonds will be relatively stable through 1984-85 (i.e., on the order of the $90 million needed in 1983).

In 1986, however, it may be necessary to increase the use of the call provision in order to maintain the tax rate, to compensate for an anticipated reduction in City debt service in that year (after relatively level projected debt service costs the preceding three years). Thereafter, the City's debt service costs are expected to begin increasing to reflect the expansion of its capital borrowing during the preceding years. Accordingly, the need for the use of the call provision to maintain the tax rate could be expected to decline after 1986.

In any case, it appears likely that the City will have sufficient capacity to maintain the tax rate at $8.75 at least through fiscal 1985 or 1986, barring drastic changes in the current outlook for the assessed and full value of taxable real estate.

Alternatively, if the City ultimately chooses to limit the extent to which it utilizes the call provision, it could maintain some degree of flexibility with respect to the real estate tax rate (and some degree of budget relief) well beyond 1986. For example, if the City chooses to exercise the call provision in such a way as to provide annual payments to MAC on the Exchange Bonds in the
range of $90 million (the approximate "going-out" rate for 1983) --
which would provide constant annual budget relief in that amount --
the Exchange Bonds would not be fully redeemed until at least
1988 (assuming no additional bonds exchanged for the last $150
million of BANs) or 1990 (assuming full bonding of the additional
$150 million). This would not necessarily prevent modest declines
in the tax rate from the $8.75 level (perhaps in 1986), but it would
provide for a more gradual decline than would otherwise ultimately
occur.

This flexibility, and the four-year planning process embodied
in the Financial Emergency Act, provides a reasonable basis for
concluding that the execution and implementation of the Exchange
Agreement can contribute materially to the City's long-range fiscal
stability and health.

CONCLUSION

As indicated above, the May 14 submission requests Control
Board approval of Financial Plan Modification No. 79-7 (as revised),
of the Exchange Agreement and of the issuance of the Exchange Bonds.
The City has provided appropriate certifications in the submission
and there appears to be no reason for the Control Board not to
approve the matters submitted.

Under Section 8 of the Act, the Control Board must approve a
Financial Plan modification which it determines is complete and
consistent with the standards set forth in Section 8.1. Modification
No. 79-7 reflects the effect of the implementation of the Exchange
Agreement, including the issuance of the Exchange Bonds, on the
Financial Plan currently in effect. Those changes appear to be
complete and consistent with applicable statutory standards and it
is therefore recommended that, pursuant to Section 8.3(b) of the
Act, the Board approve Modification No. 79-7. Approval of Mod-
ification No. 79-7 means that performance of the Exchange Agreement
will be in accordance with the Financial Plan, as modified, and the
Agreement may therefore be approved by the Board pursuant to Section
7.1(e) of the Act.

Similarly, approval of Modification No. 79-7 means that the
issuance of the Exchange Bonds and the redemption of the Exchange
Bonds in accordance with the redemption schedule set forth in the
Exchange Agreement will be consistent with the Financial Plan, as
modified. However, Section 7.1(f) of the Act also authorizes the
Board to disapprove a proposed borrowing if it determines that the
borrowing is inconsistent with the objectives or purposes of the
Act. As part of its submission, the City has affirmatively certified
that the proposed terms of the Exchange Bonds are consistent with
the objectives and purposes of the Act and there appears to be no
reason for the Board to take issue with that view. It is possible that the interrelationship of real estate tax revenues, debt service on the Exchange Bonds and the exercise of the call provisions of the Exchange Bonds may, in the future, raise issues that concern the City's ability to maintain a balanced budget during the period covered by the Financial Plan or thereafter, or that are otherwise relevant to the objectives or purposes of the Act. However, the Board will review the effect of any exercise of the call provisions and can deal effectively with such issues in the context of its Financial Plan review powers at that time. It is therefore recommended that the Control Board approve the issuance of the Exchange Bonds pursuant to Section 7.1(f) of the Act.
Mr. John J. Dugan, Assistant Director
Bureau of State Aid
Department of Audit and Control
Albany, New York 12226

Dear Mr. Dugan:

An agreement to be entered into today, May 14, 1979, between the City and MAC, provides for the exchange of certain Bond Anticipation Notes for bonds and a repayment schedule for certain other Bond Anticipation Notes. As a result, the payments provided for in our report of March 23, 1979 will be changed.

The first change is that because of a requirement of the closing tomorrow for the exchange of the BANs for bonds, you are directed to pay MAC accrued interest from the anniversary date or the maturity date of the BANs to and including May 15, 1979; this payment will total $23,291,829.06. In addition, the amounts scheduled for payment as interest and principal on May 28, 1979, June 1, 1979, June 10, 1979 and June 11, 1979 will be changed.

Because these changes will result in an increase in the amount required to be in the General Debt Service Fund for the current quarter, we will, tomorrow, make a payment into the fund equal to the amount to be paid to MAC.

We are currently in the process of determining the rest of the changes required by this transaction. As soon as they are determined we shall amend our debt service report. Since the changes will require additional amounts to be deposited into the fund, you are hereby instructed to stop transferring excess collections from the fund to the City Treasury.

Very truly yours,

Mark B. Shernicoff
Chief Accountant

MBS:TM

cc: M. Ives    P. Toia
    D. Rosen    S. Schwartz
    J. Brigham   J. Butler
    K. Eisenstadt  J. Bender
    R. Vagt
City of New York

If the Payee Reference to appear on the check is the same for all payees listed on the voucher enter it in this box. If separate references are necessary, refer to instruction No. 2 on reverse side.

NYC GEN DS FUND

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Certification by the City of New York

I certify that the amount shown to be transferred to the designated payee is the amount required to meet debt service becoming due on the date indicated above on obligations of the City of New York and is to be paid pursuant to Section 9-a of the New York State Financial Emergency Act for the City of New York and the procedures issued by the New York State Department of Audit and Control.

Signature in Ink

Chief Accountant

Date May 14, 1979

For the State Comptroller

We have reviewed the payment request pursuant to requirements of Section 9-a of the New York State Financial Emergency Act for the City of New York and the procedures issued by the Department of Audit and Control, and approve payment.

Signature in Ink

Date


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Type of State Aid: 
MEMORANDUM

Date: 21 July 1978

To: O'Brien, Shernicoff, Eisenstadt, Thomas, Keohane, Friedman, Weinstein, Seale, Lithgow

From: H. Andrew Decker

Re: BAN Interest Payments received by MAC

Attached please find a corrected schedule of BAN Interest payments received by the Corporation, dated 06/26/78.

There is one correction, as enumerated below. Please discard the previous table:

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Thank you.

HAD/lsd

attachment
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Summary of Ban Interest Paid by the City
Municipal Assistance Corporation  
For The City of New York

MEMORANDUM

Date: 27 June 1978

To: BAN Interest Payment File

From: Andrew Decker

Re: Summary of Fiscal 1978 BAN Interest Payments from the City

The Corporation has received, during fiscal 1978, $76,181,655.74 in BAN interest. This amount represents interest paid on the BANs held by the Corporation, both those received in exchange offers and those issued by the City directly to the MAC. Interest paid during fiscal 1978 is for the period from the date of effective acquisition to the most recent anniversary date. The attached schedule summarizes the BAN interest paid. This schedule is based upon calculations done by the Office of the Chief Accountant.

In general, BANs subject to the moratorium paid interest at their face rate until original maturity and at 6% thereafter. The one BAN issued by the City to MAC and not subject to the moratorium paid interest at 6%. Interest is calculated on an actual day basis (365 days).

Based upon conversations with the Third Deputy Comptroller, it is our expectation that the City will continue to pay BAN interest when due on the anniversary date of each BAN.
cc: Paul O'Brien
    Mark Shernikoff
    Karen Eisenstadt
    Allen Thomas
    John Keohane
    Marilyn Friedman
    Stephen Weinstein
    Linda Seale
    Bill Lithgow
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To MAC during Fiscal Year 1978

As required by the city of

MAC amount paid by the city.
23 June 1978

Mr. Paul O'Brien
Third Deputy Comptroller
The City of New York
707 Municipal Building
One Centre Street
New York, N.Y. 10007

Dear Mr. O'Brien:

The Corporation hereby requests payment of $2,872,109.59 on
June 27, 1978, which amount represents interest due and
payable on $48,000,000 face value of BANs that have an
anniversary date of June 27.

Sincerely,

[Signature]

Harry A. Decker
Treasurer

cc: James Brigham
    Karen Eisenstadt
    Mark Schernikoff
Harris A. Decker, Treasurer
Municipal Assistance Corporation
Two World Trade Center
Room 4540
New York, N.Y. 10047

Dear Andrew:

Thank you for sending me a copy of your June 21 memorandum on BAN interest together with the attached letters.

Shouldn't we make a paper record somewhere of the period through which interest is calculated and collected, even if we don't make a paper record of the method by which interest is calculated? It just seems to me that something ought to indicate when new interest begins to accrue.

Best personal regards.

Sincerely,

[Signature]

Allen L. Thomas

cc: Marilyn F. Friedman
    Linda Seale
MEMORANDUM

Date: 21 June 1978

To: Marilyn Friedman, Linda Seale, Allen Thomas (Esq)'s all

From: Andrew Decker

Re: BAN Interest Payments received by MAC

Attached are two letters detailing the amounts and maturities of the BANs on which we have received interest to date. In the future, a copy of any payment request letter will be sent to you.

HAD/1sd

Attachment
June 8, 1978

Mr. Paul O'Brien
Third Deputy Comptroller
THE CITY OF NEW YORK
707 Municipal Building
One Centre Street
New York, New York 10007

Dear Mr. O'Brien:

The Municipal Assistance Corporation For The City of New York (the "Corporation") holds $1,013,810,000 aggregate principal amount of Bond Anticipation Notes of The City of New York (BANs). The Corporation is authorized to present these BANs for payment of interest, but to date has not done so.

The Corporation hereby requests payment of $70,913,737.93 on or before June 9, 1978, which amount represents interest due and payable on $914,310,000 face value of BANs as shown on the attached schedule of maturities.

Sincerely,

MUNICIPAL ASSISTANCE CORPORATION
FOR THE CITY OF NEW YORK

Harris A. Decker
Treasurer

cc: James Brigham
    Karen Eisenstadt
    Marc Shernicoff
    Bill Lithgow
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$ 914,310,000  $ 70,913,737.93

/lsd
06/08/78
June 12, 1978

Mr. Paul O'Brien
Third Deputy Comptroller
THE CITY OF NEW YORK
707 Municipal Building
One Centre Street
New York, New York 10007

Dear Mr. O'Brien:

The Corporation hereby requests payment of $2,395,808.22 on June 13, 1978, which amount represents interest due and payable on $51,500,000 face value of BANs that have an anniversary date of June 11.

Sincerely,

MUNICIPAL ASSISTANCE CORPORATION
FOR THE CITY OF NEW YORK

[Signature]

Harris A. Decker
Treasurer

cc: James Brigham
    Karen Eisenstadt
    Marc Shernicoff
    Bill Lithgow
June 8, 1978

Mr. Paul O'Brien
Third Deputy Comptroller
THE CITY OF NEW YORK
707 Municipal Building
One Centre Street
New York, New York 10007

Dear Mr. O'Brien:

The Municipal Assistance Corporation For The City of New York (the "Corporation") holds $1,013,810,000 aggregate principal amount of Bond Anticipation Notes of The City of New York (BANs). The Corporation is authorized to present these BANs for payment of interest, but to date has not done so.

The Corporation hereby requests payment of $70,913,737.93 on or before June 9, 1978, which amount represents interest due and payable on $914,310,000 face value of BANs as shown on the attached schedule of maturities.

Sincerely,

MUNICIPAL ASSISTANCE CORPORATION
FOR THE CITY OF NEW YORK

[Signature]

Harris A. Decker
Treasurer

cc: James Brigham
    Karen Eisenstadt
    Marc Shernicoff
    Bill Lithgow
# MUNICIPAL ASSISTANCE CORPORATION

## SCHEDULE OF INTEREST DUE ON BOND ANTICIPATION NOTES
OF THE CITY OF NEW YORK HELD
BY THE MUNICIPAL ASSISTANCE CORPORATION
FOR THE CITY OF NEW YORK AS OF JUNE 8, 1978

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/lsd
06/08/78
MEMORANDUM

To The Municipal Assistance Corporation For The City of New York

From Paul, Weiss, Rifkind, Wharton & Garrison

Subject BAN Interest

The Municipal Assistance Corporation For The City of New York ("MAC") holds bond anticipation notes ("BAN's") of The City of New York (the "City") on which the City has paid MAC no interest. These BAN's fall into two categories: (i) BAN's which were issued prior to November 14, 1975 and matured subsequent to November 14, 1975 ("Matured BAN's"); and (ii) BAN's which were issued subsequent to November 14, 1975 and have not yet matured ("Unmatured BAN's"). The Matured BAN's fall into two subcategories: (a) BAN's issued directly to MAC by the City; and (b) BAN's received by MAC from previous holders pursuant to MAC offers to exchange its bonds for City notes.

You have asked us how the interest due from the City on the BAN's held by MAC should be calculated. We have concluded as follows: First, on Matured BAN's, interest is calculated at the stated rate to maturity and at the rate of 6% per annum thereafter. We have not found any legal basis on which to distinguish between the two subcategories of Matured BAN's for interest payment purposes and have concluded that they should be treated on the same basis. Second, on Unmatured BAN's, interest is calculated at the stated rate to maturity.

The Matured BAN's were subject to the New York State Emergency Moratorium Act for the City of New York (the
"Moratorium Act"). The Moratorium Act provided in § 4 that, "During the moratorium period . . . no action . . . shall be commenced . . . upon any short-term obligations . . . ." Short-term obligations are defined in § 2(2) to be "tax anticipation notes, bond anticipation notes, revenue anticipation notes, budget notes and urban renewal notes of the City which are outstanding on the effective date of this act." [Emphasis added.] Because the Matured BAN's were all issued prior to November 14, 1975, the effective date of the Moratorium Act, and were outstanding on such date, they are within the definition of short-term obligations and thus were subject to the Moratorium Act.*

The Moratorium Act was held unconstitutional in Flushing National Bank v. MAC, 40 N.Y.2d 731 (1977). On remand, however, (88 Misc. 2d 1047) the Supreme Court of New York found that the provision of the Moratorium Act relating to 6% interest had not been held unconstitutional, and held, in an order dated March 3, 1977, that the City must pay the stated amount of interest to maturity and 6% thereafter on moratorium notes until such were paid or discharged.

The March 3, 1977 order applied to Matured BAN's held by MAC. Flushing was never made a class action, but the

* MAC waived its right to an exchange offer pursuant to Section 5(A) of the Moratorium Act, which section is, in any case, by its terms merely a possible remedy for an aggrieved noteholder and not a condition precedent to the application of the Act.
remedy was not limited to the plaintiff. The Court of Appeals in its remittitur (40 N.Y.2d 1094 (1977)) instructed the Supreme Court to determine applications of "holders of municipal notes" other than "those who executed agreements to withhold demand for payment or enforcement of the notes held, purportedly subjected to the statutory moratorium . . . ." As discussed above, MAC was subject to the suspension of its right to sue the City on its BAN's, thus it was "purportedly subjected to the statutory moratorium." Because MAC had not "executed agreements to withhold demand for payment or enforcement" of its BAN's, MAC was included among the City noteholders whose applications the Supreme Court was instructed by the remittitur to determine.

An order dated November 3, 1977, Order of Administration Number Six, cut off the accrual of interest at December 29, 1977, but notes held by MAC were not included with the definition of "covered notes" and, accordingly, this cut-off did not apply to Matured BAN's held by MAC.

Even if it were argued that Matured BAN's held by MAC were not covered by the Court of Appeals remittitur, then MAC's right to interest would continue under the Moratorium Act and would be unaffected by the remittitur or order which followed it. As the Court of Appeals stated in the remittitur, 40 N.Y.2d 1094, "Nothing provided in this remittitur is intended to pass upon, diminish, or enhance the rights of any holder of municipal notes purportedly subjected to the statutory moratorium for which no provision is now being made for eventual payment and discharge."
The Supreme Court, 88 Misc. 2d 1047, explicitly stated that the interest provisions of the Moratorium Act had not been held unconstitutional.

"... the conclusion is clear that the court's determination of unconstitutionality cannot, in justice, be applied retroactively with respect to the interest provisions. In the circumstances apparent here, this conclusion is fully warranted, if not indeed constrained, by the principles and authorities hereinbefore discussed, and is consistent with the provisions of the saving clause embodied in the statute in the usual terms ... and is consistent as well with the direction by the Court of Appeals that the question of rate be considered and determined here."

Accordingly, whether MAC was included in the remedy set forth in Flushing or not, it is entitled to 6% interest on its Matured BAN's from maturity to their payment or discharge.

For the period prior to maturity on both Matured and Unmatured BAN's, the City must pay the stated amount of interest. For Matured BAN's, if they are covered by the March 3, 1977 Flushing order, then stated interest must be paid to maturity according to the instructions in the order. If the Matured BAN's are not covered by the order, then, as with the Unmatured BAN's, the City's obligation is based on normal contractual and constitutional law. Flushing held that it is unconstitutional to suspend the City's obligation to pay principal and interest on its notes. The clear message of the opinion is that the City is obligated to pay what it promises to pay when it issues notes. This means that the City must pay stated interest to maturity.

In summary, on Matured BAN's, payment of stated interest to maturity is required, either by the March 3, 1977
order, or by the New York State Constitution as interpreted by Flushing. For the period after maturity, 6% interest must be paid, either pursuant to the March 3, 1977 order, or pursuant to the part of the Moratorium Act which was not invalidated. On the Unmatured BAN's, the Moratorium Act does not apply, and stated interest must be paid to maturity pursuant to the contract the BAN's embody and to Flushing.
Municipal Assistance Corporation  
For The City of New York

MEMORANDUM

Date: 6 April 1978

To: H.A. Decker, M.F. Friedman, K. Eisenstadt, M. Page

From: L.W. Seale

Re: Interest received by MAC from The City of New York in Fiscal Year 1976

MAC's 1976 Annual Report contains a figure of $35,512,822, received by the Corporation from the City as interest on City obligations.

The Comptroller's Office (Mark Shernicoff), has a record of notes issued to MAC by the City which shows interest of $57,851,452 accrued on RANs, TANs and BNs through their respective FY 1976 maturity dates.

No BANs issued to MAC matured during FY 1976. BANs now held by MAC which matured during this period were originally issued to other holders, to whom the City paid interest through the maturity dates (and in some cases longer under the Moratorium Act). MAC received them through exchange offer of its bonds.

The Corporation resolved on May 28, 1976, not to present any notes for payment of principal or interest at maturity. Two TANs on the Comptroller's list matured after the date of the Corporation's resolution. The interest due on those two notes at maturity totalled $22,338,630, precisely the difference between $57,851,452 and $35,512,822.

Therefore, I think it is safe to conclude that MAC presented all notes for the payment of interest at maturity until the resolution of May 28, 1976, and received no interest after maturity on any obligations.

LWS/1sd
FROM THE DESK OF
Mark B. Shernicoff

Karen Events, C.B.

The attached schedule represents the interest paid during FY 76 in a note held by MAC. There were no bans thereafter. Shal

City of New York

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**Revenue: $7,975,000.00**
3 March 1978

John Bender, Esq.
General Counsel
EMERGENCY FINANCIAL CONTROL BOARD
270 Broadway
New York, New York 10007

Dear John:

Enclosed for your information are copies of letters we have received from our general counsel, Paul, Weiss, Rifkind, Wharton and Garrison, and our bond counsel, Hawkins, Delafield and Wood, expressing views on the legality of the City's use of certain revenues raised from taxes levied outside the 2-1/2% limit provided in Article 8, Section 10 of the New York State Constitution, to pay interest accrued on certain New York City Bond Anticipation Notes held by the Corporation.

Please note that in each letter the views expressed are predicated on a given statement of facts. The letters were requested after questions were raised as to the legality of such payment, as proposed by the City, and are now forwarded in an effort to resolve those questions.

Sincerely,

Marilyn F. Friedman
Counsel

Enclosures

MFF/lsd
March 2, 1978

Marilyn F. Friedman, Esq.
Municipal Assistance Corporation
2 World Trade Center
Room 4540
New York, New York 10047

Dear Marilyn:

We have received various materials relating to a proposed payment to the Municipal Assistance Corporation for The City of New York (the "Corporation") by The City of New York (the "City") from taxes levied outside the 2-1/2% limit provided in Article 8, Section 10 of the New York State Constitution, of accrued interest on certain bond anticipation notes of the City ("BANs") now held by the Corporation. This proposed payment is described in, and the forwarded materials include, a memorandum dated October 18, 1977 from the then Corporation Counsel to the then Deputy Mayor for Finance, a memorandum dated September 21, 1977 from Bernard J. Kabak of the Office of the Special Deputy Comptroller to Theodore M. Berns, letters to the then Deputy Mayor for Finance from Rogers & Wells and a letter from Willkie Farr & Gallagher, dated October 24 and October 28, 1977, respectively.

Although neither the Corporation nor this firm is directly involved in the determination of the City as to whether to make the proposed payment, you have requested that I express this firm's independent views on the legality of the proposed payment.

I have reviewed the memoranda and lawyers' letters referred to and the relevant provisions of the Constitution of the State of New York and of the State Public Authorities Law pertaining to the Corporation. I have considered specifically the questions raised in Mr. Kabak's memorandum.
This will confirm the views which I expressed orally at a meeting held in the office of the City Comptroller Wednesday, October 19, 1977. In my view, the proposed payment may be made from taxes levied outside the 2-1/2% limit referred to above. Each of the contrary questions raised in Mr. Kabak's memorandum, in my view, is satisfactorily resolved in favor of the proposed payment.

I understand that you may make copies of this letter available to the Deputy Mayor for Finance and others with an interest in the matter.

If you have any additional question about this matter, please call me.

Sincerely,

[Signature]

Allen L. Thomas

ALT/njr

cc: Bernard J. Kabak, Esq.
    Donald J. Robinson, Esq.
Municipal Assistance Corporation
For the City of New York
Two World Trade Center
New York, New York

Att: Marilyn Friedman, Esq.

Dear Ms. Friedman:

Pursuant to your request, we have reviewed the question of whether, assuming the following facts, The City of New York (the "City") may, in fiscal year 1977-1978, pay interest on the bond anticipation notes of the City referred to in paragraph (e) below in whole or in part from the monies described in paragraph (d) below:

(a) The Municipal Assistance Corporation For The City of New York (the "Corporation") holds general obligation notes of the City (including BANs, TANs and RANs) in the aggregate principal amount of $4,236,165,000;

(b) The Corporation has acquired such notes pursuant to applicable provisions of its enabling act as a result of certain transactions, including (i) furnishing the City with monies to pay operating expenses, (ii) exchanges of City obligations for obligations of the Corporation and (iii) renewals of notes previously acquired;

(c) Such notes are obligations of the City valid when issued and presently outstanding and unpaid;

(d) Certain monies available for the payment of such bond anticipation notes (the "Amount") have been raised by the City during its current (1977-1978) fiscal year by ad valorem taxes upon taxable real property within the City for the servicing of its debt and therefore such taxes are not included in the sum of all such taxes within the 2 1/2% Constitutional tax limit;

(e) The Corporation has informed the City that it anticipates presenting for payment of interest certain bond anticipation notes. The aggregate amount of interest due on such notes for the 1977 and 1978 fiscal years equals or exceeds the Amount. In certifying for funds from state sales tax or per capita aid revenues
to pay debt service following receipt of the interest payment contemplated, the Corporation will take into account the amount of interest paid and received, as well as other monies available for the payment of debt service.

(f) Except with respect to the notes referred to in paragraph (e) above, the Corporation has informed the City that its present policy is not to present the notes that it holds for payment of interest or for payment of principal either at or after their dates of maturity.

We have received from or through the Corporation various memoranda and opinions relating to this subject matter and have additionally reviewed such matters of law which we have deemed necessary to this opinion but such review has been concluded on the basis of our assumption of the facts set forth above. Based on the foregoing, we are of the opinion that the City may apply the Amount raised "outside the tax limit" to the payment of interest on such bond anticipation notes held by the Corporation and presented by the Corporation for such payment.

Article VIII, Section 10, of the Constitution provides that "the amount to be raised by tax on real estate in any fiscal year, in addition to providing for the interest on and the principal of all indebtedness, shall not exceed an amount equal to the following percentages...less the amount to be raised by tax on real estate in such year for the payment of the interest on and redemption of certificates or other evidence of indebtedness described in paragraphs A and D of section five of this article, or renewals thereof". By reference to paragraphs A and D of Section 5 of Article VIII, it is clear that the sum needed to pay the interest on bond anticipation notes may be raised by real estate taxes levied in addition to taxes included in the real estate tax computation and limitation for the City set forth in Article VIII, Section 10.

We also assume that the notes in question are held by the Corporation in accordance with its enabling legislation. The legislation does not alter the character of these notes in any way. Therefore, we believe that the monies may be used for paying the interest due on such notes as are presented for payment of such interest.

As you observed in your request for our opinion on this matter, consideration thereof precipitates the following other significant issues which should be addressed by the City and the Corporation in the near future:
1. Article VIII, Section 2, of the Constitution requires that the City shall make provision annually by appropriation for the payment of interest on all indebtedness. The Corporation and the City may wish to formalize their arrangements with respect to interest on all the notes presently held by the Corporation in order that the requisite appropriations of interest due and payable, if any, on such notes will be made in the future budgets of the City.

2. Consideration should also be given (a) to the provisions of Article VIII, Section 2, with respect to provision for payment of certain indebtedness in annual installments and for the redemption of certain indebtedness issued in anticipation of the collection of taxes or other revenues which are not retired within five (5) years after their date of original issue and (b) to the provisions of Article VIII, Section 4, with respect to the inclusion of the notes held by the Corporation in the debt limit of the City.

Please note that our opinion is based on the relevant facts presented to and assumed by our firm and should not be considered as precedent or basis for the propriety of any action whereby different facts would be presented and assumed.

Very truly yours,

[Signature]
REPORT ON
REVIEW OF MODIFICATION NO. 10
TO THE FINANCIAL PLAN

EFCO-48-78
NOVEMBER 15, 1977

OFFICE OF THE STATE COMPTROLLER
OFFICE OF THE SPECIAL DEPUTY
COMPTROLLER FOR NEW YORK CITY
Background and Scope

On August 25, 1977, the City presented Financial Plan Modification No. 10 to the EFCB for approval. The primary purpose of the Modification was to bring the FY 1978 Financial Plan into balance after reflecting the impact of a determination that the City's revenue estimate for State Aid for Higher Education be reduced by $54 million and its expenditure estimate for MAC Debt Service Funding be increased by $42 million. Table 1 summarizes the City's plan for overcoming the resulting budgetary deficiency for these items as well as other debt service adjustments (including the Restructuring Agreement of August 17, 1977). It proposes the use of excess real estate tax revenues raised in FY 1978 outside the constitutional tax limit to help keep the budget in balance.

Our review was limited to an evaluation of the items contained in the proposed Modification. We note that the City has other possible revenues which were not included therein.

Results of Review

The City estimates contained in proposed Modification No. 10 were found to be reasonable, with the exception of the items shown in Table 1 as General Corporation Tax, Interest on Overnight Deposits, and Other Debt Service Revisions. These items are discussed below.
TABLE 1

SUMMARY OF FINANCIAL PLAN MODIFICATION No. 10
AS PROPOSED BY CITY

(in millions)

<table>
<thead>
<tr>
<th>Items Necessitating Financial Plan Modification</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue Reduction:</td>
<td></td>
</tr>
<tr>
<td>State Aid for Higher Education</td>
<td>$54</td>
</tr>
<tr>
<td>Expenditure Increases:</td>
<td></td>
</tr>
<tr>
<td>MAC Debt Service Funding (Attributable to the Accounting Issue)</td>
<td>42</td>
</tr>
<tr>
<td>Other Debt Service Revisions (Net)</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$97</td>
</tr>
</tbody>
</table>

Funded By

| Revenue Increases:                          |   |
| General Corporation Tax                    | $15 |
| Mitchell-Lama Mortgage Interest            | 6  |
| ECF Lease Income                           | 3  |
| Interest On Overnight Deposits (Net)       | 2  |
| Real Estate Tax Arrears                    | 2  |
| **Expenditure Reductions:**                |   |
| Various Agencies (City Funds)              | 18(a) |
| **Decrease in General Reserve**            | 51(b) |
| **Total**                                   | $97 |

(a) Net of State and Federal Aid.

(b) This would reduce the General Reserve to the $100 million level which existed prior to Modification No. 9.
General Corporation Tax

The City is proposing to increase the FY 1978 revenue estimate from this source by $15 million. However, based on collections during the first quarter of the year, it is unlikely that the City will exceed or even attain the amount projected in Modification No. 9, which had assumed a growth rate of 8 percent over FY 1977. First quarter collections in FY 1978 exhibited no growth over the comparable period in FY 1977, and the impact of a tax rate reduction during the balance of FY 1978 could significantly reduce collections below current Plan estimates. Accordingly, we recommend that this estimated revenue increase be eliminated from the proposed Modification. (We note that the City reduced the $15 million increase, as proposed in Modification No. 10, to $5 million in its September 1977 Financial Plan forecast.)

Interest on Overnight Deposits

Included in Modification No. 10 is a City proposal to pay for banking services related to the processing of welfare checks, rather than retaining cash balances at banks to compensate for these services. This would presumably make such payments eligible for State and Federal reimbursement and would release additional funds for overnight investment which could net the City $2 million in added revenue. However, we were informed by representatives of the State Department of Social Services that no local social service district is presently reimbursed for its bank fees and that there are doubts as to whether such reimbursement would be authorized for New York City if it were requested. They noted that since the City has not yet sought authorization for such reimbursement, no determination as to eligibility has been made. Considering the uncertain nature of this revenue, we recommend that the item be eliminated from the proposed Modification.
Other Debt Service Revisions

The City's proposed Modification includes a projected net increase of $1 million for City Debt Service and MAC Debt Service Funding (exclusive of the $42 million adjustment to MAC Debt Service Funding previously noted). The items contained in the $1 million net revision (Table 2) reflect the impact of the Restructuring Agreement of August 17, 1977 and the contemplated payment by the City to MAC of $60 million of interest on City bond anticipation notes held by MAC, which amount would flow back to the City through a reduction in the MAC "take-out". The City's plan to pay such interest to MAC was developed as an expedient to make use of surplus funds levied outside the constitutional tax limit in FY 1978 and raises certain legal issues as discussed below.

The City tax levy for FY 1978 included an amount to be raised outside the 2 1/2 percent constitutional tax limit sufficient to produce collections equal to the total amount of its eligible debt service requirements for that year, net of any revenues required to be applied against such debt service. Subsequent to the fixing of the FY 1978 tax rate on June 1, 1977, however, the City's net debt service eligible for funding outside the limit was reduced by $68 million due to the following factors:
### TABLE 2

**ITEMS INCLUDED IN CITY'S $1 MILLION NET DEBT SERVICE REVISION**

<table>
<thead>
<tr>
<th>Increase/(Decrease)</th>
<th>(in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MAC Debt Service Funding</strong></td>
<td></td>
</tr>
<tr>
<td>Increase resulting from MAC restructuring and new bond issues</td>
<td>$ 60</td>
</tr>
<tr>
<td>Decrease resulting from interest payments by City to MAC on City BAN's held by MAC</td>
<td>(60)</td>
</tr>
<tr>
<td><strong>Net Change</strong></td>
<td>$ 0</td>
</tr>
<tr>
<td><strong>City Debt Service</strong></td>
<td></td>
</tr>
<tr>
<td>Interest savings resulting from:</td>
<td></td>
</tr>
<tr>
<td>Exchange of $819 million of City Notes for MAC Bonds</td>
<td>$(30)</td>
</tr>
<tr>
<td>Substitution of MAC Bond Issue for City Bond Issue ($250 million)</td>
<td>(23)</td>
</tr>
<tr>
<td>Delayed sale of Serial Bonds</td>
<td>(7)</td>
</tr>
<tr>
<td><strong>Total Savings</strong></td>
<td>$(60)</td>
</tr>
<tr>
<td><strong>Additional interest expense resulting from:</strong></td>
<td></td>
</tr>
<tr>
<td>Payments to MAC for interest on City BAN's</td>
<td>60</td>
</tr>
<tr>
<td>Increased FY 1977 borrowing from City Sinking Funds</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total Additional Expense</strong></td>
<td>61</td>
</tr>
<tr>
<td><strong>Net Change</strong></td>
<td>$ 1</td>
</tr>
</tbody>
</table>
Because it was the practice of MAC in FY 1977 not to present any obligations of the City that it holds for the payment of principal or interest, the City had not made provision in its FY 1978 budget for the payment of such principal or interest. Now, because of the availability to the City of the excess funds from real estate taxes raised outside the limit, it was determined that MAC will present the BAN's to the City in FY 1978 for the payment of interest only. Since MAC has no real need for this interest income, the money to be paid to MAC from taxes raised by the City outside the limit will flow back to the City through a reduction of the MAC "take-out" and the City will then be able to use these funds for general City purposes.

The payment in FY 1978 of a full year's interest on these BAN's would approximate $55 to $60 million. (1) City officials have stated that the City could also in a like manner pay MAC additional interest for the previous year since MAC had not submitted any of its City notes for interest payments during FY 1977. Alternatively, the City had previously suggested that it could pay the principal on certain BAN's to arrive at the $68 million total, but this is not part of the current proposal.

We believe that the City's proposal to pay interest on the BAN's held by MAC from taxes raised outside the 2 1/2 percent tax limit raises certain constitutional and statutory questions which should be resolved. (The issues as perceived by this office are delineated in Exhibits A and B.) The constitutional question and the arguments pro and con are summarized as follows:

(1) This is based on the assumption that the City is legally liable for interest on these BAN's subsequent to the stated dates of maturity. We note that only $43 million out of over $1 billion of these notes had stated maturity dates subsequent to FY 1977.
Against the proposed procedure - The result of the City's proposal would be that money the City will have paid out in the form of debt service from taxes levied outside the tax limit would be returned to it without restriction as to the purposes for which such money may be used. This would in effect violate the principle that money raised outside the constitutional tax limit may not be used for general purposes. (1)

For the proposed procedure - The position of the City's Corporation Counsel is that the legal questions raised about the City's proposal are devoid of substance since the BAN's held by MAC are in form and in fact no different from any other City BAN's for which interest and principal may be raised outside the constitutional tax limit. The fact that the City proposal ultimately results in the City obtaining a larger share of revenues for general purposes than it otherwise would does not change either the character of the BAN's or that of the accrued interest on the BAN's. This position is stated in a Corporation Counsel memorandum which is attached as Exhibit C.

We had recommended that the EFCB refer this matter to the State Attorney-General for a legal opinion, particularly since the matter at issue involves interpretations of the State Constitution and other State laws and has long-term fiscal consequences. However, in view of the significant impact that such a ruling might have upon the City's financial planning in FY 1978 and later years, the City determined that it would be in its best interests first to present the matter to its several bond counsel for study. Opinions have been rendered by two City bond counsel that the proposed payment of BAN interest to MAC from taxes raised outside the tax limit is not prohibited.

(1) This position is presented with full awareness that the BAN's proposed to be presented for the payment of interest were acquired by MAC in the course of financings that it carried out on behalf of the City; and that had the City itself undertaken these financings, there is no doubt that the debt service on these BAN's could have been paid to conventional holders (as distinguished from MAC) from monies raised outside the tax limit.
by law. The issue is also being reviewed by MAC's outside general
counsel and its bond counsel but opinions have not yet been received from these
firms. The City hopes that if the opinions are unanimous in affirming that
the payment of interest as proposed is not prohibited by law, the Control
Board will agree that there is no substantial legal question to refer to the
Attorney-General.

Although the City's proposal was developed as an expedient to make
use of the surplus funds raised outside the tax limit in FY 1978, the
magnitude and long-term dimensions of this issue become readily apparent
in the context of MAC's current holdings of over one billion dollars of
City BAN's which could be presented for the payment of principal and/or
interest at any time, with resulting increases in the City's general purpose
revenues. In addition, the City has indicated that it is considering
with MAC a plan to finance the City's capital needs through the issuance
of MAC bonds, the proceeds of which will be turned over to the City in
return for an equal amount of City bonds.

We are concerned that there may be a possible gap in the FY 1978
Financial Plan of $68 million until this matter is resolved. We recommend,
therefore, that in the interim, provision be made to cover the potential gap
in the Plan from either of the following sources: (a) reductions in expen-
diture estimates, (b) new revenues not yet included in the Financial Plan.
Additional Required Debt Service Adjustments

Our review disclosed that two additional adjustments should be made in the City debt service appropriations. We estimate that higher interest rates on Federal seasonal loans will increase such interest expense by $12 million. On the other hand, $7 million of interest on RAN's held by banks, which had been included in FY 1978 appropriations, was accrued by the City Comptroller in FY 1977. Thus, City debt service appropriations should be increased by $5 million.

Conclusion

We recommend that the City's proposed Modification No. 10 to the Financial Plan be revised to incorporate:

(1) Alternative funding sources to replace the $17 million of proposed revenue increases which should be eliminated from the Modification (General Corporation Tax, $15 million; Interest on Overnight Deposits, $2 million).

(2) Additional funding sources to finance $5 million of increased debt service appropriations for interest on short-term notes.

(3) Provisions to cover the $68 million potential gap in the Financial Plan arising from the real estate tax issue, pending a legal determination of that issue, either through reductions in expenditure estimates or through new revenues not yet included in the Financial Plan.
Discussion of Results of Review

We discussed our findings with responsible City representatives. They agreed that, based on later data, the appropriation for interest on short-term notes should be increased by $5 million, and that the proposed increases of $15 million in the General Corporation Tax and $2 million of interest on overnight deposits were no longer appropriate. They indicated, however, that a $5 million increase in the General Corporation Tax still appeared likely. The City's position in regard to the $68 million real estate tax issue has already been noted.
October 28, 1977

Mr. John Burton
Deputy Mayor for Finance
City of New York
Municipal Building
New York, New York

Dear Mr. Burton:

Following our conference in your office on October 19 and the discussion at the time with various representatives of City agencies, we have reviewed the interoffice memorandum of the Department of Audit and Control dated September 21, 1977 relating to the payment by New York City of interest on bond anticipation notes issued by the City and now held by the Municipal Assistance Corporation ("MAC").

We understand that the City has proposed to apply moneys available from its real property taxes levied during the current fiscal year of the City to pay interest on such City bond anticipation notes now held by MAC and that MAC intends to apply moneys so received to its debt service funding requirements. In the event that this occurs, other moneys available to MAC which are derived from certain State taxes pledged to MAC would not be required by MAC to meet its debt service funding requirements. Under applicable State legislation, therefore, such State tax moneys which are not required for MAC debt service may be transferred by the State directly to the City for use by the City in meeting City expenses included in the City's Expense Budget.

We are of the opinion that if the bond anticipation notes, the interest on which is to be paid by the City in the manner described above, were validly issued in the first instance to provide funds for objects or purposes of the City for which a period of probable usefulness has been determined by the State Legislature and inserted in the provisions of Section 11.00 of the Local Finance Law, there is no impediment to the City's making payment of interest on such notes from moneys representing real property taxes levied outside the City's tax limit.

This opinion is predicated on the premise that the City could
proceed in the manner suggested in any case where such bond anticipation notes had otherwise been sold to the public. Notwithstanding the fact that these notes were sold to MAC, they represent borrowings designed to meet the cost of objects or purposes contemplated under the aforesaid section of the Local Finance Law. The fact that such payment would release funds derived from sources other than the proceeds of real estate taxes that would under other circumstances be available for payment of Expense Budget items does not detract from the City's authority to pay the kind of debt service covered by Section 4 of Article VIII of the State Constitution.

We appreciate the concern expressed to the effect that the use of moneys in this manner could support a subterfuge by which the City could borrow on a long term basis to pay recurring items of expense that should properly be subject to the tax limits covered by Section 10 of Article VIII of the New York State Constitution. We are of the opinion, however, that there is no proscription against the City's expending real estate tax proceeds raised over and above the City's tax limit to meet payments of principal or interest on obligations issued in the first instance to meet the costs of capital items consisting of, as pointed out above, objects or purposes for which a period of probable usefulness has been determined by the State Legislature and set forth in Section 11.00(a) of the Local Finance Law.

With best wishes,

Very truly yours,

Robert W. Marshlow

RWM:ds
MEMORANDUM
FROM THE CORPORATION COUNSEL

October 26, 1977

To: Miss Friedman
From: The Corporation Counsel
Re: Memorandum 21 October 1977

You are free to write your memorandum.
This office is free to write its memorandum.
MEMORANDUM

Date: 21 October 1977

To: W. Bernard Richland, Esq., Janice Griffith, Esq.

From: Marilyn F. Friedman, Esq.

Re: Memorandum Respecting Use of Outside-Tax-Limit Revenue for Accrued Interest on MAC-Held BANs

This is in reference to the above-referenced memorandum from the Corporation Counsel to John C. Burton, dated October 18, 1977, a copy of which is attached hereto. The memorandum included certain statements concerning the Corporation and the rights of its bondholders which are not totally accurate. To avoid confusion as to which specific statements pose problems, I have taken the liberty of suggesting the following language changes in the memorandum. I do not believe that the changes bear on the issue addressed by the memorandum.

1. On page 2, the words "constituting added security for MAC bondholders" on the last line of the page should be deleted. The use of a single phrase to describe the rights of the MAC bondholders in and to the City notes held by MAC is inadvisable.

2. On page 3, the words "without payment" should be inserted after the word "cancelled" on the 7th line of the page. The last sentence in that paragraph, particularly the suggestion that a surrender of MAC-held BANs to the City without payment would violate MAC bondholders' rights, should be deleted. It is by no means clear that such a suggestion is correct.

3. In the first full paragraph on page 3, the first sentence should be revised to read as follows: "Thus, under applicable constitutional and statutory provisions payment of accrued interest on the BANs is required. If it is not paid now it must be paid later; it is City indebtedness in every sense and the Constitution permits taxation outside the ordinary 2 1/2% tax limit to pay it, Flushing National Bank v. Municipal Assistance Corporation for The City of New York, supra." This sentence more accurately describes the constitutional and statutory framework, since, again, it is by no means clear that the Legislature could not permit a forgiveness by the Corporation of the debt evidenced by the City notes held by the Corporation. The important fact is that it has not done so at this time.
4. On page 5, the last two sentences in the first paragraph on the page should be revised in their entirety to read as follows: "And, if it wanted to permit MAC to surrender BANs acquired by MAC to the City without payment, it could have so provided, as it did in the case of other short-term obligations of the City acquired by MAC (Publ. Auth. Law, Section 3035, 2). But it did neither.

Thus at present the BANs acquired by MAC are outstanding debt obligations of the City and no principle of law has been presented to demonstrate why they should not be treated as such for purposes of determining the proper source of their payment." See reasons for revision in 2 and 3 above.

5. On page 6, the words "are to" on the 8th line of the first full paragraph on such page should be replaced by the word "may" and the words "without payment" should be included at the end of the sentence ending on such line.

6. Also on page 6, the line 3 lines up from the bottom of the page should be revised to read as follows: "permitted to be delivered for cancellation without payment but remain payable by the City, principal". Please note that Section 3035 of the MAC Act does not mandate the Corporation to present RANs, TANs, URNs and budget notes to the City for cancellation without payment; it merely permits the Corporation to do so.

7. On page 7, the last sentence of the first full paragraph on that page should be deleted in its entirety. It would appear to be irrelevant to the concept set forth in such paragraph, and, in any event, the legal conclusion embodied in the sentence, if correct, is subject to too many caveats to be stated so flatly.

8. On page 8, the entire paragraph should be deleted from the memorandum. You will note from a reading of our General Bond Resolution, a copy of which is enclosed, as well as our Official Statements and the MAC Act, that rather dire consequences would result from the Legislature's transfer to the City of the revenues which now support MAC bonds. Again, this sentence is an attempt to reduce to 7 or 8 lines very complex legal relationships and should be deleted.
To make the point set forth in such paragraph, you might wish to note that refunding by MAC of its obligations previously issued had the effect of increasing the City's operating revenues in the current year and several years to come since it results in decreased annual certifications by the Corporation. Such refunding is clearly contemplated by the MAC Act and would not seem to have any constitutional implications. Therefore, the mere fact that an action taken involving the Corporation results in increased operating revenues flowing to the City, does not preclude such action.

As I noted above, the purpose of this memorandum is to suggest changes in those portions of the referenced memorandum which refer to the Corporation. Should you wish to discuss other portions of the memorandum, please feel free to call me.

MFF:ba

cc: Barbara Weiler, Esq.
    Sandy Altman
24 October 1977

Allen L. Thomas, Esq.
Paul, Weiss, Rifkind, Wharton and Garrison
345 Park Avenue
New York, New York 10022

Dear Allen:

At our request, you attended a meeting at the office of the Deputy Mayor for Finance of The City of New York on Wednesday, October 19, 1977, acting in your capacity as General Counsel to the Municipal Assistance Corporation.

The subject of that meeting was the proposed payment by the City to the Corporation of accrued interest on certain Bond Anticipation Notes of the City now held by the Corporation, from taxes levied outside of the 2 1/2% tax limit of the New York State Constitution.

This letter is to request that you state your views of the legality of such proposed payments in a letter to Honorable John C. Burton, Deputy Mayor for Finance of The City of New York, with a copy to the Corporation.

Sincerely,

Stephen J. Weinstein
Deputy Executive Director

SJW/mp
24 October 1977

Gerard Fernandez, Jr., Esq.
Hawkins, Delafield & Wood
67 Wall Street
New York, New York 10005

Dear Jerry:

At our request, you attended a meeting at the office of the Deputy Mayor for Finance of The City of New York, on Wednesday, October 19, 1977, acting in your capacity as Bond Counsel to the Municipal Assistance Corporation.

The subject of that meeting was the proposed payment by the City to the Corporation of accrued interest on certain Bond Anticipation Notes of the City now held by the Corporation, from taxes levied outside of the 2 1/2% tax limit of the New York State Constitution.

This letter is to request that you state your views of the legality of such proposed payments in a letter to Honorable John C. Burton, Deputy Mayor for Finance of The City of New York, with a copy to the Corporation.

Sincerely,

Stephen J. Weinstein
Deputy Executive Director

SJW/mp
October 24, 1977

Dear Sir:

We have been retained as bond counsel for the City of New York (the "City") in connection with sales by the City of general obligation bonds or notes, including bond anticipation notes, to City pension funds, sinking funds or the Municipal Assistance Corporation ("MAC").

You have advised us that the City proposes to pay accrued interest in the amount of Sixty Million ($60,000,000) Dollars on bond anticipation notes (the "Notes") held by MAC. You have further advised us that this amount will be paid from the levy of real estate taxes in excess of the percentage limitation provided in Section 10 of Article VIII of the New York State Constitution. You have requested our opinion as to the legality of such payment.

We have examined such portions of the Constitution and statutes of the State of New York and the Charter of the City, and court decisions thereunder, as we have deemed necessary and relevant for purposes of this opinion. In addition, we have reviewed two memoranda relating to the proposed payment, one dated September 21, 1977 from Bernard J. Kabak to Theodore M. Berns, Chief Municipal Consultant of the New York State Department of Audit and Control, and the other dated October 18, 1977 from the Corporation Counsel of the City to you.
Based on the foregoing, we advise you that in our opinion the use by the City of funds obtained from the levy of real estate taxes in excess of the percentage limitation provided in Section 10 of Article VIII of the Constitution to make the proposed interest payment described above is not prohibited by existing law.

Very truly yours,

Rogers & Wells
October 21, 1977

Honorable John C. Burton
Deputy Mayor for Finance
Municipal Building
New York, NY 10007

Dear Mr. Burton,

At the meeting of October 19 on the subject of the proposal for the City to pay interest on bond anticipation notes held by the Municipal Assistance Corporation with monies raised outside the constitutional tax limit, the point was made that if the payment of debt service on such notes were not permissible, the security of those who hold obligations of the Corporation would be weakened. Because my memorandum of September 21 does not address this point expressly, I thought it would be useful to offer the additional comments that follow.

I would first emphasize that, as the September 21 memorandum mentions, we agree that if the Corporation presents its notes to the City for the payment of interest, the City cannot legally refuse to pay. Thus, that the City must pay is not at issue. What is at issue is only the method by which it must pay. We believe there is a serious question under the State Constitution whether the City may pay by a method whereby monies raised outside the tax limit become usable--albeit indirectly--for the City's general purposes. Furthermore, we believe there is a serious question under State statutes whether the City may pay by a method whereby the City can achieve a balanced budget synthetically or whereby certain procedures and limitations regarding the flow of monies from the Corporation to the City are not followed. (These points are developed more fully in the September 21 memorandum.)

What method of payment, then, would be permissible? The September 21 memorandum already observes that the City could pay with monies raised within the tax limit. What is more, under certain circumstances (which circumstances were hypothesized at the October 19 meeting) it might be permissible to pay even with monies raised outside the tax limit. That is, if indeed the Corporation did not derive sufficient revenues to pay debt service to holders of its obligations from what is called its "takeout", then, for this purpose, it could rely on the additional security that the City notes afford by presenting them for the payment of debt service. This, of course, is not the case before us. Nevertheless, if under such circumstances the
City were to pay the debt service with monies raised outside the tax limit, monies would not flow back to the City, and the constitutional and statutory problems mentioned above would not arise.

The appeal of this position is that it resolves harmoniously—as the mechanical position that the City may perforce pay the interest with monies raised outside the tax limit does not—all the relevant interests: the holders of the Corporation's obligations are afforded the full security to which they are entitled while the applicable provisions of the State Constitution and laws are given their full sway.

I do not wish here to respond further to the issues of law raised in Mr. Richland's memorandum of October 18 beyond the extent to which those issues were anticipated in my September 21 memorandum. Mr. Richland makes a statement of fact, however, that warrants further comment. In a footnote, Mr. Richland states the following:

The Special Deputy Comptroller's Staff Memorandum recognizes that the City can pay debt service to MAC but only out of funds raised within-the-tax-limit. It adverts to such payments which, in 1976, did take place but only on RANS, TANS and budget notes. No interest on MAC-held RANS has been paid to date.

Nowhere does the September 21 memorandum speak of 1976 in this connection. But the reason that no interest on bond anticipation notes was paid to the Corporation in 1976 is that, insofar as we have been able to determine, no such interest was payable to the Corporation in 1976. The September 21 memorandum, at the top of page 5, does, however, speak of 1977, observing that in that year the City's budget provided for the payment of debt service on City notes held by the Corporation with monies raised within the tax limit. The budget expressly included bond anticipation notes. If, as Mr. Richland points out, interest on these bond anticipation notes was not actually paid, the reason is that the Corporation, pursuant to its policy established after the City had adopted its 1977 budget, did not present them for payment.

Very truly yours,

Bernard Joshua Kabak
Counsel

cc: Alexandra Altman, Esq.
    John Bender, Esq.
    James Brigham
    Hon. Steven Clifford
    Gerard Fernandez, Jr.
    Marilyn Friedman, Esq.
    Jania Griffith, Esq.
    Jay Holt, Esq.

    Eugene Weilin, Esq.
    John Keohane, Esq.
    Robert W. Marshlow, Esq.
    W. Bernard Richland, Esq.
    Melvin Schweitzer, Esq.
    Linda Seale
    Michael Smith, Esq.

Howard T. Strow, Esq.
Allen Thomas, Esq.
MEMORANDUM FROM

JOHN C. BURTON
DEPUTY MAYOR FOR FINANCE

October 18, 1977

TO: John Bender
    Marilyn Friedman
    Paul Hopkins
    Eugene Keilin
    Robert Marshlow
    W. Bernard Richland
    Sidney Schwartz
    Richard Sigal
    Allen Thomas
    Stephen Weinstein

The attached memorandum will serve as background for our meeting in my office at 3:00 p.m. Wednesday.

J. C. B.

Attachment
MEMORANDUM

SUBJECT: Payment of City Debt Held by MAC - Facts and Legal Issues

The issue is whether the City may use taxes levied outside the 2-1/2% limit to pay interest on City bond anticipation notes (BANs) held by the Municipal Assistance Corporation (MAC). The City proposes to pay $60 million of accrued interest to MAC during fiscal year 1978 in this manner. Further, the City and MAC are considering a plan to finance the City's capital expenses by the issuance of MAC bonds, the proceeds of which would be advanced to the City in return for an equal amount of City bonds (assuming legislation were enacted to enable such transactions); this plan appears to be feasible only if the City could levy real estate taxes outside the 2-1/2% tax limit to pay debt service on the bonds that MAC would hold.

I. FACTS

MAC now holds $4,235 million of City notes, of which approximately $1,010 million are BANs. MAC acquired these notes as follows: $1,839 million from various exchange offers, of which $665 million are BANs; $2,100 million from advances made to the City for operating expenses, of which $48 million are BANs; and $297 million of BANs from advances made to the City in fiscal 1976 to redeem a like amount of maturing BANs.

To date the City has paid no interest on the BANs held by MAC. In fiscal 1976 the City paid $32 million of interest to MAC on City revenue anticipation notes, tax anticipation notes and budget notes; the City has since made no further interest payments to MAC, nor has MAC presented its City notes for payment. The $32 million paid in fiscal 1976 was, of course, changed to operating revenues of the City, since the City generally cannot
raise taxes outside the 2-1/2% limit to pay notes other than BANs. The fiscal 1976 interest payments were charged to the appropriation in the debt service budget for "interest on temporary debt".

In fiscal 1977 the City appropriated $128 million to MAC for interest on its City notes; this amount would have been sufficient to pay interest on $2,197 million of notes at their face rates, but did not cover interest on the remaining $598 million of notes then held by MAC (this $598 million had been obtained by MAC through various exchange offers). The $128 million appropriation appeared in the "Miscellaneous" section of the City's Expense Budget; consequently, no portion of the $128 million appropriation was included in the City's fiscal 1977 tax levy outside the 2-1/2% limit. Since MAC did not present any notes for payment in fiscal 1977 (in fact the MAC directors resolved not to do so), none of this $128 million was ever paid to MAC.

The City initially made no provision for payment of the MAC notes in fiscal 1978. The fiscal 1978 real estate tax was fixed on the basis of long-term debt service appropriations which were initially computed without taking into account interest due on BANs held by MAC. However, due to reductions in long-term debt service on City bonds for fiscal 1978, the current appropriation and tax levy for long-term debt service will cover $60 million of interest due on BANs held by MAC in addition to debt service on all other City bonds and BANs.

II. ISSUES

The fundamental question is whether the City can tax outside the Constitutional limit to pay debt service on BANs and bonds held by MAC. In answering this question, it appears necessary first to consider the following questions:

(1) Is City debt held by MAC truly a general obligation of the City, or does the special relationship between the City and MAC alter or impair the City's obligation on notes (or bonds) held by MAC? Does the treatment of MAC's notes in the financial statements of the City and MAC - which have excluded these notes - affect the character of the notes?
(2) Since payment of City debt held by MAC reduces MAC's need for its other revenues (sales tax, per capita aid, etc.), which are otherwise payable to the City, a consequence of such payments would be increased general revenues for the City. Is this tantamount to a prohibited use of real estate taxes levied outside the 2-1/2% limit for purposes other than debt service?

(3) Does the payment of the notes, and consequent revenue increase to the City, defeat the provisions of the MAC Act and the Financial Emergency Act requiring a balanced budget? Without the proposed $60 million interest payment in fiscal 1978, the City would have to treat $60 million of real estate taxes collected this year as deferred revenue, since revenues from real estate taxes levied outside the 2-1/2% limit may be used only for long-term debt service. Is the proposed payment an abuse of the statutory provisions under which MAC holds City notes? Is the $60 million payment tantamount to an advance by MAC to the City of operating funds in excess of the ceiling in the MAC Act?
MEMORANDUM

To:        Hon. John C. Burton
           Deputy Mayor for Finance
From:     The Corporation Counsel

October 18, 1977

USE OF OUTSIDE-TAX-LIMIT REVENUE
FOR ACCRUED INTEREST ON MAC-HELD BAN's

The single question presented is whether the payment of accrued interest on New York City Bond Anticipation Notes (BAN's) owned by Municipal Assistance Corporation (MAC) is chargeable against the portion of the City's real property tax beyond the ordinary 2-1/2% limit levied to pay principal and interest upon City obligations.

The question, thus stated, would seem to answer itself. For the New York Constitution (Art. VIII, §10) expressly provides that "the amount to be raised by tax on real estate" taxable in the City to the limit of 2-1/2% of its full valuation shall be "in addition to providing for the interest and principal on all indebtedness"; a provision which plainly and without qualification applies to interest payments on BAN's.
In the face of this obvious conclusion, an effort has been made by a staff member of the Special Deputy State Comptroller in an Interoffice Memorandum dated September 21, 1977, after demonstrating the accuracy of that obvious conclusion, to construct "arguments" raising doubt against such a resolution. In my view, those "arguments" are contrived and are devoid of substance.

1.

MAC owns BAN's in the face amount of $1.01 Billion, upon which interest has accrued. The City is ready to pay MAC $60 Million of such accrued interest out of real property taxes levied for debt service beyond the normal 2-1/2% tax limit; there are sufficient funds so raised appropriated in the City's current Expense Budget to pay the BAN interest referred to as well as all other debt service.

2.

The BAN's held by MAC are in form and in fact no different from any other BAN's. They are a substantial part of MAC's assets, constituting added security for MAC bondholders
since they are backed by the City's faith and credit and their payment guaranteed by rigorously enforced constitutional provisions, _Flushing Nat. Bank v. Municipal Assistance Corp. for the City of N.Y.,_ 40 N Y 2d 731. Even those BAN's acquired by MAC in exchange for MAC obligations - in contrast to all other short-term notes so acquired - cannot be handed over to the City to be cancelled, but may be surrendered to the City by MAC only upon the payment of principal and accrued interest or upon an exchange for other BAN's of such value. (Public Auth. Law §3035, 2.) There is no provision in the MAC statute authorizing the surrender of any MAC-held BAN's to the City without payment and, it is suggested, such a surrender would violate MAC bondholders' rights (Publ. Auth. Law §3015).

The result is that payment of accrued interest on the BAN's is inevitable as a matter of constitutional imperative. If it is not paid now it must be paid later; it is City indebtedness in every sense and nothing that even the Legislature can do could preclude taxation outside the ordinary 2-1/2% tax limit for the purpose of raising revenue for that purpose, _Flushing Nat. Bank v. Municipal Assistance Corp. for City of N.Y.,_ supra.
3.

The fact that outside-the-tax-limit revenues are to be thus used for outside-the-tax-limit purposes, results in the City obtaining a larger share of State tax revenues for general purposes than it otherwise would does not change either the character of the BAN's or that of the accrued interest on the BAN's. Both remain chargeable against and payable from outside-the-tax-limit revenues.

There are other instances in which the City's revenues and its budgetary demands are altered by the circumstance that it pays interest on City securities. For example, the several City pension systems own vast amounts of City bonds upon which the City pays interest and charges such payments against debt service paid for from outside-the-tax-limit revenues. Yet, the payment of such interest reduces the City's annual pension costs and is so reflected in its Expense Budget and its within-the-tax-limit revenues; less, it is true, since L 1977 Ch. 976 (Shinn Commission proposal, see McKinney's Session Laws, 1977 Part 8A, p.A432), than prior to that statute, but nevertheless to a significant degree.
4.

The "argument" that the payments of interest on the MAC-held BAN's as regular debt service "is open to manipulation and abuse" is, entirely apart from its basic falsity, one of policy and not of law. If the legislature had not wanted MAC to purchase BAN's or take them in exchange for MAC bonds, it could have said so. And, if it wanted BAN's acquired by MAC to be surrendered to and cancelled by the City it could have so provided, as it did in the case of RAN's (Publ. Auth. Law §3035, 2). But it did neither, and as far as present MAC bondholders are concerned, it is highly doubtful that it can any longer do so.

The "argument" is made that the payments are invalid because the fact that they are designed to have and do have the effect of making other money available for general purposes and could be in law equated with spending taxes for general purposes that were levied outside-the-tax-limit for debt service. But this has always been a principal reason why the City debt service, is, as the Constitution (Art. VIII, §10) permits, paid by taxes levied outside-the-tax-limit, that is, because tax levy proceeds within
the tax limit are required to maintain City services. This, indeed, is the reason there is a debt limit to restrict the amount of debt that present and future real property taxpayers must shoulder.

The MAC statute was certainly not meant to halt this fiscal practice. On the contrary, the statute itself discloses a recognition of a distinction between short-term debt for operating expenses and bonded debt for other purposes.*

Thus, the MAC is authorized to issue its obligations in exchange for the City's short-term obligations. Those which were issued against anticipated revenues, RANS, TANS, URNS and even budget notes are to be delivered to the City for cancellation. But BAN's which under the Local Finance Law are issued in anticipation of bonds (LFL, §38.10) and therefore represent not only an encumbrance of the debt margin but a decision to spread the cost of a long-term benefit over the period of its use, are not delivered for cancellation but remain payable by the City, principal and interest, in order to discharge the debt. The effect of this is, of course, to allow the burden to fall as in the past on the

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*The Special Deputy Comptroller's Staff Memorandum recognizes that the City can pay debt service to MAC but only out of funds raised within-the-tax-limit. It adverts to such payments which, in 1976, did take place but only on TANS, TANS and budget notes. No interest on MAC-held BANS has been paid to date. If MAC-held debt is entitled to tax limit payments, simple logic compels that it be acknowledged as debt for outside-the-tax-limit payments.
real property taxpayer over the period of probable usefulness of the purpose for which the debt was incurred.

The suggestion that MAC debt and City debt are the same because, for some purposes, the Comptroller has disregarded the difference, is pointless. The reason for the City Comptroller's report disregarding the distinction between these debts cannot change the fact that the debt is the City's to which the faith and credit are pledged and for payment of which its resources may be commanded. Flushing Nat. Bank v. Municipal Assistance Corp. for the City of New York, supra. Certainly MAC's debtors are entitled to treat the City's obligations as assets of MAC should the Corporation default. See: Public Auth. Law, §§3013, subd. 2, 3017.

The practice characterized as a practical "abuse", payment of debt service outside-the-tax-limit when other purposes consume the taxes levied within it, is a practice sanctioned by the Constitution and controlled by the debt limit.

Finally, as far as potential "abuse" is concerned, it could occur only consequent upon a conspiracy between two independent government bodies - the City and MAC, the governing members of each of which are elected and selected for, and
presumed in law to act in, the public interest. *Kane v. Walsh*, 206 N.Y. 198, 206.

Moreover, since it must be conceded that the Legislature may at any time transfer back to the City the formerly-City taxes or revenues which now support MAC bonds (See, e.g., Official Statement of MAC dated August 24, 1977, pp. 11-12) the potential "abuse" inherent in the result here — the increase in the City's general revenues — is always in prospect and is a consequence of our system of Constitution and laws.

# # #
MUNICIPAL ASSISTANCE CORPORATION

TO:        Steve Weinstein
FROM:      Bill Lithgow
SUBJECT:   Analysis of BANs held by the Corporation
DATE:      10/07/77

Attached is a breakdown of our BANs

cc:        E. Keilin
           M. Friedman
           H.A. Decker
           files
MUNICIPAL ASSISTANCE CORPORATION

Analysis of BANs Owned by MAC (10/01/77)

<table>
<thead>
<tr>
<th>SOURCE</th>
<th>DATE OF ISSUE*</th>
<th>ORIGINAL MATURITY DATE</th>
<th>COUPON RATE</th>
<th>AMOUNT</th>
<th>ORIGINAL PURPOSE*</th>
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<tbody>
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<td>New York City</td>
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<td>30,000,000</td>
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<td>09/10/76</td>
<td></td>
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<td>10/15/76</td>
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Total Resulting from Payments to New York City 345,530,000

Exchange (Series 1-4) 03/14/75 03/12/76 8.75 50,000,000
Exchange (Series 1-4) 03/14/75 03/12/76 8.75 47,960,000
Exchange (Series 5) 03/14/75 03/12/76 8.75 27,345,000
Exchange (Series 6) 03/14/75 03/12/76 8.75 4,405,000
Exchange (Series 7) 03/14/75 03/12/76 8.75 98,410,000
Exchange (Series 9) (See Sked 1) various various 440,160,000

Total Resulting from Exchange with Public 668,280,000

TOTAL BANS HELD BY MAC 1,013,810,000

NOTE:
* Cannot be verified from information at MAC office.

/lsd
10/06/77
MUNICIPAL ASSISTANCE CORPORATION

Schedule I

BANs Resulting from Series 9 Exchange

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<td>03/12/76</td>
<td>8.75</td>
<td>58,785,000</td>
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<td>06/30/75</td>
<td>05/28/76</td>
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<td>7.50</td>
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</table>

TOTAL  440,160,000

NOTE:
* U.S. Trust Statement of Transactions list these notes as one with 55,000,000 face value.

/lsd.
10/06/77
### ANALYSIS of New York City Short-term Notes Owned by the Municipal Assistance Corporation

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<th>September 21</th>
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<td>RAN</td>
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<td>99,070,000</td>
<td>1,538,085,000</td>
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<td>TAN</td>
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<td>280,000,000</td>
<td>1,468,270,158</td>
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<td>-0-</td>
<td>216,000,000</td>
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Total Notes Held
Notes From Payments to City
Sub-total
Total From Exchanges

### ANALYSIS of Notes Received as a Result of Payments to the City of New York

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<th>Type</th>
<th>Amount</th>
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<tr>
<td>RAN</td>
<td>647,500,000</td>
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<tr>
<td>TAN</td>
<td>1,188,270,158</td>
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$2,397,300,158
ANALYSIS
of
Notes Received as a Result of Exchanges With Investors

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<td>78,700,000</td>
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<td>18,215,000</td>
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<td>7</td>
<td>403,285,000</td>
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<td>9</td>
<td>819,230,000</td>
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**$1,838,865,000**
MEMORANDUM

Date: 29 September 1977
To: Eugene J. Keilin
From: William J. Lithgow
Re: Analysis of BANs Held by MAC - 9/30/77

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>From Payments to NYC*</td>
<td>345,530,000</td>
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<tr>
<td>From Exchange</td>
<td>668,380,000</td>
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</table>

* Of those BANs obtained as a result of payments to NYC, $297,530,000 were issued prior to 11/14/75. When combined with those BANs obtained as a result of exchanges with investors, a total of $965,810,000 of the BANs held by M.A.C. were issued prior to 11/14/75.

NOTE: Of those BANs obtained as a result of payments to NYC, $48,000,000 new notes were received during June 1977 as a result of payment of proceeds from Series EE bonds.

cc: SJW
    MPF
    PGC
    HAD
Then Rate self only difference is over 18% in difference the M.O.L. revenues.
The good M.O.L. revenues higher than anticipated, which didn't serve for long money (constant revenues from M.O.L. used to annual debt services).

10-11.

Statement of working the M.O.L. insurance revenues have decreased of $2,000 of 0.1% total portion and total portion initial go to pay same.

Insurance (on statement).
1. Bonds uncapitalized noted not required
2. All bonds deemed to be required
   (e.g. because M.O.L. spelled under express to be fixed at our lenders) when noted only applicable to existing of bonds, not other bonds without excess amounts required.

More concerning position would have to be the need of a new annual federal aid calculation - not really to one extent or
His paper of a special - goal which I intend here a prior. With it a 26.01
This will require a steady - annual...
Hon. Sidney Schwartz  
Special Deputy Comptroller  
Department of Audit & Control  
Office of Special Deputy  
Comptroller for the City  
of New York  
270 Broadway  
New York, N.Y. 10007  

Dear Sid:  

I have your letter of October 6 and I have passed it on to Sandy Altman to begin the process we discussed.  

I feel I must tell you, however, my strong view that both the equities and the legalities of this situation appear so clear that I can only view this process as expensive and unjustified harassment of the City which will cost many hours of time which could be far more productively used and thousands of dollars of legal fees which the City can ill afford. There are times when judgment must be exercised in the face of tortured legal arguments which is the only way I can characterize Bernie Kabak's memorandum.  

If this issue is to be decided on the basis of substance, the payments made on BANS are not being used for "general purposes" as Bernie suggests, but for the payment of debt service on MAC bonds. For all practical purposes, and in our official financial statements, MAC and City debt are combined. In equity, then, the City is being permitted through the use of this technique to pay for a portion of its long term debt service through taxation outside the limit which is certainly entirely consistent with the spirit and intention of the constitution.  

Law, however, is primarily a matter of form. Debt instruments are contracts, and the separation of MAC was carefully constructed at law even though it was recognized that economic substance differed. In form, therefore, the
payment of interest to MAC must be viewed as payment of City debt service. These payments do not result in a "flow of money for general purposes" from MAC to the City but rather in a reduced MAC take out which increases sales tax revenues of the City.

Under both substance and form interpretations, therefore, the City's position seems to meet the test of logic. Your counsel attempts to build an argument by arguing for form in some respects and for substance in others. Only by illogical combinations of form and substance can he even suggest a problem exists.

In four years at the Securities and Exchange Commission, I learned that the test of common sense is a sound legal one which needs to be applied to legal arguments. With all due respect, I don't believe that you have done that in this case. Lawyers are a valuable resource, but when they result in an overly protective reaction to a situation in which no judgment is applied, they are being misused.

Counsel would probably advise me not to send this letter, but I thought you should know how I feel.

Sincerely,

John C. Burton
Deputy Mayor For Finance
MEMORANDUM

To: Files
From: MFF
Re: Proposals to Reflect Certain MAC Debt in the Real Estate Tax Rate Imposed by New York City

At a meeting held July 5, attended by Jim Dubin, Chips something-or-other, John Keohane, Jerry Fernandez, and myself, certain proposals were advanced which would enable the City to reflect in its real estate tax rate the $820 million of MAC Bonds intended to be issued to the banks and pension funds in exchange for their City Notes. The purpose of this memorandum is to set forth those proposals and the legal issues presented thereby.

I. In March or April of 1978, the City will issue $1,300,000,000 of City Bonds. The Bonds would be issued as part of one series, with $500 million of the earliest maturing Bonds being sold to the City pension systems and the remaining $800 million of the later maturing Bonds being issued to MAC in exchange for an equivalent amount of BANS held by MAC. The legal issues raised by this proposal are as follows:

A. Does the City have bonding authority to issue such amount of obligations?

B. Will MAC-held BANS be valid obligations of the City at the time of presentment?

C. Can City give MAC City bond at private sale?
II. The City issues to MAC a Bond in the amount of $800 million which reflects the terms of the Bonds issued to the banks and pension funds in exchange for their City Notes.

A. Does the City have sufficient bonding authority to issue such a Bond under Article 18 of the State Constitution?

B. If such a Bond is issued under Article 18 of the Constitution, is it thereby exempt from the 150% rule?

C. Will MAC-held BANS be valid obligations of the City at the time of the proposed exchange.

III. Each year MAC will present to the City for payment an amount of BANS held by MAC equal to the principal and interest due in such year on the Bonds issued to the banks and pension funds.

A. Are BANS which are not paid at the date of maturity then subject to the 150% rule?

B. Is it permissible for the City and MAC to enter into an agreement whereby MAC is to present BANS to the City in accordance with a specified schedule?

C. From what source is the City required to pay an overdue BAN (i) in the case where an overdue BAN is simply presented for payment without prior agreement and (ii) in the case where a BAN is presented for payment in accordance with a prior agreement?
D. Will the BANS be a valid obligation of the City at the time of presentment

IV. When City has available cash, City will repay certain obligations held by MAC. Upon request by City for operating expenses payments, MAC will make such payments to City, utilizing monies previously paid to MAC by City and will receive City bond in consideration of operating expense payment.

A. If City repays operating expense obligations, is there room under operating expense limit to extent of repaid obligations?

B. Is money repaid to MAC by City available for payment to City for operating expenses

   (i) under applicable bond resolutions?

   (ii) under tax laws?
Law §420, does not affect this rule. Nor would it make any difference whether the State aid is computed on a per capita basis or by any other method. Thus, it would be improper to open up such a program to nonresidents, even though the program is partially funded with State aid moneys.

We note, in passing, that there is no statutory authority for a park district to obtain State aid for any youth activity it may conduct, since a park district is not included in the definition of a "municipality" entitled to receive State aid in Executive Law §412(3).

Conclusions: (1) A park district may charge nonresidents an admission fee for the use of its facilities, but it may not restrict admissions to nonresidents from a particular locality or area.

(2) The mere fact that a municipality’s youth programs are partially reimbursed with State aid moneys does not require such programs to be opened up to nonresidents.


OPINION 73-790

Inquiry: May a town place on town highways traffic signs with the legend “Children at Play”?

Statement of Law: Vehicle and Traffic Law §1682 gives local authorities, including towns, the power to set up such traffic control devices as they deem necessary on roads within their own jurisdiction. That section and §1680(c) require that all such traffic signs conform to the manual and specifications set out by the State Department of Transportation. The Manual of Uniform Traffic Control Devices contains no authorization for a “Children at Play” sign. Since there is no authorization for that type of sign, §1680(c) forbids the installation of such signs.

However, we should point out that this is no bar to a private individual or group of individuals who desire to put up such a sign at their own expense on private property.

Conclusion: A town may not install traffic signs with the legend “Children at Play” on town roads.


OPINION 73-792

Inquiry: Must the proceeds of the sale by a school district of an undeveloped land sit the purchase

Statement of a non

the cost defined obligations when of such purposes

“Capital”, (Gen Mun L issued obligation and all or part mandatory a proceeds of the provisions of Section 6.

App

payment.

debt.
the pa be expended

Thus, if it a balance ex any lawful pr

We are to apply the school dist fund for pay to counties, or does Educ we have p to applied to balance or surplus bonded indec including our Education.
make any difference in the rate of interest charged on the purchase of said lands?  

Statement of Law: General Municipal Law § 4-102 requires the establishment of a mandatory reserve fund under the following circumstances:

(1) The proceeds of the sale of land by a school district by virtue of a lien created under the provisions of § 6 of this chapter.

(2) The proceeds of the sale of land by a school district by virtue of a lien created under the provisions of § 6 of this chapter.

Appropriations from such funds shall be made only for the purpose of retiring the obligations incurred in connection with the purchase of said lands. Any balance remaining in said fund upon the retirement of all such obligations may be used for any lawful public purpose as determined by the school district. The proceeds of the sale of land by a school district by virtue of a lien created under the provisions of § 6 of this chapter shall be deposited in such fund in accordance with the requirements of that section.
land. The board of education of a union free school district is empowered to sell its land "when authorized by a vote of the qualified voters of the school district... at such price and upon such terms as said voters shall prescribe..." Thus, after voter approval, a union free school district may sell its land and if there are outstanding obligations incurred for the purchase of such land, the proceeds must be deposited in a reserve fund to pay such obligations. Money not needed to retire such obligations may be expended for any lawful purpose of the school district as directed by district voters in accordance with Education Law §1503.

Conclusion: If, upon the sale by a school district of an undeveloped land site, there are outstanding obligations that were issued to finance the purchase of such lands, a mandatory reserve fund must be established for the purpose of retiring such obligations.


**OPINION 73-795**

**Inquiries:**

1. May the board of fire commissioners of a fire district appoint an assistant engineer to fill a vacancy created by the resignation of an assistant engineer during his term?

2. Where there is only one assistant engineer to the chief engineer, who would command the fire company in the event they were both disabled?

**Statement of Law:**

1. As to the first inquiry, New York courts have held that the chief engineer is not a fire district officer (Matter of Barber v. Lampman, 198 M 135, 100 NYS2d 668, aff'd 278 AD 600, 101 NYS2d 924 (1951). From the foregoing, it would follow that the assistant engineer is not a fire district officer either, and therefore the provisions of Town Law §176(3) on filling vacancies in fire district offices would not be applicable.

2. Town Law §176(11-a), which deals with the filling of the positions of chief engineer and assistant engineer, contains no specific provisions on how to fill vacancies. For that reason, this Department stated at an earlier date that the safe procedure for filling a vacancy in the position of chief engineer was to follow the steps prescribed by §176(11-a) for making an original appointment (7 Op St Compt 103 (1951). It is our opinion that the same procedure should be followed for filling a vacancy in the position of assistant engineer. That is, the board of fire commissioners should call a meeting of the members of the fire district fire department to nominate a person to fill the vacancy; the board of fire commissioners should then appoint that person or call another meeting to make another nomination if the first one is not approved.

(2) As to the second inquiry, Town Law §176-a provides that in the
establish a petty cash fund for the fire district treasurer for the payment, in advance of audit, of properly itemized and verified or certified bills for materials, supplies or services furnished to the fire district for the conduct of its affairs.

We are of the opinion that the above-quoted section mandates that the petty cash fund, once established, be held by the fire district treasurer, and that disbursements may be made by him only after a voucher is presented for services or materials furnished to the fire district. There is no procedure whereby a fire district officer or employee can be given cash from the petty cash fund to make a purchase.

(2) All official actions of a board of fire commissioners must be undertaken pursuant to a resolution of the board, as legally constituted. There is no authority for a board to act, and to cause its acts to have legal effect, other than by resolution. This is so even when a majority of the board has independently reached agreement on a particular matter. Notwithstanding this, there must be a resolution of the board of fire district commissioners.

Therefore, there is no responsibility for the payment of expenses related to competitive bidding procedures, where such procedures have not been activated pursuant to a resolution of the board of fire district commissioners. Of course, we cannot pass on the question of whether it would be desirable for the board to adopt such a resolution after the fact, thus ratifying what was done and paving the way for the payment of the expenses in question.

Conclusions: (1) Once a petty cash fund for a fire district treasurer is established, the payment for supplies and services furnished to the district may be made only by the treasurer upon the presentation of an itemized bill which is properly certified or verified.

(2) A fire district may solicit competitive bids and incur expenses related thereto only pursuant to a resolution of the board of fire commissioners.

September 10, 1975.

OPINION 75-797

Statement of Fact: A town has issued $700,000 in serial bonds for an interceptor sewer system which ties into a solid waste treatment plant operated by a village. The town has received federal and state aid for that town project. Under an agreement with the village, a joint sewer fund has been established. The village administers that fund and claims the aid monies must be turned over to that sewer fund.

Furthermore, the town has dissolved all of its sewer districts and has a full part-town sewer improvement area. Costs are raised by a tax, not an assessment. Under the agreement with the village, all funds received by the
parties for capital costs, operation and maintenance and other related purposes are to be deposited in the sewer fund to pay operation, maintenance, and administration and retire debt issued by the village for the treatment plant.

Inquiry: Must the federal and state aid received on account of the interceptor system be placed in a mandatory reserve fund?

Statement of Law: General Municipal Law §6-7 requires municipal corporations to establish mandatory reserve funds for the payment of existing outstanding indebtedness incurred to finance the cost of a capital improvement where federal and state aid is received for such improvement. Thus, federal and state aid received on account of the town interceptor sewer system, where the town has outstanding bonds issued to finance that system, must be deposited in a reserve fund for the purpose of retiring such obligations, to the extent that the aid is not applied directly to the payment of part of the cost of the improvement or to retire indebtedness issued in anticipation of such aid.

The aid received must be deposited to the credit of such fund. But if the aggregate amount of aid exceeds the sum of all principal and interest on the indebtedness due or to become due, or if moneys remain in the reserve fund after all the obligations have been retired, such excess moneys may be used for any lawful town purpose.

Thus, federal and state aid received must be deposited in a town reserve fund to retire the obligations issued. Excess moneys, that is, where the total aid exceeds the total indebtedness due, or to become due, may be used for any lawful town purpose. Moneys remaining in the fund after all the bonds are retired may also be so used.

The sewer fund described does not meet the requirements of a reserve fund under General Municipal Law §6-7.

Conclusion: Where a town has issued obligations to finance the cost of constructing an interceptor sewer system and part or all of those bonds are outstanding, federal and state aid received on account of that system must be placed in a mandatory reserve fund.

July 30, 1975.

OPINION 75-801

Inquiry: Are federal revenue sharing funds considered as current funds or surplus funds?

Statement of Law: We note at the outset that authority for a town to purchase beach property for town recreational purposes is found in Town Law §841 and 220. See also The town's petition, as held or biennial to 1. In any event, to acquire the same in Section 220 prior Section 220 prior to

Upon the purveyor of the permissive in

4. E. to acquire the same with a previous opinion that such an expenditure be subject to either last sentence of both:

Any expenditure from surplus funds is subject to the nature of surplus funds are either fund provisions of Town law.

The purchase beach property is subject to referendum.

Conclusion: For moneys, so that the expenditure is not so August 29, 1975.

Inquiry: May a owners of commercial property to improve

Statement of Law: corporations have on
6 October 1977

Mr. Sol Lewis
Third Deputy Comptroller
Municipal Building - Room 707
One Centre Street
New York, New York 10007

Dear Sol:

In response to your letter of September 29, 1977, we are transmitting the following information with regard to debt and revenues of the Municipal Assistance Corporation and notes of The City of New York held by the Corporation.

1. City Notes Held by MAC

<table>
<thead>
<tr>
<th>Type</th>
<th>Received in Exchanges</th>
<th>Received From City</th>
<th>Total Held by MAC</th>
</tr>
</thead>
<tbody>
<tr>
<td>BAN</td>
<td>668,280,000</td>
<td>345,530,000</td>
<td>1,013,810,000</td>
</tr>
<tr>
<td>RAN</td>
<td>890,585,000</td>
<td>647,500,000</td>
<td>1,538,085,000</td>
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<tr>
<td>TAN</td>
<td>280,000,000</td>
<td>1,188,270,158</td>
<td>1,468,270,158</td>
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<tr>
<td>BN</td>
<td>0</td>
<td>216,000,000</td>
<td>216,000,000</td>
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<tr>
<td>TOTAL</td>
<td>1,838,865,000</td>
<td>2,397,300,158</td>
<td>4,236,165,158</td>
</tr>
</tbody>
</table>

The maturity dates of these City notes are contained in two schedules prepared by the United States Trust Company of New York, which holds the notes in custody accounts for the Corporation, copies of which are enclosed with this letter.

2. Total MAC Debt Issued (Principal Amount)

<table>
<thead>
<tr>
<th>Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bonds</td>
<td>$8,659,576,000</td>
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<tr>
<td>Notes</td>
<td>298,500,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$8,958,076,000</td>
</tr>
</tbody>
</table>
3. **MAC Debt Issued for Refunding (Principal Amount)**

<table>
<thead>
<tr>
<th>Type</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Bonds</td>
<td>$3,292,026,000</td>
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<tr>
<td>Notes</td>
<td>0</td>
</tr>
</tbody>
</table>

**TOTAL** $3,292,026,000

4. **MAC Debt Redeemed (Principal Amount)**

<table>
<thead>
<tr>
<th>Type</th>
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</thead>
<tbody>
<tr>
<td>Bonds</td>
<td>$209,225,000</td>
</tr>
<tr>
<td>Notes</td>
<td>298,500,000</td>
</tr>
</tbody>
</table>

**TOTAL** $507,725,000

The Corporation has indicated in its most recent Certificates to the Mayor of the City of New York and the Comptroller of the State of New York, dated September 29, 1977, estimated revenue requirements for June 1978 for its First Resolution Bonds from State Sales Tax of $80,200,000 and for its Second Resolution Bonds from State Per Capita Aid of $195,000,000. Copies of these Certificates are also enclosed with this letter.

Sincerely,

[Signature]

Stephen J. Weinstein
Deputy Executive Director

SJW/mp

Enclosures (4)

bcc: Marilyn F. Friedman
     William J. Lithgow
     H. Andrew Decker
# Schedule of Property

**United States Trust Company**

Of New York
45 Wall Street, N.Y., N.Y. 10005
51-1366

**Municipal Assistance Corporation**
For the City of New York

**Schedule of Property**

**Amount Held**

**Description of Assets**

---

**New York City Rev Antic Note**

- **Amount Held**: 50,000,000
- **Interest Rate**: 9.50%
- **Maturity Date**: 12-11-1975

- **Amount Held**: 50,000,000
- **Interest Rate**: 9.50%
- **Maturity Date**: 12-11-1975

- **Amount Held**: 94,705,000
- **Interest Rate**: 9.50%
- **Maturity Date**: 12-11-1975

- **Amount Held**: 21,760,000
- **Interest Rate**: 9.50%
- **Maturity Date**: 12-11-1975

- **Amount Held**: 89,455,000
- **Interest Rate**: 9.50%
- **Maturity Date**: 1-12-1976

- **Amount Held**: 76,180,000
- **Interest Rate**: 9.40%
- **Maturity Date**: 1-12-1976

- **Amount Held**: 61,880,000
- **Interest Rate**: 9.40%
- **Maturity Date**: 1-12-1976

- **Amount Held**: 62,990,000
- **Interest Rate**: 9.40%
- **Maturity Date**: 1-12-1976

- **Amount Held**: 57,190,000
- **Interest Rate**: 9.40%
- **Maturity Date**: 1-12-1976

- **Amount Held**: 50,000,000
- **Interest Rate**: 9.40%
- **Maturity Date**: 1-12-1976

- **Amount Held**: 81,000,000
- **Interest Rate**: 9.75%
- **Maturity Date**: 2-13-1976

- **Amount Held**: 95,892,328.77
- **Interest Rate**: 5.75%
- **Maturity Date**: 2-13-1976

- **Amount Held**: 50,000,000
- **Interest Rate**: 5.75%
- **Maturity Date**: 2-13-1976

- **Amount Held**: 50,000,000
- **Interest Rate**: 5.75%
- **Maturity Date**: 2-13-1976

- **Amount Held**: 91,655,000
- **Interest Rate**: 7.55%
- **Maturity Date**: 2-13-1976

- **Amount Held**: 62,000,000
- **Interest Rate**: 7.55%
- **Maturity Date**: 2-13-1976

- **Amount Held**: 50,000,000
- **Interest Rate**: 7.55%
- **Maturity Date**: 2-13-1976

- **Amount Held**: 90,800,000
- **Interest Rate**: 5.75%
- **Maturity Date**: 8-31-1976

- **Amount Held**: 90,800,000
- **Interest Rate**: 5.75%
- **Maturity Date**: 5-31-1976

---
## United States Trust Company

**SCHEDULE OF PROPERTY**

**MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK**

**AMOUNT HELD**

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<th>Amount Held</th>
<th>Description of Assets</th>
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<tr>
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<td>DESCRIPTION OF ASSETS</td>
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<td>NEW YORK CITY NY BUDGET NOTE 9.00% 5-27-1978</td>
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.50 PRINCIPAL CASH BALANCE
.50 INCOME CASH BALANCE
# Statement of Transactions

**Opening Balance September 2, 1977**

<table>
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<tr>
<th>Description</th>
<th>Date</th>
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</tr>
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<tbody>
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<tr>
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</tr>
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**Balance**

```
OVERDRAFT BALANCES ARE NOTATED BY O.D.
```
DEPARTMENT OF AUDIT AND CONTROL
INTER-OFFICE MEMORANDUM

To:       File
From:     Irving Cohen

Date:     October 5, 1977
Subject:  Payment by City of Interest on BAN’s Held by MAC

A meeting was held yesterday on the above matter. In attendance were Deputy Mayor John Burton, Gene Keilin (MAC), John Bender (EFCB), Sid Schwartz (SDC), and other members of these staffs.

The subject of the meeting was the City’s proposal to pay interest on its bond anticipation notes held by MAC from taxes levied outside of the City’s 2 1/2% tax limit. Our Counsel, Bernard Kabak, had previously prepared a memo on this matter (copy attached) which sought to delineate the City’s arguments in favor of the proposal and which also set forth the position of this office that the City proposal raises certain legal questions which should be resolved. The matter at issue involves, in part, an interpretation of the State Constitution and has long term consequences. As a result of this study, Mr. Schwartz is recommending that the EFCB refer the matter to the Attorney-General for a legal opinion.

Mr. Kabak’s memo served as the basis for discussion at the meeting. Mr. Bender stated that the EFCB staff is considering requesting an opinion from the Attorney-General to resolve the issue. Mr. Burton indicated that the City would have no objection to this approach. Mr. Keilin suggested that, in view of the significant impact that such a ruling might have upon the City’s financial planning in FY 1978 and later years, the interests of the City would be best served if the matter were first presented by the City to its several bond counsel for study to ensure that all ramifications are explored in depth and that the question which might subsequently be posed to the Attorney-General covers all aspects of the issue.

It was agreed by all present that:

1. Sandy Altman will prepare a statement of facts on the issue within the next
two days which will be circulated to the staffs of MAC, EFCB and OSDC for review.

2. Upon agreement by the interested parties, the City will submit the statement of facts to its several bond counsel for comment as to whether the City's proposed action is appropriate and the reasons therefor.

3. If, after review of the conclusions of bond counsel, the EFCB still feels that the matter should be referred to the Attorney-General, it will pose the question phrased in language acceptable to the representatives of the City, MAC and OSDC.

Mr. Schwartz expressed concern with the time delay that would ensue under this approach, during which interval there would be a possible gap in the FY 1978 Financial Plan of some $75 million. It was estimated that it might take a month before the question which may be put to the Attorney-General is formulated and an additional time would elapse before an opinion is issued by that office. In the interim, monies would have to be reserved to cover the potential gap in the Financial Plan from one or more of the following sources: (a) reductions in expenditure estimates, (b) new revenues, (c) use of the $100 million reserve for revenue shortfalls and/or expenditure overruns.
Hon. John C. Burton  
Deputy Mayor for Finance  
Municipal Building  
Room 1210  
New York, New York

Dear Mr. Deputy Mayor:

Municipal Assistance Corporation For The City of New York (the "Corporation"), for which this firm acts as General Counsel, has asked me to comment to you on our views on the legality of the proposed payment to the Corporation by the City, from taxes levied outside the 2-1/2% limit provided in Article 8, Section 10 of the New York State Constitution, of accrued interest on certain bond anticipation notes of the City ("BANs") now held by the Corporation. This proposed payment is described in various memoranda, including a memorandum dated October 18, 1977 from the Corporation Counsel to you and a memorandum dated September 21, 1977 from Bernard J. Kabak of the Office of the Special Deputy Comptroller to Theodore M. Berns.

I have reviewed the memoranda referred to and the relevant provisions of the Constitution of the State of New York and of the State Public Authorities Law pertaining to the Corporation.

This will confirm the views which I expressed orally to you and others at your office Wednesday, October 19, 1977. In my view, the proposed payment may be made from taxes levied outside the 2-1/2% limit referred to above. Although I believe that the questions expressed in Mr. Kabak's memorandum are legitimate questions properly raised, I do not believe that the arguments presented against the propriety of such payment from such source are so compelling as to raise a
substantial legal issue requiring resolution by higher legal authority.

Although I share the conclusion of the Corporation Counsel with respect to the specific question raised, I must respectfully point out that I do not necessarily agree with certain minor points made by the Corporation Counsel in his memorandum.

I do not necessarily agree that the Corporation may not surrender to the City, without payment, BANs held by it without violation of the rights of the Corporation's bondholders. Section 3015 of the Public Authorities Law does not, in my view, require such payment if the Corporation does not demand it.

City obligations held by the Corporation are not pledged as security for payment of obligations issued by the Corporation. The Corporation may not take into account payments scheduled to be made in the future by the City of principles of or interest on obligations of the City held by the Corporation in determining the amount of sales tax, stock transfer tax or per capita aid to be certified by the Corporation pursuant to the statutes governing its actions or pursuant to either of its General Bond Resolutions. These principles have been disclosed fully to the Corporation's bondholders in each of its official statements.

Furthermore, under Section 3035(2) of the Public Authorities Law, the Corporation is permitted to deliver to the City for cancellation BANs, TANs, UBNs and Budget Notes, but it is not obligated to do so.

With these minor, and I believe inconsequential, exceptions to the Corporation Counsel's memorandum referred to above, I am happy to say that I subscribe to his conclusion.

If you have any additional question about this matter, please call me.

Sincerely,

[Signature]

Allen L. Thomas

ALT/njr

cc: Eugene J. Keilin, Esq.
    Marilyn Friedman, Esq.
    Hon. W. Bernard Richland, Esq.
    Bernard J. Kabak, Esq.
    Hawkins, Delafield & Wood
## MUNICIPAL ASSISTANCE CORPORATION

Interest Due on MAC-held on New York City BAN's

(In $ Thousands)

<table>
<thead>
<tr>
<th>Source</th>
<th>Date Acquired</th>
<th>Amount</th>
<th>Rate</th>
<th>06/30/77</th>
<th>06/30/78</th>
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<tr>
<td>Series 4</td>
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<td>$ 3,824</td>
<td>$ 2,938</td>
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</tbody>
</table>

**NOTE:**

* Actual Day Basis.

HAD/lsd
Payment of Interest on City BAN's

Mr. Keilin stated that the Board had previously resolved not to present any of the City of New York bond anticipation notes which the Corporation holds for payment of either principal or interest. However, the City has recently requested that the Corporation present those BAN's for payment of interest. In response to an inquiry from Mr. Flynn, Mr. Keilin indicated that such payments by the City to the Corporation would, in fact, be returned by the Corporation to the City, probably by means of the normal certification procedure. By motion duly made, seconded and carried it was:

RESOLVED, that the Corporation present to the City of New York for the payment of interest only, when due, all bond anticipation notes of the City of New York held by the Corporation.
INTER-OFFICE MEMORANDUM

22 October 1976

TO: Gene Keilin

FROM: Paul Giddings

RE: Interest on BANs

Steve Clifford informs me that the City has to pay us interest on our BANs because the funds come from real estate taxes which would otherwise have to be reduced. We appear to hold $677 million in BANs, which at six per cent would be $40.6 million. Steve would be happy to repackage all the BANs into a single maturity, so that we would have only one annual transaction.

Jim Dubin informs me that we can accept this interest and pay it back to the City so long as the City uses the returned money for debt service. We have to go through a closing procedure, but this is largely pro forma and would only be once a year. Alternatively, we could keep the money and reduce our certification.

My strong preference is to be able to show interest from and to the City in equal amounts.

In any case Board action is required, because we have previously stated (and resolved) that we do not intend to present City notes for payment of principal or interest. Official Statement language will also change.

I recommend that we advise Steve to pick a date when the City prospectively has large debt service payable, and then send us a written request (him to you or Jay to Felix), that we exchange; that we present for payment of interest; that they will certify back to us to return the interest; the new maturity date; and a statement that interest returned will only be used for debt service.

cc: S.J. Weinstein

PGG/1ad
August 24, 1976

Honorable Harrison J. Goldin
Comptroller
City of New York
Municipal Building, Room 500
New York, New York 10007

Honorable Kenneth S. Axelson
Deputy Mayor
250 Broadway, Room 1401
New York, New York 10007

Gentlemen:

This letter is to confirm that the Board has resolved that it is the Corporation's present intention that City notes held by it will not be presented for payment of principal or interest.

Sincerely,

Felix G. Rohatyn
Chairman

FGR:ek

cc: Martin Ives
    Steve Clifford
    Peter Kiernan
    Donald Kummerfeld
    James Dubin, Esq.
    Sidney Schwartz
    Arthur Gordon
    Stephen Berger
    Allen Brawer
May 28, 1976

United States Trust Company
of New York, as Trustee under
the General Bond Resolution
of the Municipal Assistance
Corporation For The City of
New York
45 Wall Street
New York, New York 10005

Attention: Malcolm J. Hood,
Vice President

Gentlemen:

You are hereby instructed as custodian not to present to The City of New York for payment of principal and interest maturing short-term notes of the City held by the Municipal Assistance Corporation For The City of New York (the "Corporation") and held by you as custodian, pending further instructions by the Corporation as to the disposition of such City Notes.

Very truly yours,

MUNICIPAL ASSISTANCE CORPORATION
FOR THE CITY OF NEW YORK

By [Signature]

5/28/76