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**Re: PPA's Special Counsel Fees**

Pam:

In response to your inquiry, please allow me to offer the following. The law firm which is providing legal services for the structure of the PPA documents is not a Solicitor, they are Special Counsel. The Solicitor holds an office provided for in all of the organizational documents for the various entities which, in essence, is that that person is the chief law officer for the governmental entity.

The remaining comments are addressed to COG. They do not necessarily apply to the member municipalities who should consult with their own Solicitor regarding the matter nor does it apply to State College Area School District which also has its own Solicitor to render opinions on the matters discussed herein.

The COG Articles Agreement provide in Article III, Powers and Scope of Authority, that the members of the General Forum, by majority, may: C. "receive, administer and dispense funds from municipal, state, federal or other sources", G. "establish in these Articles of Agreement such organizational structure as deemed necessary" and H. "contract for services". Thus, the power to retain professionals, contract for their services and pay for those services is clearly contemplated by Article III of the COG Articles of Agreement.

In carrying out this responsibility, the General Forum, may, by majority vote, establish spending limits for the convenience of COG staff members who are charged with carrying out the programs or decisions that COG General Forum reaches.

It is clear that neither the SPPA Working Group nor the COG Executive Committee have in and of their own right the power or authority to pay bills or otherwise expend money without COG General Forum approval.

Because the issue that has been raised in this case involved professional services, the normal bidding requirements for contracting do not apply.

If I understand the point raised in your memo that these consulting services were provided "at risk", the payment of COG's share of those fees is legal if COG General Forum, by majority vote, approves the expenditure of funds.

We must recognize that in the area of professional services it is almost impossible to obtain fixed amount contracts. Sometimes those contracts do contain limits which say up to a certain amount. However, when the professional services are provided, the provider of those services has a claim against the governmental entities that request the service which would sound in "quantum meruit".

Said somewhat more succinctly, if the COG General Forum approves the expenditure of funds, that renders the matter moot.

Very truly yours,

MILLER KISTLER & CAMPBELL

By: 

TJW/slc

cc: Benjamin Estell