



May 12, 2011

Dear Member:

I write to keep you apprised of the status of the Secretary of State's investigation of the New Hampshire Local Government Center's risk pool operations, and to let you know that we expect a final report may be released very soon.

### **Report on the Secretary of State Investigation**

We were expecting a final report from the Bureau of Securities Regulation on December 30 of last year about the continuing investigation of a 2009 complaint. It was not forthcoming at that time and as of this writing has still not been issued. LGC has provided well over 6000 pages of documentation and, as recently as two weeks ago, we received another request for information. You may have seen or heard news reports relative to the press release issued by the Secretary of State's office yesterday. We were surprised to see a press release without a final report attached.

Based on the outrageous statements in the Bureau's press release we are left with significant concerns about the Department of State's objectivity regarding the investigation and the lack of attention to specific data provided to them in answer to questions posed. If the Department chooses to ignore the legal and factual data that is available to them, the result could be a report with a negative impact on local government.

### **Meetings to Date**

Since January 2011, LGC has met at least seven times with the Department of State. Through this process, we hoped to resolve concerns raised in the interim report in a fair manner to avoid unnecessary costs and litigation. From the start, we informed the Department that clarifying the law regarding concerns that were recently raised needed a legislative solution. However, we first wanted to see if we could thoroughly vet the issues and concerns so that we might approach the legislature together to ask for statutory guidance. In March, it appeared that the Department was backing away from our attempts to resolve issues through discussion, and we were concerned that we would run out of time to ask the legislature to clarify the law. The amendment LGC supported and presented in a public hearing setting provided specific language to add clarity to the statute and to allow the Department to continue its current investigation.

I'd like to present some concerns we have with the investigation to date:

### **Selective Enforcement**

LGC believes it is the target of selective enforcement and an exclusive investigation by the Department of State. Throughout the investigation, LGC has pointed out that we have been operating in a manner consistent with the other 5-B risk pools in New Hampshire. In fact, last year's testimony before the Senate Commerce Committee by the other 5-B risk pools confirmed this point.

The Bureau's press release states that LGC "improperly retained surplus taxpayer funds" and owes cities and towns more than \$100 million. We have not seen a final report, so it is hard to comment on that conclusion. However, the Department of State was directed by legislation (Ch. 149:6, Laws of 2010) to provide the legislature with an actuarially sound recommendation regarding proper reserve levels for all RSA 5-B risk pools. That report, issued in December 2010, only addressed the level of LGC's HealthTrust reserves. Any suggestion about appropriate reserve levels must go back to the legislature for action before any legal findings may be made.

When we question why the focus is only on LGC, the Department of State repeatedly informs us that it has not received any complaints regarding the other 5-B entities. We know that to be untrue, as we recently learned that a state representative hand delivered a written complaint to the Secretary of State on June 2, 2010 raising similar concerns regarding the other 5-B entities and asking that he initiate a formal investigation of them. It appears that no action was taken on that complaint. On March 30, 2011, we requested an explanation of this disparate treatment and have received no response from the Secretary of State's office.

### **Lack of Uniform Standards and Procedures**

The Department of State lacks uniform standards and procedures in its investigation process which has already resulted in significant expenditures by LGC. There could be additional costs to local taxpayers if the next step is formal adjudicatory or court proceedings. However, further legal challenge may be necessary because without it, all risk pools would have to incorporate into pricing their risk coverage the Department's costly new interpretation of a law that has been in effect for 24 years,. These interpretations may be counter to current risk pool operations and be different than the legal advice provided to the risk pools since the adoption of the original statute.

For example, the Department has suggested that there cannot be a combined pool offering property, casualty and vehicle coverage and instead there must be a separate pool for property coverage, a separate pool for vehicle coverage and a separate pool for casualty coverage. This is not only contrary to the way all pools in New Hampshire operate, but it would be inefficient and more costly to local governments to create separate pools.

Similarly, the Department wants to impose a much more restrictive reserve level than has been the well-established and prudent practice. The other two New Hampshire public sector risk pools use a reserve policy that results in similar reserve levels to LGC's policy. The Department suggests a new standard that would force local governments to absorb significant financial risk, with wildly fluctuating coverage rates, contrary to the desire to have local budgets that are as stable and predictable as possible.

The changes to RSA 5-B adopted at the end of the 2010 legislative session granted the Secretary of State investigatory powers but provided no rules to govern the process. LGC has been the subject of what amounts to a 2-year investigation based on an anonymous complaint with no procedural guidelines or rules that apply to the investigation. As you know from your municipal, school or county perspective, basic tenets of fairness are at risk when there are no rules governing a process. The Secretary of State should be required to adopt formal and uniform procedures through rulemaking to ensure that there will be clear rules in place within which risk pools may operate cost effectively and efficiently to meet the needs of local governments and their employees. The current regulatory uncertainty and lack of uniform standards prevent that from occurring.

### **Substitution of Judgment**

Since 1987, State law provided representatives of local government who serve on risk pool boards the authority to operate those pools by applying their prudent business judgment in the best interest of local government. Based on the language of the press release, the Department of State appears to believe that it has the right to substitute its own judgment for the operational decisions of the risk pool boards. Risk pool boards have relied on the expert advice of attorneys and actuaries to

minimize the risks to local governments according to the law and best industry practices. It is inappropriate for the Department to substitute its judgment for that of the boards of local officials who govern the risk pools, especially where it has not adopted formal uniform standards to guide that judgment and where that judgment could result in significantly increased costs to local taxpayers.

**Conclusion**


From its inception, LGC has relied upon the professional advice of attorneys, actuaries and others with specific expertise in public sector risk pools, and has operated in a manner consistent with the law, national risk pool practices, and the other New Hampshire public sector risk pools.

As recently as last week, LGC requested a meeting directly with the Secretary of State. While we hope to resume discussions with Secretary Gardner and his staff, and we remain committed to addressing concerns, LGC also continues to focus on providing the quality services that support cities, towns, school districts, and counties. For example, we are currently hosting the annual Local Officials Workshops, providing updates on healthcare reform, and continuing to offer legal advice, webinars and Benefits Administration and other employee training. Work is underway to develop new wellness initiatives and to present the popular annual Budget Workshops, Law Lecture Series and a dynamic Annual Conference.

We will continue to keep you informed of new developments, including our attempts to resolve any findings contained in the Secretary of State's final report when it is issued.

LGC has received great support from our members throughout this process and we appreciate your involvement and feedback. If you have questions regarding this process to date, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Maura Carroll". The signature is fluid and cursive, with the first name "Maura" being more prominent than the last name "Carroll".

Maura Carroll  
Executive Director