

Municipal Expenditures

Introduction

On many occasions municipalities are requested to make contributions or donations to various worthy private organizations. Such organizations include chambers of commerce, hospitals, museums, veterans' organizations, community funds, boy scouts, Red Cross, and other educational, promotional or benevolent associations. Frequently, it is difficult for the legislative body of a municipality to refuse such requests. However, it appears clear from various court decisions and legal opinions that such donations are illegal expenditures of public funds.

Under the American system of federalism, municipal power to expend money is derived from the state. The United States Constitution grants to states, rather than local governments, all powers not specifically enumerated in the Constitution. The United States Supreme Court has stated:

Political subdivision of states, counties, cities, or whatever-never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions. *Reynolds v Sims*, 377 US 533, 575 (1964).

As creature of the state, a municipality's power to spend is derived from the state. Generally, the municipal body is only empowered through a specific delegation of power provided for in the Michigan Constitution, state statute, court decisions or legal opinion. In addition, the home rule as expressed in the home rule acts does provide some limited autonomy to cities and villages for spending on municipal concerns. Regardless of spending authority, however, it is generally agreed that municipalities have the power to expend funds only for a "public purpose."

What is a Public Purpose?

The Michigan Supreme Court has quoted a Massachusetts case which listed multiple factors a court should consider in deciding a public purpose question. The factors are:

Whether the benefit is available on **equal terms to the entire public** in the locality affected; whether the service or commodity supplied is **one needed by all or by a large number of the public**; whether the enterprise **bears directly and immediately**, or only remotely and circumstantially, **upon the public welfare**; whether the need to be met in

its nature **requires united effort** under unified control, or can be served as well by separate individual competition; whether **private enterprise has in the past failed** or succeeded in supplying the want or in eradicating the evil; whether, insofar as benefits accrue to individuals, the **whole of society has an interest in having those individuals benefited**; whether a proposed extension of governmental activity is in line with the historical development of the Commonwealth and with the general purpose of its founders; whether it will be **necessary to use public ways** or to invoke the power of **eminent domain**; whether a **special emergency** exists, such as may be brought about by war or public calamity. *City of Gaylord v City Clerk*, 378 Mich 273, 299-300 (1966)

In *Hays v City of Kalamazoo*, 316 Mich 443, 453-454 (1947), the court defined the objective of a public purpose.

Generally a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation, the sovereign powers of which are used to promote such public purpose. . . . The right of the public to receive and enjoy the benefit of the use determines whether the use is public or private.

The legality of a proposed expenditure requires asking several questions. For this reason the public decision maker must be aware of pertinent case law and attorney general opinions interpreting and identifying illegal expenditure. The following questions may be helpful.

1. Is the purpose specifically granted by the Constitution, by statute or by court decision? Absent a specific grant of authority by law, the expenditure should be analyzed under the remaining questions.
2. Is the expenditure for a public purpose? When analyzing this question try and identify who will be the primary beneficiary. Is the benefactor a private organization or a public organization? Is the expenditure for the public's benefit and welfare? If the primary benefit is to the public, then the courts have generally held that the expenditure is legal.
3. Is the city or village contracting for services for which the city is legally authorized to provide? Increasingly, municipalities attempt to cut costs by contracting with private companies who in turn provide what are considered traditional city services. Garbage collection, mass transportation, and even emergency services have been contracted

out. If the expenditure meets the initial threshold, i.e., a service for which the city is legally authorized to provide, the next question should be considered.

4. Is the operation or service under the direct control of the city? If the city does not directly control, or have an oversight provision governing the expenditure, it will likely be deemed illegal.

Michigan Constitution of 1963

Article 7, Sec. 26. **Except as otherwise provided in this constitution, no city or village shall have the power to loan its credit for any private purpose or, except as provided by law, for any public purpose.**

Article 9, Sec. 18. **The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution. (Note: This applies to all political subdivisions of the state. *Black Marsh Drainage District v Rowe*, 350 Mich 470 (1958)).**

Article 11, Sec. 3. **Neither the legislature nor any political subdivisions of this state shall grant or authorize extra compensation to any public officer, agent or contract after the service has been rendered or the contract entered into.**

The Michigan Supreme Court has ruled that a city cannot give away funds or other property even for a public purpose, without express statutory authority. *Sinas v City of Lansing*, 382 Mich 407 (1969) In *Sinas* the city of Lansing had acquired certain real estate under the urban renewal law. It donated part of the land to the Lansing Community College. The court held that the donation was valid as authorized by the urban renewal statute.

Private Purpose Decisions

Expending public funds for a private purpose under Michigan law and the Constitution is illegal. However, a "private purpose" is sometimes difficult to identify. The Michigan Supreme Court has considered the limitations on expending public funds in several cases. Most involve the relationship of the city with private businesses.

1. *People v Salem Township*, 20 Mich 452 (1870) - the court held that municipalities may not use public funds either by way of a loan or donation, to aid in the construction of railroads.

2. *Clee v Sanders*, 74 Mich 692 (1889) - the court held that a contract in which the village of Fenton proposed to expend \$1200 in draining a marsh, improving a highway, and constructing a dock in order to induce a certain firm to establish a stave mill in the village, was invalid.

3. *Bates v Hastings*, 145 Mich 574 (1906) - the supreme court held that the city of Hastings could not spend money from a bond issue if it appeared that the purpose of the bond issue was actually to provide a fund for paying bonuses to industry for locating in the city.

4. *McManus v Petoskey*, 164 Mich 390 (1911) - the city owned a certain building which was occupied by a manufacturing company until it burned down. The city agreed to pay the insurance proceeds to the manufacturer if it would rebuild the building and occupy it for a term of years. The rebuilding, however, was not done on the city-owned property and it was held that payment of the \$5,000, even though not raised by tax money, would be unlawful.

5. *Kaplan v City of Huntington Woods*, 357 Mich 612 (1959) - the city acquired title to several lots which abutted Woodward Avenue and signed an agreement restricting the use of the property. Such action constituted an unconstitutional grant of city property and was void.

6. *Moshier v City of Romulus*, 54 Mich App 65 (1974) - the city was stopped from expending money for repairs to a private road. It was held that the road had never been properly dedicated to the city and, as a consequence, public funds could not be used to repair or improve private property.

Public Purpose--but outside municipal control

Most of the above cases are clearly grants for a purpose which is worthy, but obviously private in nature. There is another line of cases which involves an additional problem.

If the purpose for which the funds are expended is public in nature, but the operation is not under the control of the city or village which is making the contribution, it may nonetheless still be an illegal expenditure.

In *Detroit Museum of Art v Engel*, 187 Mich 432 (1915). the supreme court ruled that Detroit could not pay the salary of the museum director, the museum itself being a private corporation, even though the city had title to the real estate on which the museum was located and had minority representation on its board of directors. One sentence of the opinion which has been much quoted is:

The object and purpose of relator is a public purpose in the sense that it is being conducted for the public benefit, but it is not a public purpose within the meaning of our taxing laws, unless it is managed and controlled by the public.

In more recent cases it seems clear that the *Art Museum* doctrine is no longer controlling. The first case which restricted the application of this doctrine was *Hays v City of Kalamazoo*, 316 Mich 443 (1947). This case involved the validity of the payment of membership fees by Kalamazoo to the Michigan Municipal League. The court distinguished *Art Museum* case by saying that, contrary to the payment of dues to the MML, the transaction with the Museum, did not "involve the right of a municipality to avail itself of, and to pay for, information and services of benefit to the city in its governmental capacity." It should be noted that in the *Hays* case, great reliance is placed upon the development of home rule principles, and the necessity of applying a liberal and flexible definition of "public purpose."

More recently, the court held that Detroit could properly transfer to the county of Wayne certain lands which it owned constituting a portion of a park, to facilitate the construction of a home for neglected and abandoned children. In sustaining the right of the city to assist the project in the manner indicated, it was pointed out that two-thirds of the population of the county resided in the city of Detroit, and that the proposed institution would provide care for children from within the city. The court held that the city was aiding in the accomplishment of a purpose that it might itself have affected directly. *Brozowska v City of Detroit*, 351 Mich 10 (1957)

There has been no relaxation in the rule that municipalities are forbidden to expend funds for the purpose of making a donation to any private purpose. This remains true regardless of whether that purpose will incidentally benefit some or all of its citizens. All charitable donations, gifts and contributions to service clubs and agencies, and grants to procure the establishment of factories within the corporate limits of the municipality are specifically forbidden. This prohibition, however, does not apply when the municipality hires another agency to perform a service which the city may itself directly perform. Naturally, any such agreement must be bona fide and not be a disguised gift or donation.

Opinions of Attorney General

1. Where a general law village proposed to levy a 2-mill tax by a two-thirds vote to aid a **commercial club**, it was opined that such a tax would be illegal as the purpose was not public under the constitutional provisions (1927-28 AGO p. 610).

2. Money raised under 1925 PA 359 (MCL 123.881) can be used to advertise the city's advantage for **factory** location, but not to buy land to be given for a factory, to build a factory for sale or rent, or to give a bonus for locating a factory in the city (1927-28 AGO p. 672).

3. Money cannot be raised by tax to be given as a **bonus to industries** locating in the city (1929-30 AGO p. 169).

4. In a park owned by the American Legion which had installed a lighting system and held ball games open to the public, it would be unlawful for a village to **assume the cost of the electricity** used by the park up to \$100 per year, even though the majority of the village taxpayers had signed a petition requesting such payment (1935-36 AGO p. 5).

5. The action of an annual township meeting in voting to give \$1,000 to each of four **churches** in the township was illegal, and violated the constitutional provisions requiring that taxes be raised only for public purposes.

6. Where an annual township meeting voted to contribute \$100 to be used by a commission made up of representatives of other townships, villages, and cities to repair **fair buildings** owned by a city to be used for holding 4-H Club fairs among other purposes, such expenditure was illegal, not a township public purpose (1935-36 AGO p. 209).

7. 1925 PA 46, which purported to authorize counties to subsidize private **charitable institutions** rendering services to state residents who might otherwise become public charges, was unconstitutional and a donation made under such statute to the Starr Commonwealth School for Boys was illegal (1937-38 AGO p. 420).

8. A city may not contribute to a voluntary association organized to provide **recreation facilities** for the children of the city (1957 AGO No. 3066).

Expansion of Public Purpose

The Attorney General has said that a county could not use federal revenue sharing funds to make a grant to a private nonprofit hospital (1973 AGO No. 4851). The Attorney General concluded that since it could not expend its own funds as contemplated, it could not disburse federal funds for that purpose. The Attorney General did suggest that the county might obtain social service and medical service needs by contract. In a later opinion the Attorney General concluded a county could not expend federal revenue sharing funds for loans to private businesses unless the federal statute expressly authorized such expenditure (1987 AGO No. 6427).

Considerable use has been made of the authority to contract with private nonprofit agencies to perform services on behalf of a city or village. 1977 AGO No. 5212 previously referred to in connection with the interpretation of the Constitution of 1963, Article 7, Section 26, specifically recognized the validity of this procedure. Apparently as a result of this letter opinion, the legislature, amended section 3 (j), of

the Home Rule City Act (MCL 117.3). The amendment states:

In providing for the public peace, health, and safety, a city may expend funds or enter into contracts with a private organization, the federal or state government, a county, village, township, or another city for services considered necessary by the municipal body vested with legislative power. Public peace, health, and safety services may include, but shall not be limited to, the operation of child guidance and community mental health clinics, the prevention, counseling, and treatment of developmental disabilities, the prevention of drug abuse, and the counseling and treatment of drug abusers. 1978 PA 241

In addition there have been other expansions of a municipality's spending power:

Downtown development authorities, MCL 125.1651 et seq. (1975 PA 195);

Public economic development corporations, MCL 125.1601 et seq. (1974 PA 338);

Empowerment zone development corporation, MCL 125.2561 et seq. (1995 PA 75);

Enterprise community development corporation, MCL 125.2601 et seq. (1995 PA 123);

Brownfield redevelopment financing, MCL 125.2651 et seq. (1996 PA 381).

Each law allows money and resources to be amassed for economic growth under the control or oversight of the city council.

Specific Authorizations Granted by Law

Listed below are several specific statutory authorizations for public expenditure. As a public decision maker, you have a legal duty to make sound financial decisions. Whenever a question arises that does not easily match statutory law, or meet the public purpose analysis, the expenditure is likely illegal. Remember, if the question cannot be resolved, your city or village attorney is the best resource for legal advice.

Cultural Activities

Each city in its charter may provide for the appropriation and allocation of public funds to a public or private nonprofit institution engaged within the city in the provision of civic, artistic, and cultural activities, including but not limited to music, theater, dance, visual arts, literature and letters, architecture, architectural landscaping, and allied arts and crafts, to the general public. MCL 117.4k.

Water Supply

Any 2 or more cities, villages or townships, or any combination thereof, having a combined current state equalized valuation of not less than \$200,000,000 by vote of their respective electors, may incorporate an authority comprising the territory within their respective limits for the purpose of acquiring, constructing, purchasing, operating and maintaining a water supply and transmission system. The authority shall be a public municipal corporation with the rights, powers and duties set forth in this act, which act shall constitute the charter of such municipal corporation. MCL 121.2.

Public Utility

Any municipality owning or operating any public utility may authorize the giving of gifts or contributions from the operating revenues of the utility in such amounts and for such purposes as shall be determined by the governing body of the public utility to be in the public interest, subject to the approval of the legislative body of the municipality. MCL 123.391.

Exhibition Area

A city may acquire or construct exhibition areas for the display for commercial, industrial and agricultural products. MCL 123.651.

Memorial Day/Centennial

The township board of a township, the board of trustees of a village, or the common council of a city in this state, may appropriate money for the purpose of defraying the expenses of the proper observance of armistice, independence, and memorial or decoration day or for the proper observance of a diamond jubilee or centennial. The sums appropriated shall be assessed, levied, and collected in the same manner as other expenses of a township, village, or city are assessed, levied, and collected. MCL 123.851.

Band

The township board, village council, common council, commission or other legislative body of any township or village, or city having a population not exceeding 50,000 inhabitants, upon petition of ten percent of the qualified voters shall submit the question to the people whether the municipality shall come under the provisions of the act. In all such municipalities, the legislative body is authorized to levy a tax not exceeding two mills on each dollar of the assessed valuation for the maintenance and employment, under municipal control, of a band for musical purposes for the benefit of the public. MCL123.861.

Advertising

The common council of any city, or the corporate authorities of any village, in this state, shall have the power to levy a special tax not to exceed in any 1 year 4 mills on the dollar of the assessed valuation of all taxable property within the said city or village, to be used for advertising, exploiting and making known the industrial, commercial, educational or recreational advantages of the said city or village, and to establish recreational and educational projects for the purpose of encouraging immigration to, and increasing the trade, business and industries of the said city or village: Provided, however, That such tax levy shall not exceed 50,000 dollars in any 1 year. MCL 123.881.

Principal Shopping District

A city with a master plan for the physical development of the city, that either includes an urban design plan designating a principal shopping district or includes the development or redevelopment of a principal shopping district, may perform a number of improvements including the promotion or "economic activity in the principal shopping district by undertakings including, but not limited to, conducting market research and public relations, campaigns, developing, coordinating, and conducting retail and institutional promotions, and sponsoring special events and related activities." MCL 125.981.