

Lawful expenditures by municipalities

by David P. Massaron and Paul Wyzgoski

Can the city send flowers for an employee's funeral?

Is it OK for the village to purchase and distribute food baskets to senior citizens at holiday time?

Can the city make a donation to the local scout troop?

What about funding a fireworks display?

Municipal officials face many decisions about how they can expend public funds and whether certain expenditures are legal. There are myriad legal pitfalls to trip up an unwary council or municipal administrator. They must wade through federal and state constitutional prohibitions of certain types of expenditures, and analyze dozens of complicated state statutes, not to mention their own locally enacted municipal charter.

Carefully reviewing each possible source of authority or prohibition will help municipal officials determine whether the expenditure will survive legal challenge.

Constitutional authority

The 1963 Michigan Constitution (the "State Constitution") gives municipalities broad authority to manage their public finances. Article VII, Section 32 of the Constitution provides that "Any county, township, city, village, authority or school district empowered by this constitution to prepare budgets of estimated expenditures and revenues shall adopt such budgets after a public hearing in a manner prescribed by law."

This provision grants municipalities the implied power to expend public funds if the constitutional authorization is implemented by the legislature.

Statutory authority

Next, look for general statutory authority to expend funds for the purpose contemplated. Simply put, if there is no statutory authority, the municipality cannot make the expenditure.

Cities and villages are formed under various authorizing statutes, which provide the basis for many expenditures. In addition to the general enabling statutes, the legislature has enacted many specific acts allowing municipalities to expend funds.

Generally, the authorizing statutes provide broad authorization to spend. The Home Rule City Act and the Home Rule Village Act, 1909 PAs 278 and 279, respectively, are the authorizing statutes for chartered cities and villages. Each of these statutes has similar provisions. Both allow the locally adopted charter to provide for general plenary powers.

For example, these acts grant municipalities general "police powers." If the local charter includes the power to expend funds to the extent of the municipality's police powers, the municipality will be authorized to make expenditures for the general health and welfare of its citizens.

The legislation allows a charter to include many broad provisions governing local authority, such as taxation powers and procedures, bookkeeping, etc. (MCL 117.4) In addition, charters may authorize more specific activities, and thus the expenditure of funds for certain purposes.

Both the Home Rule City Act and the Home Rule Village Act also allow a charter to include limitations. Thus, officials must be sure that their local charter authorizes a particular expenditure and also that the charter does not prohibit or limit the expenditure.

For example, a charter may limit or empower the entity's ability to buy, sell or lease property, to borrow, or to engage in other kinds of activities.

Where a charter prohibits expenditures for particular purposes or more commonly requires certain expenditures to be authorized by a referendum or requires supermajority support of the governing body, no expenditure is authorized without following those procedures. Municipal officials should carefully review their charter before making any expenditure.

For general law villages, the authorizing statute is 1895 PA 3, the General Law Village Act. This act provides broad authority for GLVs to operate and spend funds.

In addition to these general grants of authority to spend money, many specific grants of authority have been enacted. These statutes allow funds to be spent on the construction of municipal electrical systems, the creation of and payments to interlocal independent legal entities formed from a combination of municipal systems, various economic development projects, housing development, and many other projects.

Where state statute bars particular expenditures, municipalities are not authorized to expend funds even if those expenditures would fall within their general powers. Some statutes limit the means to achieve those expenditures as well.

Finally, officials should review their local ordinances. Local ordinances can require certain specific clauses in contracts to expend funds. For example, some local ordinances require that contractors must pay a living wage. Any expenditure, depending on the language of the specific ordinance, which does not comply with that ordinance, may be invalid.

State Constitution limits authority. The 1963 Constitution provides that cities and villages can lend their credit for a public purpose if there is a statutory authorization. Unlike the State of Michigan or county governments, cities and villages have more flexibility to lend their credit.

The first requirement for a satisfactory lending of credit is that it be for a "public purpose." A public purpose is defined by Michigan courts as one having "for its object the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation." *Hays v. City of Kalamazoo*, 316 Mich 443 (1947).

Courts applying these principles have questioned donations even to nonprofit and cultural institutions. The municipal official should ask

whether this is the type of thing that would benefit the public at large. Courts will also consider whether the operation is within the control of the municipality. After finding a public purpose, the municipal official must then determine whether there is a statutory authorization for the city or village to lend its credit.

Often there is no statutory authorization. A lending of credit is defined by the Constitution. Article VII, Section 26 of the Constitution provides that: "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." The courts have long interpreted this provision to prevent municipalities from appropriating funds to any entity without receiving something of specific value in return.

"Lending of credit" is a misleading term. It does not necessarily involve a loan of money. If the city or village gives money to another party, a lending of credit has occurred, unless the city or village receives something of specific value in return.

Municipalities violate this rule if they donate money for any of a number of reasons. For example, a municipality may want to donate funds to support a local charitable group, such as a soup kitchen or a foster home. But this donation does not necessarily involve an exchange of value for value.

Another "donation" or valueless provision by municipalities that often poses problems is when the government provides government-owned lands for economic development purposes.

One way to avoid this potential trap, especially with donations to soup kitchens or other charitable



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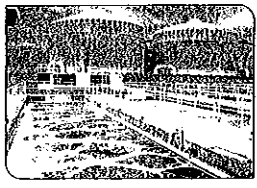
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groups, is to contract for the services that the municipality is seeking to support.

For example, a Michigan Attorney General's opinion held that while a city could not make a donation to an adult foster home, nothing would prohibit a municipality for contracting for those services.

Or, the municipality can provide land to developers for economic development projects in exchange for value by way of continued control of various aspects of that land. Important to this concept is that the courts leave it up to the political branches. For example, if a mayor and city council find that the city's provision of funds or property to a particular entity resulted in sufficient value returned, the courts will not second guess that decision, so long as it is reasonable.

Approach with caution

Municipal officials should be wary of the following expenditures:

- Funds expended outside their municipal boundaries. It is true that many, if not most, of these expenditures are authorized, but municipal officials should be wary nonetheless to insure that the expenditure is authorized.
- Donations to charitable or cultural institutions. These donations are likely violations of the lending of credit prohibition in the Michigan constitution. If possible, municipal officials should seek to contract with the charitable enterprise for the services their donations were seeking to support.
- Provision of property or funds to a private developer. These transactions can be particularly difficult to structure to avoid lending of credit issues. Municipal officials should keep in mind the "value for value" principle, and they should insure that they have the necessary rights in the contract to insure that the value is provided.



Municipal Expenditures

May a Michigan city/village spend funds on flowers for an employee's funeral, for birthday cakes, for employee gifts, or retirement parties?

Generally, a municipality's power to spend money is derived from the state through the Michigan Constitution and state laws. In addition to specific grants of power, cities and villages with home rule authority are also able to rely on the applicable provisions in the Constitution and statutes for the power to spend on municipal concerns. Regardless of the authority, it is generally held, however, that municipalities have the power to expend funds only for a public purpose. One test for determining a public purpose is whether the expenditure confers a direct benefit of reasonable general character to a significant part of the public. It should be noted that the public purpose test has also been limited to the provision of services for which municipalities exist and the powers they have authority to exercise.

With respect to the question raised, neither the Michigan Constitution nor state law grants to municipalities the power to spend public money on employee parties, gifts, etc. Nor can a good argument be made that the expenditures are for a public purpose. Absent a grant of spending authority, and no clear public purpose defined, the expenditure is most likely illegal. Simply put, a municipality cannot give public funds away.

May the city/village purchase and distribute candy for children and fruit baskets for senior citizens at holiday time?

First of all, there is no authority granted by the Michigan Constitution or by statute to make the gifts in question. Nor can a public purpose be identified by virtue of the gifts under Michigan law.

May a Michigan city/village make a charitable donation, gift or contribution to service clubs, charities or public or private social service agencies?

Generally, no. Such expenditures have been held not to be used for a public purpose. Even if the expenditure benefits the public incidentally, the expenditure may be nonetheless invalid if the appropriation is not under control of the city/village. However, MCL 117.3 indicates that the charters of home rule cities shall provide for the public peace, health and safety of persons and property. Specifically, a home rule city may contract with a private organization or another governmental unit for services considered necessary by the legislative body. Operation of child guidance and community mental health clinics; prevention, counseling and treatment of developmental disabilities; and drug abuse prevention, counseling and treatment are indicated to be services for public peace, health and safety. MML has prepared a reference packet on the issue which includes Department of Treasury materials.

May a Michigan city/village fund a fireworks display or pay for holiday celebrations?

A Michigan statute specifically grants municipalities the power to spend money on these celebrations. If the local celebration is for Armistice, Independence or Memorial days, or a diamond jubilee or centennial, the city may appropriate money for the purpose of defraying the expense of the celebration (see MCL 123.851).

Please visit the member section at www.mml.org to read the complete Municipal Expenditures One-Pager Plus, and find a wide variety of additional information relevant to municipal governance and administration.

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U.S. Constitution
provides further limits

The Federal Constitution prohibits several types of expenditures. Municipal officials need to be cautious in making expenditures to support religious displays or institutions. They also should avoid any expenditure that could arguably deny someone of their civil rights or has discriminatory purpose.

Conclusion

Municipal officials can always think of worthy programs on which to spend public funds, but before they authorize an expenditure, it is always wise to carefully review the various sources of authority. If any question remains, ask your municipal attorney for guidance.

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