



Donating Public Property May Raise Constitutional Problems

Laura J. Genovich

Foster Swift Municipal Law News

October 30, 2013

As public servants, municipal officials and employees are often eager to help people and organizations in the community – even by contributing funds or property from the municipality. Unfortunately, although donations of public funds and property are well-intended, they may be unlawful.

Municipalities only possess the powers conferred on them by statute or the state constitution. *Mosier v Bd of Auditors*, 295 Mich 27, 29; 294 NW 85 (1940). The Michigan Constitution prohibits municipalities from loaning their credit for any public or private purpose unless provided for by law. Mich Const, Art 9, § 18. This means that municipalities may transfer public property or donate public funds only under limited circumstances.

TRANSFERRING PUBLIC PROPERTY

The Michigan Supreme Court has held that "municipalities may not give away public property without a consideration." *Kaplan v City of Huntington Woods*, 357 Mich 612 (1959). The consideration must have "fair value." *Alan v Wayne Co*, 388 Mich 210, 330; 200 NW2d 628 (1972).

For example, the Michigan Legislature has provided that a township may transfer public property under certain circumstances:

By resolution of the township board, a majority of the members serving may acquire property for public purposes by purchase, gift, condemnation, lease, construction, or otherwise and **may convey or lease that property or part of that property not needed for public purposes.**

MCL 41.2 (emphasis added). Thus, property that is not needed for public purposes may be transferred. **Such a transfer, however, requires consideration if the public property has value.** If the property does not have any value, then a transfer without consideration may be acceptable because there would be no "fair

AUTHORS/ CONTRIBUTORS

Laura J. Genovich

PRACTICE AREAS

Municipal & Public Entity Law



value" for the property.

DONATING PUBLIC FUNDS

Generally, unless specifically authorized by statute or the Michigan Constitution, municipalities do not have authority to donate funds, even to non-profit organizations. Without such specific authority, the Michigan Attorney General has written that public bodies may not appropriate or contribute public funds to private non-profit corporations, even if that corporation is performing activities for the public benefit. OAG, 1935-36, p. 5 (Village has no authority to appropriate public funds for lighting a recreation field controlled by a veterans' organization even though the entertainment provided on the field was free to the public); 1 OAG, 1957, No. 3066, p. 476 (October 9, 1957) (City funds may not be used for contributing to the expenses of private voluntary groups operating recreation facilities for children); OAG, 1977-1978, No 5212, p 199, 200 (August 17, 1977) (prohibiting contributions by a county to a private, non-profit hospital). **Thus, in most cases, municipalities cannot make monetary donations, even to good causes.**

EXCEPTIONS

Expenditures may be authorized if they constitute a proper public purpose. For example, paying dues to the Michigan Municipal League has been held to be a proper public expenditure. *Hays v City of Kalamazoo*, 316 Mich 443; 25 NW2d 787 (1947). Paying dues must, however, be reasonably related to the services provided to the governmental units. OAG, 1989-1990, No 6563, p 28, 30 (January 26, 1989).

Additionally, public bodies may expend public funds to private, non-profit corporations pursuant to a contract. OAG, 1977-1978, No 5212, p 199, 200-201 (August 17, 1977). Typically, the corporation would then perform services on behalf of the municipality as consideration. For example, the Attorney General concluded that a county could pay public funds to a private non-profit hospital if the county enters into a contract and the hospital's services aid the county in the performance of a governmental function. OAG, 1987-1988, No 6431, p 60 (April 16, 1987). The public body would have to receive adequate consideration in return.

CONCLUSION

Determining whether a proposed expenditure or transfer of property is lawful requires a review of the circumstances in light of the constitution, statutes, and case law discussed above. Municipalities should consult with legal counsel before donating money or property.