

Smart Steps to Lawful Expenditures

1. Townships Don't Donate.

A township cannot make a gift of public money, property or other assets. It's a gift if the township gets less than equal value in return.

2. Public Money Can Be Used Only For Public Purposes.

Public money cannot be used for a private interest.

Justice Cooley on taxation and using public funds for a private purpose:

“It must be imposed for a public, and not for a mere private purpose. Taxation is a mode of raising revenue for public purposes only, and ... when it is prostituted to objects in no way connected with the public interests or welfare, it ceases to be taxation and becomes plunder.”
People ex rel. Detroit & H.R. Co. v. Salem Township Bd. (20 Mich. 452, 1870)

3. Townships Need Statutory Authority to Spend Public Money. “Simon Says!”

If a law says or implies that a township may spend public money on an activity, then it is a lawful expenditure (as long as you get equal value or better in return).

But if you can't point to a statute that authorizes townships to spend money on a particular activity, then you have no statutory authority. It's an unlawful expenditure.

Keep it in perspective: Townships were not created to “Do Good.” Townships exist to assess property, levy taxes, administer elections, and provide other public services.

Many other organizations do exist to “Do Good.” The fact that a township board must decline to spend public money on a private activity does not mean that there is anything wrong with the activity or the organization that asked for help. Individual board members can always reach into their own pockets if they feel strongly about an activity or cause.

4. Townships Can Contract.

If it is lawful for a township to spend public money on an activity, then a township may contract with another entity to provide that activity.

But remember—a township cannot make a gift of public money. So you must get equal or better value in return for township money. A written contract can help establish the value the township is getting for its residents.

*--Catherine Mullhaupt, MTA Member Information Services Liaison, September 2007
(517) 321-6467, www.michigantownships.org*

A township can spend public money only for public purposes that are expressly authorized or implied by the Michigan Constitution and statutes.

Article VII, §34 of the Michigan Constitution of 1963 states, “The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.”

The Michigan Supreme Court also stated in *Hanselman v Killeen*, 419 Mich. 168 (1984), that “local governments have no inherent powers and possess only those limited powers which are expressly conferred upon them by the state constitution or state statutes or which are necessarily implied therefrom.”

In other words, much like the childhood game of “Simon Says,” if the Michigan Constitution or a law says or implies that a township can spend public money for a purpose, then you may.

A township cannot make a gift of public money or assets. The township must receive equal or better value in exchange for public money or assets.

Article VII, § 26 states: “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.” According to the Supreme Court in *In re Request for Advisory Opinion on Constitutionality of 1986 PA 281*, 431 Mich. 93 (1988), this applies to townships.

Article IX, §18 also states, “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.” The Supreme Court held in *Black Marsh Drainage District v Rowe*, 350 Mich. 470 (1958), that this applies to townships. According to the Court in *Kaplan v City of Huntington Woods*, 357 Mich 612 (1959), a gift

or donation of money or other property by a municipality constitutes a violation of this constitutional prohibition.

So, what does all this mean? As I say, “You **Don’t Donate**, but you **Can Contract**.”

If a township is asked for money, a board should follow these steps:

1. Determine if a township is authorized by law to spend money for the purpose involved. Look for a law that authorizes or requires a township to spend money for that purpose.

2. Determine if the township board wants to contract to have the service or activity done. If a township is authorized to spend money to perform a service or activity, then a board may choose to contract with another governmental unit, public or private organization, or person to do so. But remember—the board still decides where and how it will use township money. Simply because a township **could** contract for a service does **not** mean it must. Board members have a duty to decide how to best use public resources for the township as a whole.

The contract need not be lengthy or involved; it can be a simple written agreement describing what will be done and how much the township will pay. Contracts do not always have to be in writing—but for the reason outlined in step three, I strongly recommend that all contracts or agreements for use of public money be in writing.

3. Ensure that the township is receiving an equal or better value for its money. A township cannot give public money with no expectation in return. Even if it is for a valid, public purpose, a township cannot make a gift of public money or assets—it must receive at least the same value in return. Or, as my mother-in-law says, “Fair exchange is not robbery!” That’s why a written contract is handy to spell out what the township is receiving in return for the payment of public money.

AUTHORITY FOR THE ACTIVITY BEING PAID FOR BY THE GOVERNMENT

Advertising the Agricultural, Industrial, Commercial, Educational or Recreational Advantages of the State, County or Local Unit

COUNTIES (MCL 46.161) by special tax levy or general fund appropriation

CITIES & VILLAGES (MCL 123.881) from a specific tax levy

TOWNSHIPS (MCL 41.110c) by appropriation

Places of Recreation, Parks

COUNTIES

(MCL 46.351) County board to appoint a 10-member commission to oversee the operation of parks and places of recreation. County commissioners set policy, approve budget, debt, and tax levy. Also authorizes regional commissions with the funds on deposit with the county treasurer of the largest county.

(MCL 123.61 et al.) County board to appoint 3 member commission (county road commissioners) to operation parks and places of recreation. County commissioners approve rules, approve budget, debt, and tax levy.

(Opinion of the Attorney General, 1945-46, No. 0-2850[A] p. 135) County road commissioners may use park funds of the county for purchase of golf balls to be resold at the county park and may operate usual concessions at such park.

CITIES & VILLAGES

(Constitution: Art. 7 Sec. 23) Any city or village may acquire, own, establish and maintain, within or without its corporate limit, parks, boulevards, cemeteries, hospitals and all works which involve the public health or safety.

(MCL 41.428) may appropriate to a township to acquire and operate free recreational facilities. Contributions to be made to the township park commission.

TOWNSHIPS

(MCL 41.421 et seq.) Townships may establish a park commission to acquire, maintain, manage and control township parks and recreational facilities.

CITY, VILLAGE, COUNTY OR TOWNSHIP

(MCL 123.51) may operate a system of public recreational facilities.

Armistice, Independence, Memorial Days, Diamond Jubilee or Centennial Celebrations

CITY, TOWNSHIP OR VILLAGE (MCL 123.851) may expend money for observances, under the control of the governmental unit, to celebrate armistice, independence, memorial days, diamond jubilee or centennials. These claims shall be paid in the same manner as other expenses of the unit.

Armistice Day

COUNTIES (MCL 46.11a) County board of commissioners are authorized to appropriate such sum, as they deem fit for public celebration on Armistice Day, in a matter the board may determine.

NOTE: It is improper for a unit of government to expend public money for an annual picnic, golden jubilee or other celebration that is not specifically authorized by law.

Community College Maintained by a School District

COUNTY, TOWNSHIP, OR OTHER GOVERNMENTAL UNIT (MCL 380.1607) by action of its governing body may contribute annually towards the support of a community college maintained by a school district.

Libraries

CITY, TOWNSHIP OR VILLAGE--(MCL 397.201 et al.) may establish and maintain a public library.

CITY--may, without vote of the electorate, levy one mill for the library.

CITY, TOWNSHIP OR VILLAGE--after voter approval, may levy up to two mills to establish, operate and maintain a library.

COUNTY LIBRARY--(MCL 397.301)

SCHOOL LIBRARIES--Under boards of education (MCL 397.261 et al.)

NOTE: Several other statutes may authorize contributions to established libraries for library services to its inhabitants or the consolidation of library services.

REGIONAL LIBRARIES (MCL 387.151 et seq.)

DISTRICT LIBRARIES (MCL 397.171 et seq.)

LIBRARY NETWORK ACT (MCL 397.131 et seq.)

Hospitals

COUNTY (MCL 331.151) May establish and operate a county hospital after vote of the electorate.

PROHIBITED from contributing to a private, nonprofit corporation operating a hospital. (AGO 4851 dated Nov. 4, 1974)

May contract for services (AGO 5083) with a private, nonprofit corporation to provide health or welfare services to persons who are the proper concern of the county pursuant to guidelines and where final authority to take discretionary action remains with the public body.

COUNTY, CITY, VILLAGE (MCL 331.1101) Municipal Health Facilities Corporations Act--County board, city or village council may incorporate 1 or more corporations under this act. **NOTE:** A health care corporation established under this act is a discretely presented component unit of the incorporating unit.

Joint Municipal (Community) Hospitals-- (MCL 331.1 et seq.) Two or more CITIES, TOWNSHIPS AND VILLAGES, or any combinations may incorporate a hospital authority to establish, expand and/or operate a hospital or health care facilities.

TOWNSHIP (MCL 41.712) board may, by majority vote, pay from unexpended balances in its contingent fund to any hospital, a sum that fairly represents the reasonable share of the township in the maintenance and support of the hospital whose facilities are made available to the residents of the township at standard rates. However, the hospital and township board shall agree upon the number of residents of the township to which the hospital shall make facilities available during each year.

Historical Activities, Commissions, Districts

TOWNSHIPS (MCL 399.161) may appropriate money that the township board believes advances and fosters historical interests of the township.

CITIES, COUNTIES, TOWNSHIPS and VILLAGES (MCL 399.171 et al.) (Historical Commissions) may individually or jointly appropriate money to or by ordinance, create a commission to advance the historical interests of the unit or units.

CITY, COUNTY, TOWNSHIP or VILLAGE (MCL 399.201 et al.) may by ordinance establish historical districts and a commission to preserve and refurbish historical structures.

Juvenile Delinquency--Curbing

CITY, COUNTY, TOWNSHIP, or VILLAGE (MCL 123.461) may levy taxes and appropriate funds for operating centers open exclusively to youths under 21 years of age and aimed at curbing juvenile delinquency within the community. May require a vote of electors.

Economic Development

COUNTY (MCL 125.1231 et al.) commissioners may create a county commission to promote economic development and provide in the county budget for the expenses of the commission.

CITY, COUNTY, TOWNSHIP or VILLAGE (MCL 125.1601 et al.) may approve an application to incorporate an economic development corporation, file articles of incorporation and fund projects of said EDC, which are for a public benefit and as approved by the legislative bodies.

Tax Tribunal (SEV) Appeals

COUNTY and all SCHOOL BOARDS [211.44(3)] may contribute to the defense of tax tribunal issues defended by a local tax assessing unit to the extent that the cost of the appeal exceeds 1 percent of the administration fee available to the tax assessing unit.

Senior Citizens/Older Persons

CITY, COUNTY, TOWNSHIP or VILLAGE (MCL 400.571 et al.) authorizes a legislative body to appropriate funds to a public or private non-profit organization for the purpose of providing services to older persons 60 years or older. Appropriations to a private organization must be specified in a contract. The terms of the contract must be published within 10 days of its approval in a local newspaper specifying the terms of and services to be performed.

COFFEE/MEALS

The purchase of coffee, donuts and sandwiches must be for a public, not an individual or private group or purpose. These expenditures for use at a regular or special meeting, for fire fighters, volunteer or full time employees, when working an extended period of time or when dedicating public buildings are normally considered expenditures for a public purpose.

Coffee and donuts for employees use during normal working hours is considered personal, not for a public purpose, and improper unless specifically provided for in a collective bargaining agreement or duly adopted employment policy of the governmental unit (fringe benefit).

RETIREMENT/RECOGNITION FUNCTIONS

Retirement functions, gifts or plaques for employees or officials, recognition dinners for volunteer fire fighters or ambulance staff are usually not for a public purpose, therefore not an allowable expense. Travel and meals as part of the cost of training volunteers to perform emergency services within the township are deemed a public purpose, payable as an expense when properly budgeted, authorized and approved.

A TOWNSHIP board may, by resolution, establish retirement, health, and life and/or accident insurance benefits for township officials and employees. (MCL 41.110b) The board may provide that officials or employees pay a portion of the premium and deduct that cost by payroll deduction.

COUNTY RETIREMENT (MCL 46.12a) County commissioners may by resolution establish retirement systems.

ALL LOCAL UNITS (MCL 38.1501 et seq.)

Legal Expenses

A governmental unit is not authorized to expend public money to assist residents with legal costs in defending the homeowners from possible civil action by a neighboring city to condemn their property for public use by the city. We are unable to see a "public purpose" for the township in this expenditure. Also this expenditure may be prohibited under the provisions of Article 9, Section 18 of the 1963 Michigan Constitution that prevents a governmental unit from lending its credit to the aid of any person, association or corporation, public or private, except as authorized in the Constitution.

Other Lawful Expenditures

Contracts with public or private, profit or nonprofit organizations for a specific public service or benefit that the unit can legally perform, and money is available within the budgeted appropriations. These may include contracts for fire protection, ambulance service, assessing and tax collections, trash/rubbish collections, employee benefits, etc. Contracts should address financial reporting, auditing, review of records and related matters.

Membership dues to governmental associations as MTA, MML, MAC, and similar organizations that advise, inform and educate officials and employees. (See court decision *Hayes v City of Kalamazoo*, 316 Mich. 443).

Meals and refreshments during extended working hours for emergency services by firefighters, police officers and for authorized seminars of an educational nature to officials and employees.

Registration fees, lodging and travel for attendance at useful public informational or educational workshops and seminars.

UNLAWFUL EXPENDITURES BY A GOVERNMENTAL UNIT

Contributions or appropriations, which are not specifically authorized by the Constitution or State statute, cannot be authorized regardless of the worthiness of the cause. Examples of such prohibited expenditures where there is no contract for specific services to lawful wards or functions of the local unit have been negotiated are as follows:

Contributions to churches, veterans, non-profit organizations.

Payment of funeral expenses for a person injured on government property.

Donations to a private ambulance or EMS service not under contract with the governmental unit.

Donations, including use of property or equipment to Little League, Scouts, Big Brothers/Sisters.

Donations to community organizations.

Expenses for private road construction or maintenance.

Office refreshments, picnics.

Presents to officials and employees or retirement recognition events.

Flowers to the sick or departed (Attorney General Opinion 2346 dated July 18, 1956).

Mileage of officials (except county finance committee and board of commissioners. See MCL 46.52 and 46.62) and employees to and from their residence to the city, township or village hall, county building or meeting rooms. (Mileage paid to county commissioners must, of course, be included on their W-2 as taxable income.)

Per diem compensation to township supervisor, clerk and treasurer on a salary basis for attending township board meetings. (Check city and village charters for their compensation procedures or restrictions.) Extra compensation for summer tax collections unless part of the initial salary resolution or is authorized within statutory procedures for an increase in salary.

Extra compensation for special elections unless part of initial salary resolution or is authorized under statutory procedures for an increase in salary.