



## Donating Public Property May Raise Constitutional Problems

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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

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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.