



Determining lawful township expenditures

It seems that more and more townships are being questioned about some of their township expenditures. Questions about the lawfulness or the legality of certain expenditures are not only coming from individual citizens, but also from fellow board members, special interest groups and township auditors. As more needs arise and more legislation is passed, it is important to know the framework and guidelines for making sure your township expenditures are lawful.

The Michigan Constitution not only provides for the creation of townships but also addresses expenditures. For instance,

- *A township cannot loan its credit for any private purpose or even public purpose except as provided by law. (Article VII, §26)*
- *A township may not lend its credit to any person, association or corporation. (Article IX, §18)*
- *A township has only those powers that are “fairly implied” and not prohibited by the constitution. (Article VII, §34)*

Upon reviewing the constitution, statutes, case law, attorney general opinions and other information, a township’s expenditures should be made for a “public purpose.” A township should make sure it is getting a “value-for-value.” It may not make “donations,” but can contract for a specific service. The following provides some assistance in looking at these issues.

1 WHAT GOVERNMENTAL FUNCTION IS BEING ADVANCED?

An expenditure should be a “value-for-value.” That means a township should examine what it is receiving for the money it is expending. Article IX, §18 of the Michigan Constitution prohibits a township from lending its credit to any person, association or corporation, public or private, except as authorized in the constitution. The Michigan Supreme Court has held that a “lending of credit” occurs when a municipality gives money, without receiving something of specific value in return.

In *Skutt v. City of Grand Rapids*, 275 Mich 258 (1936), the Supreme Court discussed the concept of “public policy.” Although a township should always look to statutes for authorization, sometimes these cannot be found. One must then look to court decisions, and the “constant practice” of government officials.

In its decision, the court noted that taxes are designed and collected for the purpose of supporting government, and maintaining governmental activities and functions. Taxes are to be raised for specific purposes, and public money cannot be used to further a private enterprise. Expenditures should always be viewed as to what statute or law it furthers, and what public policy is achieved.

As a result, townships do not donate money to any cause. This is also a practical matter of policy. If a township could make donations to any service organization, where would the board draw the line? How can it say “yes” to one organization and “no” to another?

2 TOWNSHIPS CAN CONTRACT FOR SERVICES, BUT NOT MAKE DONATIONS.

Townships can contract for services authorized by statute. Generally speaking, a contract is an agreement between two or more parties that obligates one party to perform a particular service in exchange for consideration—usually money.

In contrast, a donation or gift does not imply any obligation between the parties. It is important to note that just because a township has a contract for a service, that does not necessarily make it a lawful expenditure. However, a contract does address the issue of obligation and can address the question of value-for-value mentioned earlier.

Many townships report that private agencies approach them for donations for their organization because the work they do benefits some of the township’s residents. There are hundreds of good charitable organizations and, although they may benefit some of the public, it does not mean they are entitled to municipal funds.

Take, for example, a township that was asked to provide funds to a non-profit corporation that provided services for young people within the township. The organization argued that it provided a benefit to township residents and was therefore



The courts and the attorney general concluded that, in the absence of legislation authorizing such an expenditure, it would not be appropriate to fund a private, non-profit corporation even though the activity would be for a public benefit.

a public purpose. When a similar issue was presented before the Michigan attorney general, the attorney general noted (citing Michigan Supreme Court case 388 Mich 442) that even though a private, non-profit corporation might be performing activities for the public benefit, this still is not a public purpose within the meaning of the taxing laws unless it was managed and controlled by a public entity. The courts and the attorney general concluded that, in the absence of legislation authorizing such an expenditure, it would not be appropriate to fund a private, non-profit corporation even though the activity would be for a public benefit.

However, Public Act 179 of 1976, the Youth Center Act (MCL 123.461), allows a public body to provide youth care services. A municipality could then enter into a contract with a private, non-profit corporation pursuant to the act whereby it would perform the services on behalf of the municipality. The contract would provide control over the manner in which the funds would be spent and provide assurance that the funds were being used for a “public purpose.”

3 THE EXPENDITURE MUST BE AUTHORIZED BY STATUTE.

Always check to ascertain if there is a statutory provision covering a particular request. Where the Legislature has intended to grant a municipality authority to make an expenditure, it has done so explicitly.

In addition, when a township receives a request to make an expenditure for a particular item, put the burden on the requester to cite the statute or public act that authorizes the township to appropriate funds for the request. A township may also want to contact the Michigan Townships Association, or the Michigan Department of Treasury Local Audit and Finance Division at (517) 373-3227 or www.michigan.gov/treasury, for other guidelines.



Unlawful township expenditures

Contributions that are not specifically authorized by state statute cannot be granted, regardless of the worthiness of the cause. Examples of such prohibited contributions where no contract for specific beneficial services to a township have been negotiated include:

- Defending against recall petitions, unless invalid petitions would require an unnecessary invalid election expense
- Donations to churches or to improve church property
- Donations to a community organization
- Donations to veterans, nonprofit organization
- Donations to Little League, Scouts, Big Brothers/Sisters
- Donations to a private ambulance or emergency medical service not under contract with the township
- Expenditures for legal suits by taxpayers
- Expenses for private road construction or maintenance
- Extra compensation to the treasurer for summer tax collection, unless part of the treasurer's initial salary determination or authorized under appropriate procedures for an increase in salary
- Flowers for the sick or departed
- Mileage of officials to and from their residences to the township hall or meeting rooms of the township board
- Office picnics
- Office refreshments
- Payment of funeral expenses for a person injured on township grounds
- Payments to private or public, nonprofit hospital where no contract for services is entered into
- Per diem compensation to township supervisor, clerk or treasurer for township board meetings (MCL 41.95(2))
- Presents to officials
- Promoting election proposals or candidates
- Retirement recognition events
- Retroactive pay increases for township officials

Can a township donate money to a neighboring city's economic development council to promote and advertise the city and surrounding townships? A township cannot simply donate funds to this organization, but it could contract for services under MCL 41.110(c), which permits a township to advertise the agricultural, commercial, industrial, educational or recreational advantages of the township, county or state.

It is important to note that even though an expenditure may be specifically authorized by statute, it must be implemented via a contract, not a donation. This requirement has a practical purpose. In one example, a township made such a contribution to a city economic development council without specifying that the township be included in the advertising. When the township complained that the promotional materials made no mention of the township, the council indicated that it had considered the funds a donation, with no obligation to promote the township. A contract, even a simple one, could have addressed this issue and provided that the township be included in the advertising.

Years ago, a township may not have been able to support a senior citizens group. However, because of specific legislation (MCL 400.571), a township is now able to do so. This does not mean that the township can support the local Boy Scouts or youth group because the organization provides certain services to this portion of the population. Remember, it is not the worthiness of the charitable organization that is at stake. Rather, absent a specific authorization by statute, would this function be fairly implied from the Township Act?

Although contributing to a baseball organization for children has not been seen as a lawful expenditure, some townships have contracted with an organization that would operate a recreational program for the township. By having a service contract that specifies what the organization will do to provide recreational programs and the ability by a contract for the township to have input and control over such activity, this can be seen as a lawful expenditure.

The sidebar article on pages 17-19 provides examples of specific legislation that permit townships to contract for services or to provide funds that otherwise would be considered an unlawful expenditure according to past case law and opinions by the Michigan attorney general.

A township should always look to a statute authorizing an expenditure activity to support its decision in the allocation of funds. When a township cannot find a statute or an umbrella statute to support a particular activity, this is a sign the expenditure is probably not allowed.

4 YOU CANNOT EXCEED YOUR BUDGET.

In no case should township expenditures exceed what has been appropriated in the budget for a particular line item without an amendment to the budget (MCL 141.437). This may seem obvious, but it is important to remember when discussing any expenditure. Each township has certain statutory obligations

that require funding. If the township finds excess funds available over and above these obligations, those funds could be used for lawful expenditures that will benefit the whole township.

Every year, MTA and the Department of Treasury receive recurring questions in which no court decision or attorney general opinion has been rendered. Typically, these have to do with expenditures for dinners, recognition awards, parties or decorations.

For instance, many townships would like to provide a recognition dinner for their volunteer firefighters at the end of the year. It is MTA Legal Counsel opinion that if a township provides in its policy for its volunteers or employees that this is a benefit or compensation for their volunteering, this would be a lawful expenditure.

However, if the township does not have such policy of compensation, this does not further a "public purpose" and should not be employed. MTA Legal Counsel further have recommended that townships seek donations from various businesses or organizations within their township to provide such a recognition dinner. Similarly, Legal Counsel believe that the awarding of plaques or pins should also be part of a compensation policy and must be carried out consistently for all employees or volunteers. Some townships hold recognition ceremonies at yearly training sessions; this is lawful because educational expenses are permitted.



It is important to note that even though an expenditure may be specifically authorized by statute, it has to be implemented via a contract, not a donation.

On another issue, providing refreshments for the public at a township building dedication may be seen as an approved expenditure, but simply providing refreshments to elected officials would not.

Although there is no specific statute regarding decorations for holidays, MTA Legal Counsel believe that under MCL 41.110c, a township can use funds to assist in "advertising and promoting" the township. To the extent that decorations help promote and enhance the image of the township, such expenditures would be appropriate. However, expending



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money on a holiday party would not be viewed as an expense promoting the public welfare and benefit. Therefore, MTA Legal Counsel would not support these types of activities.

With the increasing nature of specific legislation that permits a township to make expenditures, township officials should ask themselves:

- What governmental function does this promote?
- What public benefit and policy is this furthering?

If the answers to these questions do not appear to be very clear, that's a sign that one should use caution before making an expenditure.

Township board members have a fiduciary relationship, and as our Supreme Court stated in 1963, the public is entitled to an elected official's best judgment and by accepting a public office, officials "become bound to exercise such judgment and to use their best exertions for the public good regardless of their own." (11 Mich 222) Elected officials have no right to place themselves in a position where their own interest would be against those of the public. The people have a right to expect that their officials, as fiduciaries, will engage in fair dealings and disinterested conduct for those they represent and will always act for the benefit of the public.

Keeping these general principles in mind, a township will not have to agonize over doing the right thing.

ANSWER A FEW SIMPLE QUESTIONS

When a request is made for a particular expenditure, the township board should ask itself:

- What governmental function is being advanced?
- Will it be a value-for-value?
- Will we be contracting for a specific service?
- Is this expenditure authorized by statute or can it be fairly implied to be authorized by statute?
- Is it in our budget?

Answers to these questions will help make sure that the township's expenditures are lawful. ■

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Lawful expenditures

A number of Michigan statutes or attorney general opinions authorize specific township expenditures. Always check for an authorizing statute before proceeding with an expenditure. The following list includes examples of authorizing statutes. It is not a comprehensive list, and other statutes may affect expenditures listed here. In some cases, more than one statute may apply to a particular activity. When in doubt, consult your township attorney to be sure you are using the most appropriate authorizing statute for your township's needs.

Advertising—MCL 41.110c authorizes a township board to appropriate money to advertise the agricultural, industrial, commercial, educational or recreational advantages of the state, county or township; to prepare and maintain an exhibition of the products and industries of the township at any domestic exposition to increase travel; to advertise the township or parts of the state to tourists and resorters; and to maintain and circulate a publication to disseminate information regarding township improvements, activities and functions.

Boundary protection—Attorney General Opinion No. 6710 of 1992 states that a township may pay the cost of detachment proceedings and defending against annexation or incorporation proceedings.

Cooperative extension services—MCL 285.201 authorizes townships to appropriate money or raise money by taxation in order to promote agricultural interests of the township and to provide for agricultural extension work for such townships.

Defending public officials—MCL 691.1408 authorizes a township to defend a public official sued for damages, criminal activities, injunction, etc., while performing their duties and acting within the scope of authority, including hiring an attorney and paying court costs and any judgment. The township may also settle the case and pay settlement amounts.

Economic development corporation—MCL 125.1601, *et seq* provides for creating a township economic development corporation (EDC) to fund those EDC projects that are approved by the township board and are of public benefit.

Hiring—MCLs 41.75a and 42.10 authorize hiring a township manager or superintendent and other necessary township employees.

Historical interests—MCL 399.161 permits the township board to raise and appropriate money for fostering activities that advance the historical interests of the township.

Hospitals—MCL 41.712 permits a township board to pay any hospital a sum from unexpended balances in its general fund that fairly represents a reasonable share of the maintenance and support of the hospital whose facilities are made available to township residents at standard rates. The number of residents for which facilities shall be available per year shall be included in an agreement.

Installment contracts—MCL 123.721 authorizes a township board to purchase land and equipment under an installment purchase agreement up to a maximum of 13 percent of its state equalized valuation without Municipal Finance Commission approval and within its budget appropriations. The Revised Municipal Finance Act (MCL 141.2101, *et seq*) permits a township to purchase real or personal property by contract or lease; these are not considered the borrowing of money and are not subject to review by the commission.

July 4th—MCL 123.851 permits the township board to appropriate money for the purpose of defraying the expenses of observing Armistice, Independence, and Memorial or Decoration Day, and of a Diamond Jubilee or Centennial.

Juvenile delinquency—MCL 123.461 allows a township to appropriate funds for operating centers open exclusively to youth under 21 years of age aimed at curbing juvenile delinquency.

Library—MCL 397.210 authorizes the township, after an election on the subject, to support a township public library.

Newsletter (See Advertising)—MCL 41.110c authorizes a township to maintain and circulate a publication to disseminate information regarding township improvements, activities and functions. There are very few legal constraints on the type of information that can be included in a township newsletter.

However, it is important to note that Michigan statutes prohibit the use of township funds to promote a position on an election, ballot question or millage proposal. You may discuss an election issue in a newsletter, but must be careful to include only factual, unbiased information.

Parks—MCL 41.421 authorizes the township board or a commission to expend funds to acquire, maintain, manage and control township parks and places of recreation. The board or commission may also acquire, construct and maintain wharves, piers, docks and landing places for the public.

Public improvements—The Revenue Bond Act (Public Act 94 of 1933) and the Special Assessment Act (Public Act 188 of 1954, as amended) authorize payment for all or a portion of public improvements.

Recreation—MCL 123.51 permits expenditures for recreation purposes.

Senior programs—MCL 400.571, *et seq* authorizes the township board to appropriate funds to a public or private nonprofit organization for the purpose of planning, coordinating, evaluating and providing services to persons 60 years of age and older. Township appropriations to private organizations must be followed by a published notice within 10 days in a local newspaper specifying the terms of the appropriation.

Tax Tribunal—MCL 211.44(3) permits a school board to contribute to the defense of tax tribunal issues defended by a township to the extent the cost exceeds 1 percent of the administration fee available to the township.

Urban cooperation—The Urban Cooperation Act (MCL 124.501, *et seq*) allows a township to contract for services with another municipality for any service that it could provide itself separately.



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OTHER LAWFUL EXPENDITURES INCLUDE:

- Contracts for a specific public service or benefit that is within budget appropriations
- MTA dues (*Hayes vs. 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
- Registration fees for attendance at useful public informational or educational workshops
- Mileage for attendance at authorized seminars and governmental meetings other than township board meetings
- Insurance premiums for pension plans, health, life and/or accident coverage of officials and employees under MCL 41.110b.
- Intergovernmental contracts and contracts with private organizations for services such as fire protection, ambulance service, assessing and rubbish collection may qualify. Check authorizing statutes before proceeding.

—John Lohrstorfer, MTA Legal Counsel

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