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Township Law *E-Letter*

Spending Public Money for a Public Purpose: A Township's Beginner Guide to Lawful Expenditures

Townships operate according to their annual appropriations resolution, from spending public funds to providing public services. Many of these public expenditures are clearly lawful, such as purchasing a fire truck or paying the hourly wage of township employees. Yet, there are other expenditures that arise in the normal operation of a township that routinely raise questions about whether they are appropriate. For instance, can the township provide a lunch reception for an honor the township received for an outstanding water system or a new park? Similarly, are there issues with providing repairs to a township-owned building that is being used by another association for less than market rent? This E-Letter discusses the multiple factors that determine whether an expenditure is lawful to help provide townships a set of questions to use for considering whether an expenditure is lawful.

I. Township Authorization to Expend Public Funds

Michigan townships are statutory units of government. Townships are granted explicit statutory powers and those “fairly implied and not prohibited.” Art. VII, § 34. The Michigan Constitution disallows a township from making expenditures unless it has specific authorization. Art. VII, § 26. Accordingly, one must first determine if constitutional or statutory authorization allows an expenditure.

Unfortunately, not all statutes are directly on point for a specific expenditure. To complicate matters, there are numerous statutes that provide townships with authority for a specific expenditure. For example, Act 230 of 1932 permits a township board with a population not exceeding 50,000 inhabitants to levy an annual tax of not more than 2 mills “for the maintenance and employment, under municipal control, of a band for musical purposes for the benefit of the public.” MCL 123.862.

Although a township deciding to expend funds for a township band will have explicit authority, questions about lawful expenditures more often arise when deciding whether expenditures may be “fairly implied” under a relevant legal authority. For example, township board members are authorized to receive reimbursements for reasonable expenses actually incurred on behalf of the township. MCL 41.95 and MCL 42.6. What are “reasonable expenses incurred on behalf of the township”?

II. Lawful Expenditures Should Support a Public Purpose

When trying to determine whether an expenditure is fairly implied under authorizing legislation, a Township should consider whether the expenditure is made for a public purpose. Michigan Courts have long found that lawful expenditures must be made for a public purpose. The expression “public purpose” has frequently been discussed in judicial decisions. It is difficult, if not impossible, to give the expression a definite meaning that will be applicable under any and all circumstances. “The courts as a rule have attempted no judicial definition of a public as distinguished from a private purpose, but have left each case to be determined by its own peculiar circumstances.” *Hays v City of Kalamazoo*, 316 Mich 443, 453–54 (1947). Generally, however, “a public purpose has for its objective **the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation**, the sovereign powers of which are used to promote such public purpose.” *Id.* at 454. Courts are deferential toward municipal determinations of public purpose because “such determinations should be made by the elected representatives of the people.” *Hess v Cannon Tp*, 265 Mich App 582, 595; 696 NW2d 742, 750 (2005).

“The right of the public to receive and enjoy the benefit of the use determines whether the use is public or private.” *Id.* For example, the Michigan Supreme Court has held that membership dues paid to governmental associations such as the MTA, MML, MAC, or similar organizations are a lawful expenditure as a “public use.” By a municipality availing itself to services that advised, informed and educated the public officials and employees on municipal issues and topics, the Court found the purpose was public because the public benefited from having knowledgeable elected officials who advanced the welfare of the municipality due to the services received.

III. The Township Must Maintain Care and Control

Not only must an expenditure be made for a public purpose, but it must be made under the control and care of the township. *Attorney Gen v Bay Co Sup'rs*, 34 Mich 46, 48 (1876). For that reason, it is often advised that townships avoid making monetary charitable donations. 1977 AGO No. 5212. Townships are often approached for donations for private organizations because the work performed by the organization in some way benefits the township. While the object and purpose of a charitable donation may be conducted in a manner that it would benefit the public, it is not a public purpose within the meaning of our tax law which requires the use be managed and controlled by the township. *Detroit Museum of Art v Engel*, 187 Mich 432, 443; 153 NW 700, 703 (1915).

As with any other actions taken on behalf of the township and the public, board members have a duty of care to faithfully discharge the duties of their office. A township expenditure is the act of spending public money, and board members must act in good faith and with reasonable care in managing expenditures. Township officials and employees have an obligation to act in the best interest of the public. To be considered lawful, an expenditure must be done in good faith and not for any improper reason. For example, it would be improper to expend a lunch as an informational teaching session, but in reality have a lunch for private social reasons, or for any other non-public purpose.

IV. The Township’s “Fair Implied” Powers Further Community Welfare

We recognize other municipal authorities advise Michigan townships take a conservative approach to lawful expenditures. This position rests primarily on the basis that, as previously discussed, townships only possess the limited powers expressly conferred upon them. With limited powers, such power cannot be exercised except in pursuance of express statutory authority. See *City of Berkley v Royal Oak Tp*, 320 Mich 597, 601 (1948) (“Local units of government derive their powers of taxation from the legislature and such power cannot be exercised except in pursuance of express statutory authority”). While the conservative approach may avoid any and all questions of illegality, it limits the township’s ability to further the community’s welfare and general wellbeing through lawful expenditures which are fairly implied under authorizing legislation.

In taking this approach, townships should consider the following when determining whether an expenditure is lawful:

1. Is the expenditure expressly or fairly implied pursuant to authorizing legislation?
2. Is the expenditure made for a public purpose?
3. Is the expenditure made under the control and care of the township?
4. Is the expenditure approved by appropriation of the Township Board?

It is not always clear whether an expenditure is lawful. Our office can help with making such legal consideration. If you are currently in the process of determining whether to permit or prohibit an expenditure, you can reach out to us for assistance.

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