

FOCUS

on Municipal Finance

Municipal Expenditures: Proper Public Purposes

by Mary Mitchell, Esq.

Increasingly over the past few years, the Division of Local Services' (DLS) legal and accounting staffs are asked if certain expenditures made by cities and towns are allowable. Many of these issues arise as the municipal accounting officer reviews departmental bills for payment. This article discusses the rules regarding the expenditure of public funds and makes recommendations for ensuring proper payment.

Authority to Spend

The authority for cities and towns to spend money arises under Section 5 of M.G.L. Ch. 40. That section provides that:

[a] town may at any town meeting appropriate money for the exercise of any of its corporate powers; provided, however, that a town shall not appropriate or expend money for any purpose, on any terms, or under any conditions inconsistent with any applicable provision of any general or special law.¹

Cities and towns are free to exercise any power or function, except those denied to them by their own charters or reserved to the state, that the Legislature has the power to confer on them, as long as the exercise of these powers is not inconsistent with the Constitution or laws enacted by the Legislature.² In general, the properties and purposes for which cities and towns are authorized to spend are not specified, but rather include any necessary expenditures arising from the exercise of their powers or functions.

Public Purpose Limitation

Cities and towns can spend only for public purposes. Public funds cannot be used for private purposes. Thus, cities and towns have the right to spend money for any purpose where the public good will be served, but not where the expenditure of money is directly for the private benefit of certain individuals. This principle is expressed in the Massachusetts constitution and in numerous cases.³

In some situations, however, the expenditure of public funds advances both public and private interests. In those situations, if the dominant motive for the expenditure is a public one, incidental private benefits will not invalidate the expenditure.⁴ If, however, the dominant motive is to promote a private purpose, the expenditure will be invalid even if incidentally some public purpose also is served.⁵

Prohibitions Against Certain Expenditures

In addition to the general prohibitions against spending money for any purpose or under any conditions inconsistent with any general or special law, there are two other prohibitions on municipal spending.

1. Anti-Aid Amendment

The first is a prohibition against the giving of money or property by a city or town to or in aid of any individual, association or corporation embarking upon any private enterprise. This prohibition is referred to as the Anti-Aid Amendment.⁶ It provides in pertinent part:

No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or second-

dary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth.¹¹

This amendment prohibits the use of public money or property by cities and towns for the purpose of maintaining or aiding any institution or charitable or religious undertaking that is not publicly owned. The kinds of expenditures barred by the amendment are those that directly and substantially benefit or "aid" private organizations in a way that is unfair, economically or politically.⁷

The prohibition against using public funds for private organizations includes any grants, contributions or donations made by a city or town to an organization for the specific purpose of directly supporting or assisting its operations. However, the Anti-Aid Amendment does not preclude a city or town from purchasing specific services from private organizations in order to carry out a public purpose.⁸ Further, as with the public purpose limitation discussed above, if an expenditure is for a public purpose, but also incidentally benefits a private organization, the expenditure generally will not violate the Anti-Aid Amendment.⁹

2. Wines, Liquors, Cigars

In addition to the prohibition against the use of public funds for private organizations, there is also a prohibition against the use of public funds to purchase alcohol and tobacco under Section 58 of M.G.L. Ch. 44.

What Constitutes a Public Purpose?

The question of what constitutes a permissible "public purpose" has been discussed in many cases.¹⁰ The cases "do not, however, establish any univer-

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sal test."¹¹ Instead, they generally stress the certainty of benefits to the community.¹² Thus, the basic test is whether the expenditure is required for the general good of the inhabitants of the city or town.¹³

Generally speaking, local government spending for the following purposes satisfies the public purpose test:

Wages and Benefits. Cities and towns have the right to spend reasonable amounts to execute their powers and duties.¹⁴ This right includes the right to compensate people for services rendered.¹⁵ Compensation for services may include sick leave and vacations.¹⁶ Cities and towns also have the right to settle employment and other claims that may be made upon them arising out of their administration of their municipal affairs.¹⁷

Merit Awards. Cities and towns may spend reasonable amounts on awards for students.¹⁸ Cities and towns may also spend reasonable amounts on retirement gifts, plaques, merit service payments and other similar awards for municipal employees and officials. The expenditure of public money in recognition of services rendered, even though such expenditure of money is directly for the private benefit of certain individuals, is a public purpose where the benefit is conferred as an appropriate recognition of distinguished and exceptional service, such that the public welfare will be enhanced or the loyalty and productivity of the other employees will be promoted.¹⁹

By contrast, local government spending for these purposes does not satisfy the public purpose test:

Gifts and Gratuities. Since public money can only be expended for public purposes, cities and towns have no power to appropriate money for gifts or gratuities to persons whose situations may appeal to public sympathy.²⁰

Lobbying. Cities and towns cannot spend money to influence elections.²¹

Frequently Asked Questions

DLS is asked frequently whether the following expenditures are for public purposes and may be paid:

Alcohol purchased by a department to be served at a fundraiser or for compliance testing. The language of M.G.L. Ch. 44 Sec. 58 is prohibitive. It reflects an explicit Legislative disapproval of spending municipal resources for alcoholic beverages and cigarettes. DLS has advised, however, that they can be purchased for the limited purpose of "compliance testing" for law enforcement or public health purposes. For example, local officials may "stage" purchases of alcohol or cigarettes by minors from local stores using money for anti-smoking or under-age drinking campaigns. Those expenditures would not be prohibited because they are not for consumption but to ensure compliance with local regulations and state statutes.

Floral arrangements for funerals of municipal employees. Funeral flowers, sympathy cards and other expenses for the customary expression of sentiments that are incidental to the social relationships that employees develop during work are not expenses made for public purposes. Those expenses are not within a municipal department's budget simply because the relationships developed in conjunction with the conduct of departmental business. Therefore, it is not appropriate to pay for funeral flowers or sympathy cards out of municipal funds. They should be covered from private donations.

Plaques and gifts awarded to persons retiring from municipal government or to current employees for outstanding performance during the year. Retirement gifts, plaques, merit payments and other similar awards given to retirees or employees may be considered a proper purpose for the expenditure of municipal funds if they are not excessive and are used to (i) encourage continuity of service or to (ii) enhance efficiency and loyalty or to

(iii) promote productive performance. The expense of holding a retirement party should be covered from private donations because it is mostly an expression of support and appreciation from colleagues. However, paying for the cost of dinner for the retiree would be appropriate. By contrast, paying for the dinners, gifts or party expenses for any attendees other than the retiree would generally be considered a mere gratuity and not for a proper municipal purpose.

Refreshments at public functions, such as a ribbon-cutting ceremony, an opening day, a reception or banquet, or a presentation. Refreshments and meals may be served at legitimate public functions such as ribbon-cutting ceremonies, opening day events, receptions or banquets, presentations, and the like so long as they are modest and served to provide a benefit for the city or town by helping to keep the participants alert and receptive. The public function must be a department sponsored public event for authorized persons and related to the public purpose of the department sponsoring it. If the function is open only to select groups or individuals, or spouses are in attendance, it is more likely to be considered a private celebration of primarily a social character.

Refreshments served to employees, such as coffee made available at a staff meeting or light refreshments provided to election workers or lunch served at an all-day training program or planning meeting. Refreshments and meals may be served to officers or employees of the city or town or persons doing business with the municipality at official meetings or official events so long as they are modest and benefit the city or town by helping to keep the participants alert and receptive or by enhancing efficiency by avoiding loss of time and disruption if participants leave the premises. The official meeting or event must be a department or municipal

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pal sponsored meeting or event for authorized persons and related to the public purpose of the sponsor.

Reimbursement of a department head for attending retirement or department dinners or parties or for attending other events not sponsored by the department or municipality.

Employees and officials may be reimbursed for the expenses of attending functions that relate to their public duties. The function must relate to and further the public purpose of the department sponsoring it. If a department head incurs an expense in the performance of official duties in the representation of his or her department, the expense is reimbursable. Thus, the cost of a department head's attendance at a retirement dinner or department party at which he or she is the official presenter of token gifts or awards, as a representative of his or her department, would be a legitimate municipal expense. If the event is arranged and funded by department employees or others, and attendance is optional, then the event would seem to be social and for private purposes rather than for public ones. In addition, if the event is outside of municipality, and not related to the department or the community, the use of municipal funds would not be appropriate.

Reimbursement of purchases or expenses incurred during authorized travel or while engaged in authorized business.

Employees who are out-of-town or working late on business or attending training programs or conferences on behalf of a city or town may be reimbursed for out-of-pocket costs of travel, meals, and other purchases incurred in furtherance of that objective and as a term or condition of employment. These types of expenses are permissible municipal expenses, provided that attendance is authorized by the municipal official or board with the authority to expend department funds. Included within the realm of reimbursable expenses are: (i) registration charges, including late fees; (ii) local surcharges

and taxes on car rentals; (iii) taxes and tips on meals, and (iv) taxes on petty cash purchases, so long as these expenses are reasonable and not in conflict with the reimbursement policies of the city or town. Late registration fees are considered to be part of the contract price for the training program or conference. Similarly, surcharges, taxes and tips are a necessary and customary part of legitimate expenses incurred by employees in the course of their employment.

Payment of expenses associated with fundraising for departments, e.g., mailings seeking donations or door prizes and refreshments at a fundraising event.

Municipal departments like the Parks and Recreation Department, the Library, the Historic Commission, or the schools may want to raise money for a particular project. There is no law that prohibits seeking financial donations or some other kind of support. Fundraising activities that go beyond applying for grants or soliciting donations and involve raising and disbursing significant monies are problematic, however, because they are more in the nature of a profit on the business or transaction. DLS believes better practice may be to have a private entity sponsor and conduct fundraising events and turn over the net proceeds to the municipal department as a grant or gift.

The Anti-Aid Amendment prohibits use of municipal resources to assist a private group's fundraising activities even if the activities will benefit the municipality. Public funds may not be used to assist a private organization's fundraising activities, no matter how worthy or related the cause. For example, the school department cannot pay to print and mail a flyer by the Parent-Teachers Organization to promote a car wash it is holding to raise monies for the schools.

Sharing the expenses of a community event co-sponsored by a municipal department and a private organization also raises Anti-Aid Amendment issues

because the event is not under the exclusive control of public officers. However, the municipal department could enter into a contract with the private organization to run the event on its behalf.

Conclusion

DLS strongly recommends that municipalities develop clear written policies or guidelines, preferably by bylaw or ordinance, about allowable expenditures. For example, to ensure the municipality receives the maximum benefit from its sales tax exemption, there should be clear standards about when department employees can purchase necessary supplies or materials and be reimbursed. Travel expenses are often set out in collective bargaining agreements, but the municipality should also adopt a policy to cover travel expenses for non-union employees. DLS also recommends that standards be established for merit awards, food or fundraising expenses. DLS also recommends that accounting officers advise managers and employees at the beginning of each fiscal year of the municipality's policies. This will help to avoid uncertainty or disagreements about whether certain expenditures are permissible and payable. ■

1. M.G.L. c. 40, § 5 applies to cities under M.G.L. c. 40, § 1.

2. See art. 2 of the Amendments to the Massachusetts Constitution, as appearing in art. 89, §§ 6, 7 and 8.

3. Mass. Const., Art. XI, c. 2, § 1 and Art. IV, c. 1, § 1; *Lowell*, 111 Mass. at 461, 471; *Matthews v. Inhabitants of Westborough*, 131 Mass. 521 (1881); *Mead v. Acton*, 139 Mass. 341 (1885); *In re Opinion of Justices*, 190 Mass. 611 (1906); *Whittaker v. Salem*, 216 Mass. 483 (1914); *Duffy*, 232 Mass. at 50; *In re Opinion of Justices*, 240 Mass. 616 (1922); *Jones v. Inhabitants of Town of Natick*, 267 Mass. 567 (1929); *D.N. Kelley & Son, Inc. v. Selectmen of Fairhaven*, 294 Mass. 570 (1936); *Quintan v. City of Cambridge*, 320 Mass. 124 (1946); *Eisenstadt v. County of Suffolk*, 331 Mass. 570 (1954).

4. See e.g. *Opinion of the Justices*, 313 Mass. 779 (1943) ("The fact that the owner of a way may profit by expenditures for the removal of snow and ice does not invalidate expenditures where the primary purpose of such removal is the benefit of the public to whose use the way is open.")

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5. See e.g., *Salisbury Land & Improvement, Co. v. Commonwealth*, 215 Mass. 371 (1913) (act was unconstitutional where it authorized the condemnation of lands for a public beach and the sale or leasing to private parties of any portion not needed for the public beach).
6. The Anti-Aid Amendment is contained in Section 2 of Article 46 of the Amendments to the Massachusetts Constitution (as amended in 1974 by Art. 103 of the Amendments).
7. See *Commonwealth v. School Committee of Springfield*, 382 Mass. 665 (1981); *Helmes v. Commonwealth*, 406 Mass. 873 (1990).
8. See e.g., *Commonwealth v. School Committee of Springfield*, 382 Mass. 665 (1981) (court held that the purchase of services by the school committee from private schools to meet the needs of special education students did not run counter to the anti-aid amendment because the purpose was to fulfill the obligation of the public school system which had chosen not to provide the services in its own schools).
9. See e.g., *Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Board of Lawrence*, 403 Mass. 531 (1988) (the taking of property for urban renewal project did not violate the Anti-Aid Amendment because the taking had a public purpose to eliminate a blighted open area and any benefit to college was incidental to that purpose).
10. See *Eisenstadt v. Suffolk County*, 331 Mass. 570, 573 (1954) and cases cited.
11. *Allydorn Realty Corp.*, 304 Mass. at 292.
12. See e.g., *Opinion of the Justices*, 313 Mass. at 784-85 (expenditures for snow removal from private ways that were open to public were for the public purpose of accommodating the public as to means of travel and transportation); *McLean v. Boston*, 327 Mass. 118 (1951) (expenditure of money for the development of housing for residents made homeless by tunnel expansion was for the public purpose of addressing a local emergency caused by a public improvement); *Opinion of the Justices*, 349 Mass. 794 (1965) (payments by city for retirement of certain alcoholic beverage licenses was for the public purpose of cleaning up of the city).
13. See *Opinion of the Justices*, 337 Mass. 777, 781 (1958).
14. See e.g., M.G.L. c. 40, § 4 ("A city or town may make contracts for the exercise of its corporate powers. ..."); *Leonard v. Middleborough*, 198 Mass. 221 (1906).
15. See e.g., *Curran v. Holliston*, 130 Mass. 272 (1881); *Attorney General v. Woburn*, 317 Mass. 465 (1945).
16. See e.g., *Quintan v. City of Cambridge*, 320 Mass. 124 (1946); *Wood v. Haverhill*, 174 Mass. 578 (1899).
17. See *Matthews v. Westborough*, 131 Mass. 521 (1881); *Jones v. Natick*, 267 Mass. 576 (1929); *George A. Fuller Co. v. Commonwealth*, 303 Mass. 216 (1939).
18. See e.g., M.G.L. Ch. 71, § 47 (specifically authorizes the expenditure of municipal funds for student prizes).
19. See e.g., *Eisenstadt v. County of Suffolk*, 331 Mass. 570 (1954); *In re Opinion of Justices*, 190 Mass. 611 (1906); see also *In re Opinion of Justices*, 240 Mass. 616 (1922).
20. See e.g., *Matthews v. Westborough*, 131 Mass. 521, 522 (1881); *Whittaker v. Salem*, 216 Mass. 483 (1914); *Jones v. Inhabitants of Town of Natick*, 267 Mass. 567 (1929).
21. See e.g., *Anderson v. Boston*, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1060, 99 S.Ct. 822 (1979).

Joint Tax Revenue Figure Reached

On December 12, 2005, Commissioner Alan LeBovidge presented the Department of Revenue's economic and revenue forecast to members of the House Ways and Means Committees and the Secretary of Administration and Finance at their annual Consensus Revenue Hearing at the State House.

In addition to FY06 and FY07 revenue projections for the Commonwealth, this report provided information on recent revenue trends for the state and predictions regarding the US economy for FY06 and FY07.

Testimony was also provided by Michael Widmer of the Massachusetts Taxpayers Foundation, Dr. Yolanda

Kodrzyński of the Boston Federal Reserve Bank, Professor David G. Tuerck of the Beacon Hill Institute and Professor Adam Clayton-Matthews of UMass Boston.

To access the full text of the materials presented at this hearing, click on www.mass.gov/eoaf/revenue_hearing_materials.html.

On January 13, Administration and Finance Secretary Thomas Trimarco; Senator Therese Murray, Chairwoman of the Senate Committee on Ways and Means; and Representative Robert DeLeo, Chairman of the House Committee on Ways and Means, issued a statement indicating that they agreed on a joint tax revenue figure of \$18.975 billion for FY07.

They also agreed upon the following off-budget transfers that are mandated in law:

- \$734 million for the MBTA.
- \$572.52 million for School Building Assistance (SBA).
- \$1.335 billion for the state pension system, consistent with the three-year schedule currently in effect.

The secretary and the chairs of the two budget committees agreed that \$16.333 billion will be the maximum amount of tax revenue available for the general appropriations act (GAA) in FY07. ■