

MICHIGAN MUNICIPAL EXPENDITURES

Michigan Municipal League Convention

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Holland, Michigan

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MICHIGAN MUNICIPALITIES

Michigan municipalities include cities, villages, townships and counties

Municipalities are instrumentalities of the state that are authorized by the Michigan Constitution

Michigan municipalities are created, controlled and modified by the State Legislature

CONSTITUTION OF MICHIGAN

Article VII Section 17: Each organized township shall be a body corporate with powers and immunities provided by law.

Article VII Section 21: The legislature shall provide by general laws for the incorporation of cities and villages. Such laws shall limit their rate of ad valorem property taxation for municipal purposes, and restrict the powers of cities and villages to borrow money and contract debts. Each city and village is granted power to levy other taxes for public purposes, subject to limitations and prohibitions provided by this constitution or by law.

Article VII Section 32: Any county, township, city, village, authority or school district empowered by the legislature or by this constitution to prepare budgets of estimated expenditures and revenues shall adopt such budgets only after a public hearing in a manner prescribed by law.

CONSTITUTION OF MICHIGAN

PUBLIC PURPOSE

Article VII Section 26: 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.

Article IX Section 18: 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.

MUNICIPALITIES ARE POLITICAL SUBDIVISIONS OF THE STATE

Political subdivisions of States -- counties, cities, or whatever -- never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions. As stated by the Court in *Hunter v City of Pittsburgh*, 207 US 161, 207 US 178, these governmental units are "created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them," and the "number, nature and duration of the powers conferred upon [them] . . . and the territory over which they shall be exercised rests in the absolute discretion of the State." *Reynolds v Sims*, 377 US 533, 575 (1964)

ANALYSIS OF A PUBLIC PURPOSE

Whether the benefit is available on **equal terms to the entire public** in the locality affected; whether the service or commodity supplied is **one needed by all or by a large number of the public**; whether the enterprise **bears directly and immediately**, or only remotely and circumstantially, **upon the public welfare**; whether the need to be met in its nature **requires united effort** under unified control, or can be served as well by separate individual competition; whether **private enterprise has in the past failed** or succeeded in supplying the want or in eradicating the evil; whether, insofar as benefits accrue to individuals, the **whole of society has an interest in having those individuals benefited**; whether a proposed extension of governmental activity is in line with the historical development of the Commonwealth and with the general purpose of its founders; whether it will be **necessary to use public ways** or to invoke the power **of eminent domain**; whether a **special emergency** exists, such as may be brought about by war or public calamity. *City of Gaylord v City Clerk*, 378 Mich 273, 299-300 (1966)

OBJECTIVE OF A PUBLIC PURPOSE

Generally 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. . . The right of the public to receive and enjoy the benefit of the use determines whether the use is public or private. *Hays v City of Kalamazoo*, 316 Mich 443, 453-454 (1947)

PROTECTION OF THE MUNICIPAL FISC

Understanding a public purpose

Authorized municipal expenditures of or for a public purpose are lawful

Unauthorized municipal expenditures of or for a private purpose are unlawful

THE ROLE OF LOCAL GOVERNMENT

WELL RECOGNIZED PUBLIC PURPOSES

Police and fire; public safety

Public libraries

Tax assessment and collection

Streets, sidewalks and bridges

Sewer and water utilities

Refuse collection and disposal

Public utilities

Public Parking lots

Public transportation systems

Public cemeteries

Public parks

THE ROLE OF LOCAL GOVERNMENT

OTHER PUBLIC PURPOSES NOT SO WELL RECOGNIZED

Observance or celebration of armistice, independence, memorial day, diamond jubilee and centennial. MCL 123.851

Operations of youth centers to curb juvenile delinquency. MCL 123.461

Membership dues to Michigan Municipal League or Michigan Townships Association

“The elimination of the nonconforming uses and structures in a zoning district is declared to be for a public purpose and for a public use.” MCL 125.3208(4)

THE ROLE OF LOCAL GOVERNMENT

OTHER PUBLIC PURPOSES NOT SO WELL RECOGNIZED

“In all such villages, townships or cities adopting the provisions of this act, the legislative body thereof is authorized and empowered to levy an annual tax not exceeding 2 mills on each dollar of the assessed valuation of such village, township or city as the case may be, for the maintenance and employment, under municipal control, of a band for musical purposes for the benefit of the public.” MCL 123.862

Any city, village, county or township may operate a system of public recreation and playgrounds; acquire, equip and maintain land, buildings or other recreational facilities; employ a superintendent of recreation and assistants; vote and expend funds for the operation of such system. MCL 123.51

THE ROLE OF LOCAL GOVERNMENT

OTHER PUBLIC PURPOSES NOT SO WELL RECOGNIZED

The common council of any city, or the corporate authorities of any village, in this state, shall have the power to levy a special tax not to exceed in any 1 year 4 mills on the dollar of the assessed valuation of all taxable property within the said city or village, **to be used for advertising, exploiting and making known the industrial, commercial, educational or recreational advantages of the said city or village**, and to establish recreational and educational projects for the purpose of encouraging immigration to, and increasing the trade, business and industries of the said city or village: Provided, however, that such tax levy shall not exceed 50,000 dollars in any 1 year. MCL 123.881

Any city, village, township or county of the state of Michigan may purchase, acquire, construct, maintain, operate, improve, extend or repair housing facilities and eliminate housing conditions which are detrimental to the public peace, health, safety, morals or welfare. MCL 125.652

THE ROLE OF LOCAL GOVERNMENT

OTHER PUBLIC PURPOSES NOT SO WELL RECOGNIZED

An ACT to authorize any city, village, township or county to purchase, acquire, construct, maintain, operate, improve, extend, and repair housing facilities; to eliminate housing conditions which are detrimental to the public peace, health, safety, morals, or welfare; and for any such purposes to authorize any such city, village, township, or county to create a commission with power to effectuate said purposes, and to prescribe the powers and duties of such commission and of such city, village, township, or county. . . Act 18 of 1933 Housing Facilities

Downtown development through a Downtown Development Authority 197 PA 1975; MCL 125.1651 et seq

Economic development through an Economic Development Corporation (EDC), MCL 125.1601
Principal Shopping District (PSD) MCL 125.981 or Business Improvement District (BID) MCL 125.981

UNLAWFUL EXPENDITURES BY A LOCAL GOVERNMENTAL UNIT

Municipal contributions or appropriations that are not authorized by the Michigan Constitution or a statute cannot be authorized by the worthiness of the cause. Examples of prohibited expenditures where there is no contract for specific services provided to the public for the local unit:

Contributions to churches, veterans, and 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, and service clubs

UNLAWFUL EXPENDITURES BY A LOCAL GOVERNMENTAL UNIT

Donations to community organizations

Expenses for private road construction or maintenance

Office refreshments, picnics

Presents to officials and employees or retirement recognition events

Flowers and cards to or for the sick or departed

Mileage of officials and salaried employees to and from their residence to the city, township or village hall, county building or meeting rooms

Per diem compensation to an elected official on a salary for attending board meetings

ATTORNEY GENERAL OPINION NO. 2346

No. 2346

July 18, 1956

Honorable Frank Szymanski,
Auditor General,
Lansing, Michigan

Dear Mr. Szymanski:

Your predecessor requested the opinion of the Attorney General on certain questions which have arisen during the course of county audits.

“6. May a county board of supervisors, or any other county board or commission, authorize an expenditure of county funds for the purchase of flowers to be given during illness or at death, to one of the members of such board or commission, or to a member of the family of such member or, for the same purpose to any individual or organization?”

I know of no statutory provision authorizing counties to make expenditures of county funds for the private purpose of purchasing flowers in times of death or illness. In addition to the lack of statutory authority the expenditure of public funds for such a purpose is unlawful in principle. In the early case of *The People v. Salem*, 20 Mich 462, Judge Cooley announced the proposition that taxation must be imposed for a public and not for a mere private purpose. He pointed out that public purpose is one which will subserve the public good or one that has the furtherance of the interest of the citizens as its purpose.

If the tax itself cannot be imposed except under such conditions then it necessarily follows that funds raised by taxation can be expended only when the purpose of the expenditure is a public one as distinguished from a private interest or purpose. There can be no furtherance of the general public welfare of the county or its citizens in the expenditure of money of public fund for flowers for private occasions however worthy the motive of the giver. **The principles announced in the *Salem case* are still the law of Michigan and in my opinion the expenditure of county funds for flowers on private occasions is an improper and unlawful use of such money.**

Very truly yours,

Thomas M. Kavanagh

Attorney General

CWT:SSF;mep

RECOMMENDATIONS

When considering the lawfulness or propriety of a municipal expenditure, **identify the authorized function** or activity of the municipal government **and the public purpose** advanced or accomplished by it.

Without an authorized municipal function and a public purpose to be accomplished by it, a municipal expenditure will be unlawful.

If the authorized municipal function or the public purpose is impossible to discern and describe, do not make the expenditure.