

# Municipal Fundraising And Gifting

August 2012

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## TUG HILL COMMISSION TECHNICAL PAPER SERIES

### TUG HILL COMMISSION

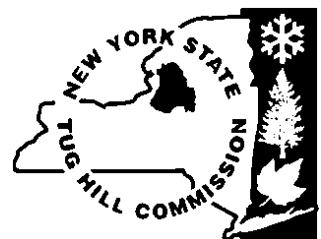
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## SPECIAL THANKS

We thank the New York State Conference of Mayors and Municipal Officials (NYCOM) and the New York State Office of the State Comptroller for providing the bulk of material compiled in this paper.

The Tug Hill Commission *Technical and Issue Paper Series* are designed to help local officials and citizens in the Tug Hill region and other rural parts of New York State. The *Technical Paper Series* provides guidance on procedures based on questions frequently received by the Commission. The *Issue Paper Series* provides background on key issues facing the region without taking advocacy positions. Other papers in each series are available from the Tug Hill Commission at the address and phone number on the cover.

## **Introduction**

This paper addresses two separate, but related issues—municipal fundraising and municipal gifting. The first section focuses on municipal fundraising and whether a municipality or its officials has the authority to solicit charitable donations or to conduct fundraising activities for municipal projects. The second section addresses the more complex topic of municipal gifting (municipal payments or contributions to private individuals, organizations, or associations). What makes gifting the more complex issue is that despite the prohibition against municipal gifting, there are several exceptions. The material in this section is adapted from an out-of-print publication by the New York Conference of Mayors and summarizes how to properly expend municipal funds to other entities in furtherance of a public purpose. The appendix to this paper includes several State Comptroller Opinions that demonstrate the application of the following guidelines.

## **Municipal Fundraising**

Faced with the reality of limited local resources and stiff competition for available funding programs, local fundraising efforts play a key role in the completion of an untold number of community projects. At issue is the proper role of municipalities, their officials, and/or special committees in such fundraising efforts.

## **Municipalities May Not Solicit Gifts or Conduct Fundraising Activities**

There is no authority for a municipality to solicit monetary or material gifts, either by advertisement or otherwise. Nor may they conduct fundraising activities. According to Office of the State Comptroller opinions No. 74-1102, 1974, and No. 77-292, 1977, such activity would be contrary to public policy and, therefore, not a proper municipal function. This issue is also addressed in State Comptroller's Opinion #78-256 in the *Appendix*. This prohibition does not forbid the pursuit of funding from established grant programs, which is a legitimate municipal function.

*Absent express statutory authority, municipalities generally may not undertake fund-raising activities, including the solicitation of gifts. Fund-raising activities undertaken to benefit a municipality should be directed and administered by individuals in their private capacities or by community groups not affiliated with the municipality. In turn, these private individuals or groups may make donations to the municipality. Municipalities are generally authorized to accept gifts of real and personal property to be used for proper municipal purposes. Gifts generally may be accepted on the condition that they be used for a specified municipal purpose so long as the condition does not require the local officials to surrender or renounce their powers and duties. Once accepted by the appropriate municipal official or body (usually the*

*governing board), monies generally must be transmitted to the chief fiscal officer. These funds constitute municipal monies and, accordingly, expenditure of these monies is generally subject to the same statutory requirements (e.g. budgetary appropriation, audit of claims, competitive bidding) as other municipal revenues.*

-from Office of State Comptroller workshop handout, 3/29/00

This limitation on municipal fundraising also applies to various town and village committees (recreation, historical, bicentennial, community improvement, etc.). While municipal boards have the power to create such committees, they cannot give these committees more power than the board itself has. Since a municipality cannot solicit funds, neither can it authorize its committees to solicit funds.

## **Examples**

- A town appointed committee is charged with planning the town's bicentennial celebration. This committee sets up a bank account into which it begins to deposit monies raised from bake sales and other activities conducted to raise funds for the celebration. There are two problems with this example. First, the committee may not solicit contributions or conduct fundraising activities as a municipal entity. Secondly, municipally-appointed committees may not hold funds in separate accounts outside of the appointing municipality's control.
- A village asks its recreation committee to work with a landscape architect that the village has hired to plan improvements to the village park. Local citizens form their own ad hoc group to raise funds for a new playground at the park. This group then donates monies raised to the village on the condition that these funds be put toward new playground equipment (or the group may purchase the equipment and donate it to the village). This is an acceptable scenario, as the village had no role in forming the volunteer group and is not directly connected with the fundraising activities. Some members of the village recreation committee may even choose to participate in these fundraising activities in their role as private citizens. However, the State Comptroller's office advises elected officials to not participate in fundraising activities for municipal projects, even as a private citizen, to avoid the perception of anything improper.

## **Accepting Contributions of Money**

When a municipality accepts a gift of cash for a designated or "restricted" purpose, it has several options. If using the money relatively soon, the monies could be deposited in the municipality's *operating fund*. This would require a modification to the budget, but could be appropriated immediately since the gift would be considered 100% surplus. However, to better track the gift amount, or if it is not likely to be expended before the next fiscal year, then the contribution should be deposited in the *capital fund* or the *trust and agency account*. The New York State Office of the Comptroller can provide guidance on specific cases.

## **MUNICIPAL GIFTING: Payments to Other Organizations or Associations**

A gift is a voluntary transfer of money, goods, or services without any consideration or compensation. The gift prohibition in Article VIII of the New York State Constitution forbids a municipality from giving or loaning its money, services, or property to a private individual, corporation or association.

Although municipalities may not *give* funds to a private entity, they may contract with such entities to provide specific activities or services that constitute a proper municipal purpose. Agreements with private entities to provide a proper municipal service need not be complex. The agreement should state the purpose of the contractual arrangement—e.g. to provide a public recreational program, maintain or improve municipal recreation facilities, maintain a municipal historic structure, or erect and maintain a veterans’ monument. It should be clear that the service provided is in furtherance of a legitimate municipal purpose. The agreement should state the payment amount and should specify what services will be provided by the private entity in return. Boards should consult with their municipal attorney before entering these types of contracts due to the variety of forms they may take.

### **SPECIFIC EXAMPLES**

This section addresses the areas where municipal gifting concerns most commonly arise: patriotic causes, recreation, and historical associations. The information in the pages that follow is adapted, with permission, from “The New York State Constitutional Gift Prohibition and How it Applies to Your Municipality,” an out-of-print publication by the New York State Conference of Mayors.

#### **Patriotic Organizations and Causes**

A municipality **cannot**:

- donate real property or sell real property for a nominal sum to a veteran’s organization, even if the land will be used for the erection of a veteran’s memorial;
- donate public money to a veteran’s organization including donations of money for celebrations or parades, or toward the purchase of real property.

**Exceptions:** General Municipal Law does specifically authorize municipalities to support certain patriotic causes. A municipality may: 1) acquire lands and erect a veterans’ monument; 2) pay funds for the erection or maintenance of a veterans’ monument on public lands to a soldier’s monument corporation pursuant to the guidelines under the Not-for-Profit Corporation Law section 1405; 3) acquire land and erect a memorial building. For more on this issue, see Comptroller’s Opinion #81-399 in the *Appendix*.

## Recreation and the Arts

A municipality may spend funds for municipal recreation programs for its citizens, but cannot give money to private groups for recreational purposes unless a proper contract is entered into. Absent such a contract, municipalities **cannot**:

- make a charitable donation to any private committee or organization that provides recreation programs to youth or any other segment of the population;
- make a gift or appropriate money for the expense of operating any privately owned community center aside from those which may be lawfully appropriated to a youth recreation project operated by the municipality (for example, leasing space for a municipality operated program);
- finance a little league program, a CYO basketball tournament, or a privately sponsored bowling league where the athletic program is sponsored by interested individuals and not by the municipality;
- contribute funds to a cultural group for the purpose of supplying residents with concerts, art exhibits, or musical productions;
- support a local drum and bugle corps.

**Exceptions:** Although funds cannot be given to private groups, municipalities may provide for recreational programs or contract with groups to provide recreation to the general public. The key to contracting with private groups is that the municipality must retain control of the program and not simply be a pass through for funds. In addition, the value of the service must be commensurate with the sum paid. Municipalities **may**:

- contract to provide for band concerts to be given annually or on specific dates;
- contract with a private organization for the operation of an approved municipal youth program, provided that: the program is available to all those within the designated age group regardless of race, creed, or national origin; such a privately operated program is under the supervision and control of the municipality; and the contract specifies the particular services which the municipality is to receive and the amounts and purposes for which it will incur expense.

A private entity may charge an admission fee to a performance for which municipal funds have been paid, provided that the charge does not contradict the terms of the contract with the municipality. A municipality may also establish a reduced fee schedule for the use of the recreational programs or facilities by senior citizens pursuant to General Municipal Law section 95-a.

## Little League

Municipalities cannot donate money or goods for use by a privately operated Little League or similar organizations, as they are limited to one sport, have set formats, and are controlled by national parent organizations. There is little or no room for municipal control, and often all interested persons cannot participate.

**Exceptions:** Although money cannot be directly donated, a municipality may enter into a contract with a Little League affiliated organization to have it run a portion of the municipal recreation program. The program must be under the supervision and control of the municipality and must be legitimately instituted for the benefit of the municipality. As in all previously mentioned examples, the contract should be for a fixed sum and should specify for what and how the funds are to be expended. See the *Appendix* for State Comptroller's Opinion #82-225.

## Historical Associations and Events

Municipalities **cannot**:

- make outright gifts of funds or services to support private historical associations or societies;
- subsidize the printing of a history of the municipality when such a book is not being published in connection with a program conducted by the municipality commemorating a historical event;
- make a contribution to any private entity for a celebration.

**Exceptions:** Under the NYS Arts and Cultural Affairs Law section 57.07, municipalities may appoint a local historian and expend funds to maintain historic structures, monuments, and collections, and to publish local histories. Again, a municipality cannot make a gift to private historical associations, but it may contract with such entities to provide maintenance or assist in publication of local histories and records.

A municipality may expend funds for an historical commemoration or other public celebration only if the funds have been appropriated for such and are retained in the control of the municipal board. An outside group may assist in carrying out the commemoration, but the funds must remain in control of the governing board of the municipality. For more on this topic see State Comptroller's Opinion #81-357 in the *Appendix*.

**Further questions** on specific situations should be referred to the Office of the State Comptroller or to your municipal attorney.

**MUNICIPAL FUNDRAISING  
AND  
GIFTING**

**APPENDIX**

**OPINIONS OF THE STATE COMPTROLLER**



power to levy and collect taxes, to provide, individually or jointly, for the establishment of public libraries. Education Law §256(1) provides in pertinent part:

Any authority named in section two hundred fifty-five may, individually or jointly with another municipal or district body, grant money for the cost of maintaining or the cost of any capital improvements to or expenditures for one or more: . . . public libraries, provided such libraries are registered by the regents . . . or may . . . contract . . . (for) library services . . . .

Thus, pursuant to the above section, a town may provide moneys for the operation of a village library. While the language of the statute appears to authorize an outright "grant" of money by the town to the village library, it is the opinion of this Department that, where a town wishes to contribute to a village library, the parties should enter into a contract for services rendered. In this manner, the town may bind the contracting entity to provide its residents with complete access to the library facilities.

(2) As a general rule, town charges are imposed on a town-wide basis in all instances unless there is specific statutory authority to impose such charges on something other than a town-wide basis. The only authorization for making town library expenses a part-town charge is that contained in Education Law §256(2), which provides that library expenses shall be a part-town charge where a town and one or more villages within the town jointly contract for library services with one of the libraries listed in that section. Since the arrangement inquired about does not fit within that exception, the town expenditures involved must, necessarily, be a town-wide charge.

It may well be that the intent of the amendment to §256(2) (L 1972 ch 364) was to make the town's share of library support a part-town charge under circumstances of the type here under consideration. Unfortunately, the language is limited by its terms to joint *contracts*. The only remedy we can see would be a further clarifying amendment to §256(2).

**Conclusions:** (1) A town may expend funds to be used for the operation of a village library pursuant to a contract for services rendered.

(2) The moneys appropriated by the town pursuant to such a contract would be a town-wide charge.

December 3, 1974.

### OPINION 74-1102

**Inquiries:** (1) May a town enact local legislation with respect to property and buildings of historical significance located on private property designated

(2) May a town create a nonprofit historical organization which would be eligible for tax-deductible donations?

(3) What are the income tax consequences to donors of historical artifacts who make their donations directly to a town?

(4) May a town solicit "matching funds" for particular projects from private individuals and organizations?

**Statement of Law:** (1) Town Law §64(17-a) authorizes a town, and General Municipal Law §96-a authorizes a county, city, town or village, to provide for the protection and preservation of historic sites and also to provide for appropriate and reasonable control over the use of neighborhood private property within public view. Section 64(17-a) further provides:

Any such measures, if adopted in the exercise of police power, shall be reasonable and appropriate to the purpose, or if constituting a taking of private property, shall provide for due compensation . . . .

Thus, a town may enact local legislation with respect to historical sites within the guidelines set up by §§64(17-a) and 96-a. In the present situation, legislation requiring a developer to donate historical properties or structures to the town or to pay the cost of moving such structures would seem to be unauthorized in that it would amount to a taking of private property without due compensation. In the present situation, it would appear that condemnation by the town of the historical sites in question might best suit the town purposes.

(2) It is well established that municipal corporations have only those powers which are specifically delegated by statute or are necessarily implied therefrom. We are aware of no provision of law authorizing a town to create a nonprofit corporation. It is therefore our opinion that this proposal is impermissible.

(3) This Department is not in a position to pass on questions of possible tax deductions for individual taxpayers. We would suggest that inquiries of this nature be directed to the Internal Revenue Service.

(4) Generally speaking, matching funds are moneys which come from the State or federal government to match the amount of money appropriated by a municipality for particular projects. Thus, it is inaccurate to refer to donations from private individuals as matching funds. However, we assume that the question is whether a town may budget funds for a particular project with such project to be contingent upon the receipt of donations from private individuals or groups and that the town would advertise for such donations.

Town Law §64(8) clearly authorizes towns to accept gifts of money or property. However, we find no authority which would authorize a town to publish paid advertisements for gifts. Furthermore, as a matter of fiscal policy, it would be improper for a town to appropriate funds on a contingency basis and difficult, if not impossible, to budget anticipated gifts.

Therefore, it is our opinion that this final proposal is unauthorized and impermissible.

Of course, if a local newspaper is so informed, it might carry the story of a particular town program as a news item. Thereafter, any donations received as the result of such story could be accepted and treated as surplus funds.

**Conclusions:** (1) A town may, within the guidelines set up by Town Law §64(17-a) and General Municipal Law §96-a, enact local legislation with respect to property and buildings of historical significance located on private property designated for development.

(2) There is no provision of law authorizing a town to create a nonprofit organization.

(3) Questions regarding the income tax consequences to donors of historical artifacts who make donations directly to a town should be directed to the Internal Revenue Service.

(4) A town may not budget funds for a particular project, with the project to be contingent upon the receipt of donations from private individuals or groups, and there is no authority for a town to publish paid advertisements for gifts.

November 7, 1974.

### OPINION 74-1104

**Inquiry:** May a school district board of education charge a rental for the use of school playground facilities by a town recreation commission during out-of-school hours?

**Statement of Law:** Education Law §414 provides in part:

Schoolhouses and the grounds connected therewith and all property belonging to the district shall be in the custody and under the control and supervision of the trustees or board of education of the district. The trustees or board of education may adopt reasonable regulations for the use of such schoolhouses, grounds or other property, when not in use for school purposes, and for such other public purposes as are herein provided. . . . The trustees or board of education of each district may, subject to regulations adopted as above provided, permit the use of the schoolhouse and rooms therein, and the grounds and other property of the district, when not in use for school purposes, except as provided in subdivision seven hereof; for any of the following purposes. . . .

The use of school district property by a town recreation commission for recreational activities is a permissible use under the said statute. Neither the town nor any other entity has a right to use the property for any other purpose.

not-for-profit corporation by reason of the fact that his fellow member in the professional corporation is attorney for such not-for-profit corporation and, consequently, its alter ego (Gen Mun L §800(3)). This interest would be a prohibited one within the meaning of General Municipal Law §801 were it not for §802(1)(f) of that law which creates an exception in the case of a "contract with a membership corporation or other voluntary non-profit corporation or association."

Hence, no prohibited interest in contract arises herein. However, the mayor is required to disclose his interest in such contract under General Municipal Law §803.

**Conclusion:** Where a village sells real property to a not-for-profit corporation and the village mayor, an attorney, is associated in a professional corporation of attorneys with an individual who is both attorney for and director of the not-for-profit corporation, no prohibited interest in contract arises.

April 1, 1977.

### OPINION 77-292

**Inquiries:** (1) Is there any prohibition against a municipality conducting a public subscription campaign whereby members of the general public are asked to donate money toward the cost of constructing a convention arena center, where such donation entitles the donor to receive a name plate, with his name on it, to be placed on a seat in the convention center?

(2) If there is no prohibition against such campaign, are the donations made to the campaign considered charitable donations, deductible for income tax purposes?

**Statement of Law:** (1) and (2) Notwithstanding the fact that the contributor would receive a name plate to be placed on a seat, these subscriptions are, basically, in the nature of a gift (see 57 NY Jur, *Subscriptions*, §1). General City Law §20(3) clearly authorizes a city to accept gifts of money or property and Glens Falls City Charter §1.4.2 specifically authorizes such acceptance.

However, we not only find no authority for a municipality itself to conduct a campaign to solicit such gifts, either by advertisement or otherwise, but we also find it to be contrary to public policy and, hence, not a lawful city purpose. We have found similar arrangements in the past to be "unauthorized and impermissible" (1974 Op St Compt #74-1102 (unreported)).

It should be noted that should a local civic organization, rather than the city itself, sponsor the subscription campaign, any contributions received therefrom

could thereafter be accepted by the city as a gift (see 30 Op St Compt 156 (1974); 16 Op St Compt 64 (1960)).

Since it is our opinion that a municipality may not conduct a subscription campaign, the question regarding whether donations to such a campaign would be income tax deductible becomes moot. At any rate, this Department is not in a position to pass on questions of possible income tax deductions for individual taxpayers. Any inquiries of that nature should be directed to the Internal Revenue Service (30 Op St Compt 156 (*supra*)).

**Conclusion:** A city may not sponsor a public subscription campaign to finance construction of a convention center.

May 4, 1977.

### OPINION 77-295

**Statement of Fact:** A subdivision containing approximately 30 homes was approved by the planning board in the mid-1960's.

Apparently, the builder was unable to stabilize the banks around several of the homes in such subdivision with the result that during heavy rains, the banks slide down and threaten the homes.

**Inquiry:** Under such circumstances, would it be proper for the town to expend moneys to construct retaining walls to stabilize the banks on the properties in question?

**Statement of Law:** State Constitution Article VIII §1 prohibits the expenditure of municipal moneys for private purposes. The proposed construction of retaining walls to stabilize the banks would serve only the interests of the property owners under consideration, rather than constitute an improvement in the interests of the general public, and in our opinion would be an unconstitutional gift of town moneys. We feel that the inquiry involves essentially a private matter between the builder and the property owners.

**Conclusion:** A town may not expend moneys for the purpose of constructing retaining walls to stabilize banks on private property.

May 3, 1977.

TOWN LAW, §64(8): There is no authority for a town or any of its departments or agencies to either solicit funds for use in town programs or participate in fund-raising activities for such purpose. A town may, however, accept gifts of moneys solicited by a private civic group.

April 7, 1978

78-256

Joel H. Sachs, Esq.  
Town Attorney  
Town of Greenburgh  
Box 205  
Elmsford, New York 10523

Re: Town of Greenburgh

Dear Mr. Sachs:

This is in response to your letter of March 14, 1978 wherein you ask whether either the town, or agencies or departments thereof, may perform certain fund-raising activities. These activities consist of the solicitation of donations from local businesses for use in various town programs, and the sponsorship of fund-raising events such as cookie sales and carnivals.

This Department has stated that there is no authority for a municipality to solicit gifts, either by advertisement or otherwise, and that such an activity would be contrary to public policy and, therefore, not a proper municipal function (Op. State Compt. No. 77-292, 1977, as yet unreported, enclosed for your reference; Op. State Compt. No. 74-1102, 1974, unreported).

We feel this conclusion would apply equally in the case of solicitation by agencies or departments of the town which function as mere agents of the town itself.

Similarly, it is our opinion that it would be improper for either the town or any town department or agency to sponsor fund-raising activities such as cookie sales or carnivals either through monetary support or by allowing use of town facilities therefor. As stated above, there is no authority for municipal participation in such activities and such participation would not constitute a proper town purpose.

We note, however, that Town Law, §64(8) authorizes a town to accept gifts of money or property, subject to such terms and conditions as may be prescribed by the grantor. Therefore, should a local private civic group, rather than the town itself or any of its departments or agencies, sponsor fund-raising activities or solicit funds for use by

Joel H. Sachs, Esq.

-2-

78-256

the town, contributions made to the town by such group of moneys it collected could be accepted by the town as a gift.

We trust the above will be of assistance to you.

Very truly yours,

ARTHUR LEVITT  
State Comptroller

By

James C. Cooper  
Associate Counsel

Morris:sr  
Enc.

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER  
ALBANY, NEW YORK  
12236

EDWARD V. REGAN  
STATE COMPTROLLER

Opns St Comp, No. 81-357

MUNICIPAL FUNDS - Publicity fund (expenditures for town bicentennial celebration) - Advance payment (publicity services) - Appropriations (for town bicentennial celebration)

TOWN LAW, §64(14)(a): A town may contract with a private organization for services in connection with a celebration commemorating the town's bicentennial. However, the town may not make advance payments for such services.

This is in reply to your letter concerning a bicentennial celebration planned for 1984 in the town. You ask whether the town board may annually appropriate moneys for such a celebration. The moneys would be turned over to a private "bicentennial committee" for expenditure in connection with the celebration. At the end of 1984, any remaining unexpended moneys would be returned to the town.

Town Law, §64(14)(a) authorizes town boards, by resolution, to establish a publicity fund for, among other purposes, commemoration programs of historical events. This provision would clearly authorize use of publicity fund moneys for a program celebrating a town's bicentennial. An appropriation not exceeding \$3,000 annually may be made therefor. Such annual appropriation may be increased to an amount not exceeding \$10,000 by resolution subject to permissive referendum, and may be increased to an amount in excess of \$10,000 by resolution subject to mandatory referendum. Among the items for which such moneys may be properly expended in connection with a bicentennial are floats and other items in conjunction with a parade, fireworks, advertising, stationery, speakers, posters and commemorative flags or decals (14 Opns St Comp, 1958, p 306; Opns St Comp, 1973, No. 73-619, unreported).



Publicity fund moneys may not simply be turned over to a private organization for use in connection with a bicentennial celebration as the organization sees fit (15 Opns St Comp, 1959, p 208). Such moneys must be controlled by the town board and may be expended directly by the town board for a bicentennial program administered by town personnel, with the expenditures made in accordance with the procedures for disbursement of town moneys set forth in Article 8 of the Town Law. Of course, the town board may receive input from civic minded groups as to the precise purposes for which such moneys should be expended (4 Opns St Comp, 1948, p 92). Alternatively, the town may contract with a private organization for the performance of services in connection with the celebration. The contract must be in writing, detailing the services to be performed, and may provide for a reasonable payment from the publicity fund for the services (Opns St Comp, 1979, No. 79-94, as yet unreported).

If the town decides to contract with a private "committee" for services in connection with a bicentennial celebration, it would be improper, in our opinion, to provide for an arrangement whereby the town would make annual lump-sum payments to the private organization prior to the rendition of any services by the organization, with adjustments made at the end of the contract term. As a general rule, a town may not pay for services prior to the actual rendition thereof (Town Law, §118; NY Const, art VIII, §1; Opns St Comp, 1976, No. 76-927, unreported). We have recognized that, under certain circumstances, a municipality may make advance payments to a private entity performing services for the municipality pursuant to a contract. For instance, advance payments with subsequent adjustments would be permissible where a municipality is essentially contracting for the availability of services, or where, due to custom and usage of trade in certain fields, a municipality would find it difficult or impossible to purchase certain services without making advance payments (Opns St Comp, 1972, No. 72-1080, unreported; Opns St Comp, 1981, No. 81-90). However, it is our opinion that circumstances warranting advance payments are not present in this instance.

We note that the town would apparently be interested in a contract for a term of approximately three years. Neither Town Law, §64(14) nor any other provision of law prescribes a maximum term for a contract for publicity services. As a general rule, absent a statute providing otherwise, a municipal contract may cover any length of time provided it does not cede away control or embarrass the legislative powers of the municipality, or render it unable to control matters over which it has jurisdiction. Long-term agreements are generally

not favored because, among other things, they tend to restrain competition and restrict municipal officials in performing their public responsibilities. In addition, absent statutory authority to the contrary, contracts relating to governmental, as opposed to proprietary or business matters, may not extend beyond the terms of the members of the governing board authorizing the contract so as to bind their successors in office (Morin v Foster, 45 NY2d 287, 408 NYS2d 387, 380 NE2d 217; 10 McQuillin, Municipal Corporations, §§29.100, 29.101). We have expressed the view that the function of publicizing a town, although having many traits of a proprietary activity, is basically governmental in nature (Opns St Comp, 1980, No. 80-671, as yet unreported). It is our opinion that the town may enter into a three year contract for services in connection with the bicentennial celebration so long as the contract does not bind a successor town board.

October 26, 1981

Mrs. Elizabeth McClave  
Town of Stephentown

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER  
ALBANY, NEW YORK  
12236

EDWARD V. REGAN  
STATE COMPTROLLER

Opns St Comp, No. 81-399

MUNICIPAL FUNDS - Expenditures - (funds for veterans' organization)  
Town charges - (funds for veterans' organization)

TOWN LAW, §§64(12), (13): Where a veterans' organization located in a town moves to an adjoining town, the town from which it moved may, if no other veterans' organization is located in the town, appropriate funds for the organization, up to \$500 annually, for the celebration of certain holidays if at least three residents of the town belong to the organization. The town may also appropriate up to \$50 annually for the organization for the cost of rent and maintenance of its meeting hall if at least five town residents are members of the post.

We have received an inquiry requesting our opinion as to whether a town is authorized to support a local American Legion Post with town funds if the Legion Post moves its meeting hall to a neighboring township. We have been advised by the town that no other veterans' organization is located in the town.

Town Law, §64(12) authorizes a town, in which there exists a local veterans' organization listed in the section, to appropriate up to \$500 annually for the purpose of defraying the expenses of certain holidays. The section also provides that in the case where a veterans' chapter is located in a town adjoining a town in which no chapter is located, the town having no chapter may appropriate funds, up to \$500 annually, for the chapter if at least three residents of the town are members. If, in the situation presented to us, the town is left with no other veterans' organization after the American Legion moves to an adjoining town, the town in question may still fund the post provided that at least three residents are members.

Pursuant to subdivision 13 of section 64, a town may also appropriate up to \$300 per year for each veterans' organization for the purpose of defraying the rental or maintenance costs of its meeting hall. Where a town has no veterans' organization

of its own it may appropriate up to \$50 for a chapter located in an adjoining town if the membership of such chapter includes at least five residents of the town having no chapter. Again, if in the situation presented to us, the town is left with no veterans' organization after the American Legion post moves to an adjoining town, the town may still fund the post, up to \$50 per year, for rent and maintenance if at least five residents of the town are members.

Therefore, it is the opinion of this Department that where a veterans' organization located in a town moves to an adjoining town, the town from which it moved may, if no other veterans' organization is located in the town, appropriate funds for the organization, up to \$500 annually, for the celebration of certain holidays if at least three residents of the town belong to the organization. The town may also appropriate up to \$50 annually for the organization for the cost of rent and maintenance of its meeting hall if at least five town residents are members of the post.

December 3, 1981

Mr. Harry R. Halldow, Supervisor  
Town of Williamson

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER  
ALBANY, NEW YORK  
12236

EDWARD V. REGAN  
STATE COMPTROLLER

Opns St Comp, No. 82-225

PARKS AND RECREATION -- (contract with town);  
(contributing funds to)

STATE CONSTITUTION, ARTICLE VIII, §1; GENERAL MUNICIPAL LAW, §95; EXECUTIVE LAW, §422(9): A municipality may contribute funds to a affiliated organization pursuant to an agreement whereby the organization is to run a portion of the municipal recreation program under the supervision and control of the municipality. The program must be a legitimate one instituted for the benefit of a municipality's residents and not a device to channel public money to a private organization. The determination as to whether a affiliated organization could enter into such an agreement is one best made by the officials of

We have received an inquiry requesting our opinion as to whether a town may contribute funds to a

. Both leagues are now affiliated with but in the past had no such affiliation and in fact were part of the town's recreation program. The town recreation department is willing to allow these leagues to continue to run the baseball and softball portions of its recreation program subject to the department's supervision and control.

This inquiry raises virtually the same questions as were considered in Opns St Comp, 1981, No. 81-211. We stated then that the position of this Office was that a municipality cannot make gifts of public funds to private organization, such as the , because Article VIII, §1 of the State Constitution prohibits gifts of public money to private entities. We also noted that there were circumstances under which a municipality may contract with a private organization to have it operate all or a portion of the municipal recreation program and that the contract could be with an established organization which provides some recreational programs open to the general public, although perhaps limited to certain age groups (see also, Opns St Comp, 1977, No. 77-886, unreported; 27 Opns St Comp, 1971, p 45; 25 Opns St Comp, 1969, p 240).

We further expressed the view that such a municipally-sponsored but privately operated program must generally remain under the supervision and control of the municipality and that such a program must be legitimately instituted for the purpose of providing recreation for town residents. We adhere to the positions noted above and from the information at hand believe the town in the present inquiry meets some of these requirements and is willing to meet the others.

However, in Opns St Comp, No. 81-211, supra, we also expressed a belief, and only a belief, that a affiliated organization could not enter into this type of recreation agreement because of certain restrictions in the Con-stitution and By-Laws. We take this opportunity to clarify and redefine our position on this point.

Certain provisions of the Constitution and By-Laws provide that regular members should not actively engage in the promotion and/or operation of any other baseball program (article III, §3) and further provide that the affiliates are to devote their entire energies to the activities authorized by their charters and shall not be affiliated with any other program or organization or operate any other program (article XI, §1). We accorded these provisions their apparent meaning and concluded they indicated a certain reluctance on the part of the to enter into an agreement with a municipality on the terms outlined above. However, we were not then nor are we now in a position to give an official interpretation of the constitution and by-laws of any private organization. The view expressed in Opinion No. 81-211 was for guidance only.

Nonetheless, the proper interpretation of the Constitution and By-Laws should come from

It may well be that the will interpret its constitution and by-laws as allowing municipal agreements wherein control and supervision is maintained by a municipal recreation department. Alternatively, the may be willing to waive the two provisions in a given instance, or it may be able to suggest a viable alternative. Then again it may be opposed to any agreement with a municipal recreation department. In any event, it is for the to determine whether or not it is able and willing to run a municipal recreation program on terms consistent with those expressed in Opns St Comp, No. 81-211.

To restate our position, a municipality may contribute funds to a affiliated organization pursuant to an agreement whereby the organization is to run a portion of the municipal recreation program under the supervision and control

of the municipality. The program must be a legitimate one instituted for the benefit of a municipality's residents and not a device to channel public money to a private organization. The determination as to whether a affiliated organization could enter into such an agreement is one best made by the officials of

August 5, 1982

Lewis C. DiStasi, Jr., Esq., Town Attorney  
Town of Lloyd

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

The name of a company, product, service, individual or private entity has been redacted from this opinion. It is the policy of the Office of the State Comptroller not to refer to a specific product, service, individual or private entity.