

Municipal Fundraising And Gifting

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TUG HILL COMMISSION

Dulles State Office Building

317 Washington Street

Watertown, New York 13601-3782

315-785-2380/2570 or 1-888-785-2380 fax: 315-785-2574

Email: tughill@tughill.org Website: <http://www.tughill.org>

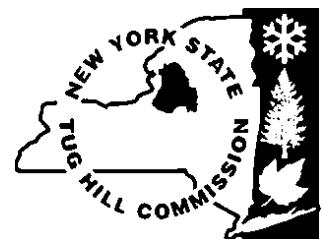


TABLE OF CONTENTS

INTRODUCTION	1
MUNICIPAL FUNDRAISING.....	1
MUNICIPALITIES MAY NOT SOLICIT GIFTS OR CONDUCT FUNDRAISING ACTIVITIES	1
EXAMPLES	2
ACCEPTING CONTRIBUTIONS OF MONEY	2
MUNICIPAL GIFTING: PAYMENTS TO OTHER ORGANIZATIONS OR ASSOCIATIONS	3
PATRIOTIC ORGANIZATIONS AND CAUSES.....	3
RECREATION AND THE ARTS.....	4
LITTLE LEAGUE	5
HISTORICAL ASSOCIATIONS AND EVENTS	5
APPENDIX.....	6
OPINIONS OF THE STATE COMPTROLLER	6

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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