Donations & Gifts

Question:

Can cities make donations or give gifts?

Discussion:

The issue is not whether it is okay to make a donation or give a gift, but whether an expenditure of public money serves a public purpose. If it is purely a charitable donation, it is prohibited by the Texas Constitution. If it is an expenditure of public funds for a public purpose, it is acceptable.

As a general rule, a gratuitous donation or gift by a city is prohibited by the Texas Constitution, art. III, §52, and art. XI, §3, which, in part, states that the legislature may not authorize any county, city, or other political subdivision of the state to lend its credit or grant public money or anything of value in aid of an individual, association or corporation. The purpose of these provisions is to prevent local governments from appropriating public money for private purposes.

However, the fact that private interests are incidentally benefited by a public expenditure does not invalidate an expenditure for a legitimate public purpose. In other words, if a city determines that an expenditure accomplishes a valid public purpose, the fact that one or more individuals or corporations might benefit does not invalidate the expenditure. The key question is whether a valid public purpose is being directly accomplished by the expenditure. Numerous courts have been asked to invalidate or uphold particular expenditures based on whether a public purpose was being served.

The determination of whether a particular expenditure accomplishes a public purpose must be made by the city council. Some expenditures, such as those for street repair or police protection are easily deemed to serve a public purpose, while others, such as contributing to “Meals on Wheels” or “Crimestoppers,” are more difficult. Cities may not expend public funds simply to obtain for the community the general benefits resulting from the operation of the corporate enterprise. City of Corpus Christi v. Bayfront Assoc., Ltd., 814 S.W.2d 98 (Tex. App.--Corpus Christi 1991, writ denied).

The council’s determination as to public purpose is subject to judicial review. However, if the council goes on record recognizing the expenditure as a valid public purpose, the courts are not likely to overturn that determination. Courts are hesitant to second guess the legislative determinations of local governments. Accordingly, in the absence of fraud on the part of the council, or a total lack of evidence that an expenditure serves a public purpose, a court is not apt to declare a particular city expenditure to be invalid.
Once a legitimate public purpose is identified, the city must consider whether contractual obligations or other forms of formal control are necessary in order for the the council to ensure that the city receives its consideration -- the accomplishment of the public purpose. Op. Tex. Att’y Gen. No. LO 94-008 (1994).

Summary:

The Texas Constitution does not absolutely prohibit cities from granting public money to private entities. The clear purpose art. III, § 52 and art. XI, § 3 is to prevent the gratuitous application of public funds for private use. Cities are free to make expenditures that *incidentally* benefit private interests so long as the expenditure is made for the *direct* accomplishment of a legitimate public purpose. In order to make such grants, city councils must determine: (1) whether a particular grant of money will serve a legitimate public purpose, and (2) whether the city has placed sufficient controls on the transaction to ensure that the public purpose will be carried out.

Examples:

(a) The inclusion of a single guest for each city employee at an employee awards banquet paid for by city funds is acceptable if the city determines that the goal of boosting employee morale and providing recognition to employees will be accomplished. Op. Tex. Att’y Gen. No. LO 88-94 (1994).

(b) The leasing of city property to a child care facility at less than fair market value is acceptable if the council determines that the lease serves a valid public purpose, such as improving employee performance by reducing absenteeism, tardiness, and turnover. *See* Op. Tex. Att’y Gen. No. JM-1156 (1990).

(c) The provision of fencing, portable toilets, and police protection for a festival presented by the chamber of commerce might be an acceptable exercise of a city’s police powers if such items are deemed necessary for the health and safety of the people attending the festival. *See* Op. Tex. Att’y Gen. No. JM-1199 (1990).

(d) The lighting of private streets might be acceptable if the city’s purpose is to light the city’s police and fire fighting easements as well as public utility easements so that residents of private streets are merely incidental beneficiaries. Op. Tex. Att’y Gen. No. LO 94-078 (1994).


(f) Cities cannot grant extra compensation to employees after their services have been rendered. *Faussett v. King*, 470 S.W.2d 770, 774 (Tex. Civ. App.--El Paso
1971, no writ). The fact that the city council budgets funds for merit raises does not
give the council authority to make individual raises retroactive. See Op. Tex. Att’y

(g) If cities want to provide a Christmas bonus, it is recommended that such
expenditures be provided for in annual budgets as part of broader compensation
policies that seek to encourage future productivity and increase morale.

Also, cities can implement prospective longevity pay policies that base the
amount of longevity pay on an employee’s total service, including service before the
longevity pay policies can include varying forms of compensation, some of which
could be payable in December and be referred to as a Christmas bonus.

(h) Cities cannot make outright gifts and donations to private entities, including
of Garland, 561 S.W.2d 260, 261 n.1 (Tex. App.—Tyler, 1978, writ ref’d n.r.e.).

(i) Cities cannot pay dues or provide rent-free office space to private
corporations such as chambers of commerce in order to secure the general benefits
that result from the encouragement of private industry. See Op. Tex. Att’y Gen.

Reviewed by:

TML Legal Department

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