



## To Give and Receive :: Municipal Donations

An issue that every single municipality has encountered at one point or another is the giving and receiving of donations. Though gifts are explicitly addressed in the

New York State Constitution, there are still a lot of grey areas that come with interpreting the appropriateness of gifts, particularly when it comes to municipalities making donations. When addressing a municipal gift question, one must look to the Gift or Loan Clause of the New York State Constitution and make an analysis on a case by case basis, as each situation presents unique facts.

### The Gift and Loan Clause

Article VIII, § 1 of the New York State Constitution, known as the Gift and Loan Clause, provides that:

No county, city, town, village or school district shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking . . . nor shall any county, city, town, village or school district give or loan its credit to or in aid of any individual, or public or private corporation or association, or private undertaking.

Reading the Constitution, it would appear that in no instance may a municipality give a gift of municipal moneys or property. However, municipalities are, in fact, permitted to gift their property or make donations, so long as the expenditure is for a proper municipal purpose and there is a contract in place ensuring

that the municipality will receive the benefit of the proper municipal purpose. The contract functions as a way to protect the municipality from making an illegal donation because, although a municipality is making a donation of its property, the contract elucidates that the donation in fact guarantees a benefit to the municipality in return. So long as a contract is in place, the analysis of whether a gift or donation is valid or not then turns upon what constitutes a proper municipal purpose.

### Giving Gifts: Municipal Donations

Of course, this then begs the question: what exactly constitutes a proper municipal purpose? Though the term appears to be quite vague, common law handed down from New York State courts and a slew of opinions from state agencies have provided much guidance in

this area. Analysis of such opinions leads to one common theme: a municipal donation must be beneficial to the public and in the public interest.

### Small Scale Donations - Proper Municipal Purpose

Questions often arise regarding whether a municipality may provide food and refreshments at municipal meetings and dinners. There are times when this is appropriate. For instance, a municipality may hold an annual dinner meeting honoring unsalaried members of public boards as a token of appreciation for their service.<sup>1</sup> This is in the public interest and constitutes a proper municipal purpose because it encourages citizens to continue to sit on such boards. However, the expenditure for a dinner must be reasonable and only the meals of the unsalaried board members being honored may be paid for.<sup>2</sup>

Additionally, a municipality is permitted to authorize reimbursement for meals consumed at a business luncheon or dinner if such business discussed promotes a valid municipal purpose.<sup>3</sup> A city or village may also provide refreshments for the general public at official municipal functions.<sup>4</sup> This is such because the expenditure for refreshments is incidental to the effectuation of the lawful municipal purpose of holding such functions.<sup>5</sup>

### **Large Scale Donations - Proper Municipal Purpose**

The cost of refreshments and business luncheons and dinners are typically a nominal cost to the municipality, especially in light of the reasonable expenditure requirement that is imposed on such undertakings. However, municipal donations on a larger scale can also be proper, so long there is a contract and the donation serves a valid public purpose. For example, a municipality may donate a school building it acquired to a not-for-profit corporation that will utilize the building for low and moderate income elderly housing. Even though it is a large scale donation, the intended use of the property serves a valid public interest, as donations that promote subsidized housing are well-established as providing benefits to the community.<sup>6</sup>

Along those same lines, a municipality may donate real property to a not-for-profit corporation formed to build affordable housing for first-time buyers.<sup>7</sup> This is permissible even though a private group may receive an incidental benefit. A municipal donation that benefits a private group is constitutional so long as the private benefit is incidental to the public benefit.<sup>8</sup> In this situation, the donation serves a valid public interest in that it makes housing available to first-time home buyers whose housing needs would not otherwise be met.

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Additionally, a municipality is permitted to donate a parcel of land that will provide for the construction of a library, so long as the board makes an explicit finding that the library will provide library services to residents of the municipality and the board includes an express condition that the land be used for library purposes in the conveyance.<sup>9</sup> Donating land for the construction of a library promotes the proper municipal purpose of education and community involvement and, as such, is a constitutional donation.

### **Illegal Municipal Donations - No Proper Municipal Purpose**

Donations to worthy causes and charity in general are often viewed in a positive light. However, when it is the municipality making the donation such charity must be viewed with a more critical eye, because the funds that are being donated are public moneys and, unless the donation has a proper municipal purpose, the municipality cannot donate funds to causes or charities that it deems worthy. While a municipal board may determine that a certain organization is entitled to a donation, taxpayers may disagree- which is why a proper municipal purpose is essential when making a donation.

In analyzing the common law and agency opinions, it is clear that if a donation is made to a private entity, it is likely to be found unconstitutional unless there is a clear public benefit that stands as the main component of the donation. For instance, a municipality cannot donate funds to defray the start-up costs of a private day care center, even though the day care center would

serve the residents in the municipality.<sup>10</sup> Nor may a city or village donate money to a not-for-profit that provides hot meals to the elderly.<sup>11</sup>

Additionally, a donation to a parochial school to fund a symposium on teen bullying is unconstitutional.<sup>12</sup> Though the topic may be beneficial, the character of the donation imposed a private benefit, with any benefit to the public being incidental to such donation, thereby causing the donation to fail the proper public purpose test. However, it should be noted that the State Comptroller has indicated that if the municipality had entered into a contract with the school to conduct a symposium on bullying, the expenditure would constitute a proper public purpose.

It has often been stated that promoting tourism of a municipality is a proper public purpose.<sup>13</sup> However, municipalities have donated funds to a source that is designed to promote tourism, only to later find that such a donation was an unconstitutional gift. For instance, a municipality sought to donate monies to a project to reconstruct a dam owned by a private entity. The municipality reasoned that if the dam was not reconstructed, a lake that was a popular fishing site for tourists could potentially be affected. In this instance, the municipality failed to show that the potential lower levels of the lake would affect the fishing in the area and, as such, a donation to reconstruct the dam would be unconstitutional, as improvements to private property without any demonstrated public benefit are rarely, if ever, permissible.<sup>14</sup> If the municipality could have demonstrated that failure to reconstruct the dam would have led to decreased tourism, the State Comptroller's Office may have concluded that the funds were used for a proper municipal purpose.

Another method of promoting tourism used frequently by municipalities is the holding of parades,

conventions or other celebrations. Though a city or village may appropriate and expend funds for a parade, it is unconstitutional to donate funds to a private organization for use in such parades and conventions.<sup>15</sup>

### **Conclusion**

When contemplating a municipal donation, ensure that all of the relevant factors for a constitutional donation are considered: a contract is in place ensuring that the municipality receives a public benefit; the main benefit of the donation is public, not private; it is for a proper municipal purpose; and it serves the public interest. If you have any questions regarding municipal gifts and donations, please contact NYCOM Counsel, Katie Hodgdon at (518) 463-1185 or by email at [katie@nycom.org](mailto:katie@nycom.org).

#### Endnotes

1. See 1980 Ops St Comp No. 80-282.
2. See 1981 Ops St Comp No. 81-775.
3. See 1982 Ops St Comp No. 82-213.
4. See 1979 Ops St Comp No 79-902.
5. See 1988 Ops St Comp No. 88-4.
6. See 1987 Ops Atty Gen No. 87-12.
7. See 1988 Ops Atty Gen No. 88-75.
8. See 1988 Ops Atty Gen No. 88-75.
9. See 1994 Ops Atty Gen No. 94-19.
10. See 1984 Ops St Comp No. 84-15.
11. See 1979 Ops St Comp No. 79-37.
12. See 2005 Ops St Comp No. 05-06.
13. See *Froslid v Hults*, 20 AD2d 498 (1964).
14. See 2002 Ops Atty Gen No. 2002-17.
15. See 1981 Ops St Comp No. 81-132.