

## Determining Lawful Expenditures

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This narrative is intended as a reference for local government officials, employees and governmental auditors of selected references to the Michigan Constitution of 1963, court decisions, opinions of the attorney general and Michigan statutes that address some of the questionable expenditures of local government. This narrative should not be considered a legal opinion of the statutes, court decisions or opinions of the attorney general. Please consult your legal advisor if a legal opinion is needed.

### **BASIC PREMISE OF LOCAL GOVERNMENT**

Some of the basic guidelines and legal restrictions imposed on local governments are summarized in the following legal citations. This listing is not complete, but does highlight the basic restrictive authority granted to Michigan's local units of government.

### **CONSTITUTIONAL PROVISIONS--MICHIGAN CONSTITUTION OF 1963**

(a) Each organized township shall be a body corporate with powers and immunities provided by law (Art. 7, Sec. 17).

(b) 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 (Art. 7, Sec. 21).

(c) Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section (Art. 7, Sec. 22).

(d) 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 (Art. 7, Sec. 26).

(e) 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 (Art. 7 Sec. 32)

(f) The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution (Art.7, Sec. 34).

(g) 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 (Art. 9, Sec. 18). (NOTE: The Supreme Court in the decision of Black Marsh Drainage District v. Rowe [1958], 350 Mich. 470, held that this provision applies to all political subdivisions of the state.)

(h) Neither the legislature nor any political subdivision of this state shall grant or authorize extra compensation to any public officer, agent or contractor after the service has been rendered or the contract entered into (Art 11, Sec. 3).

### **SUPREME COURT DECISIONS**

(a) Local governments have no inherent powers and possess only those limited powers which are expressly conferred upon them by the State Constitution or State statutes or which are necessarily implied therefrom (Hanselman v. Killeen [1984] 419 Mich. 168).

(b) A county is a municipal corporation and possesses only those powers which have been conferred upon it by the Constitution and the statutes (Mosier v. Bd. of Auditors 295 Mich. 27, 29).

(c) Local units of government derive their powers of taxation from the legislature and such power cannot be exercised except in pursuance of express statutory authority (City of Berkley v. Township of Royal Oak [1948] 320 Mich. 597).

### **OPINIONS OF THE ATTORNEY GENERAL**

(a) Appropriation of township funds which is not expressly authorized or necessarily implied with express statutory powers is unlawful whether with or without a vote of the township electors (Opinion of the Attorney General, 1955-56, No. 1704, page 32). The general belief is that an illegal or unauthorized expenditure of governmental funds by any local governmental unit can not be changed to a legal or authorized expenditure by a vote of the electors.

(b) City funds may not be used for contributing to the expenses of private voluntary groups operating recreation facilities for children (Opinion of the Attorney General, 1957, No. 3066, page 476).

(c) Village has no authority to appropriate public funds for lighting a recreation field controlled by a veterans' organization even though the entertainment provided therein were free to the public (Opinion of the Attorney General, 1935-36, page 5).

(d) Since money can be raised by a township only for township purposes, township cannot pay part of the expenses of a county children's worker (Opinion of the Attorney General, 1947-48, No. 694, page 574).

(e) Appropriation of money by township for construction, improvement or maintenance of state trunk lines is ultra vires and such spending is misappropriation of funds (Opinion of the Attorney General, 1952-54, No. 1738, page 285).

These legal citations specify that a local government unit and the officials of local governments have only those duties specifically granted to them by the Michigan Constitution and statutes. If the action to be taken is not specifically authorized by the Constitution, a statute, court decision or legal opinion, that action can not be legally executed.

Provisions specified in a local unit's Charter or Ordinance, legally adopted by vote of the electorate or approved by the legislative body after publication, must be followed when those procedures are more restrictive than the general statute.

### **General Budget Provisions**

Michigan Compiled Law (MCL) section 141.412 requires that a public hearing be held on the proposed budget prior to the legislative body formally adopting the budget. The time, date and location of the public hearing must be published at least six days prior to the hearing. Copies of the proposed budget must be available for public inspection from the date the notice of the public hearing is published and thereafter.

Specific budget procedures for charter townships are required by MCL 42.24 through 42.27. Charter township budgets must be adopted at least 60 days prior to the start of their fiscal year and after a public hearing notice published at least 7 days prior to the date of the public budget hearing. Cities and Villages may have Charter Provisions or Local Ordinances requiring specific budgetary procedures. The local procedures must be followed when they are more restrictive than the general statute.

MCL 141.421 et seq.--"Uniform Budgeting and Accounting Act"--requires a local unit to adopt a General Appropriation Act (approved budget) after a public hearing.

Expenditures can not exceed the amount authorized in the Appropriation Act unless the local Appropriation Act is amended. Expenditures can not be authorized unless that are provided for in the Appropriation Act.

Expenditures can not be authorized that exceed the amount appropriated or in excess of the available funds as that action creates a debt against the unit or a deficit within the fund.

The Appropriation Act may include a narrative authorizing the fiscal officer to make transfers between activities, cost of personnel, capital outlay or other budgetary action authorized by the legislative body.

Authorized expenditures in excess of or contrary to the Appropriation Act (budget) can be recovered by civil proceedings brought by the Attorney General or prosecuting attorney (MCL 141.420).

Any budgetary procedure specified in a Charter or Ordinance of a local unit that is more restrictive than the general statute must be followed.

### **Paying Claims--vendor bills**

CITIES (MCL 87.7) All claims against the city shall be filed with the clerk for adjustment, and after examination thereof, the clerk shall report the claims with all accompanying vouchers and counter claims of the city, and the true balance as found by the clerk, to the council for allowance, and when allowed shall draw the city warrant upon the treasurer for the payment thereof, designating thereon the fund from which payment is to be made.

(MCL 88.20) The council shall audit and allow all accounts chargeable against the city but no account or claim or contract shall be received for audit or allowance, unless it shall be accompanied with a certificate of an officer of the corporation (city), or an affidavit of the person rendering it, to the effect that he verily believes that the services therein charged have been actually performed or the property delivered for the city, that the sums charged therefore are reasonable and just, and that no set-off exists, nor payment has been made on account thereof.

COUNTIES [MCL 46.11(q)] and (MCL 46.71) It shall be the duty of the county board of commissioners or county auditors to adjust, allow and authorize the payment of all claims against the county. Any claim not adjusted or ordered paid shall not be paid.

Exceptions (MCL 46.53) This section authorizes the county board of commissioners in counties with less than 75,000 population to provide by resolution for the appointment of a finance committee. When the statutory committee is appointed, the finance committee approves all claims.

Exceptions (MCL 46.63) This section authorizes the county board of commissioners in counties with not less than 75,000 population to provide by resolution for the appointment of a finance committee. When the statutory committee is appointed, the finance committee audits all claims. Approval for payment by the county board of commissioners after audit by the finance committee.

TOWNSHIPS (41.75) The township board shall approve claims against the township and authorize payment of allowed claims. Paid claims are filed and preserved by the township clerk. The treasurer shall pay claims upon order of the township board, signed by the clerk.

VILLAGES (MCL 65.7) Council to audit and allow all accounts chargeable against the village; but no account or claim or contract shall be received for audit or allowance, unless it shall be accompanied with a certificate of an officer of the corporation, or an affidavit of the person rendering it, to the effect that he verily believes that the services therein charged have been actually performed or the property delivered for the village, that the sums charged therefore are reasonable and just, and that to the best of his knowledge and belief, no set-off exists, nor payment has been made on account thereof.

**NOTE:** Some volunteer fire departments, parks departments and similar governmental functions performed by a group, committee or agency of a local unit are paying their claims without the prior approval of the legislative body, which is improper. Unless the agency (fire, parks etc) is a statutory authority with the authority to approve its own claims for payment, its claims must be approved by the legislative body. In some circumstances, we have found that the legislative body has turned a tax levy over to a volunteer group or department to expend as the department or group deem necessary, which is also improper. In most circumstances, the taxing authority is with the unit of government and the levy is to provide specified services. The local unit must establish a fund, prepare a budget and when appropriate, should contract with the department or group to provide the service for a specific dollar amount.

### **Special Statutory Expenditure Provisions**

#### **Advertising the Agricultural, Industrial, Commercial, Educational or Recreational Advantages of the State, County or Local Unit.**

COUNTIES (MCL 46.161) by special tax levy or general fund appropriation

CITIES & VILLAGES (MCL 123.881) from a specific tax levy

TOWNSHIPS (MCL 41.110c) by appropriation

### **Places of Recreation, Parks.**

COUNTIES (MCL 46.351) County board to appoint commission to operation parks and places or recreation. County commissioners set policy, approve budget, debt, tax levy.

(MCL 123.61 et seq.) To authorize county expenditures for parks, recreational facilities and airports to townships, cities and villages to operate and maintain. We recommend that they have a written contract or letter which specifies procedures, limits, financial reporting, audits, etc.

CITIES & VILLAGES (Constitution: Art. 7 Sec. 23) Any city or village may acquire, own, establish and maintain, within or without its corporate limit, parks, boulevards, cemeteries, hospitals and all works which involve the public health or safety.

(MCL 41.428) may appropriate to a township to acquire and operate free recreational facilities. Contributions to be made to the township park commission.

TOWNSHIPS (MCL 41.421 et seq.) Townships may establish a park commission to acquire, maintain, manage and control township parks and recreational facilities.

CITY, VILLAGE, COUNTY OR TOWNSHIP (MCL 123.51) may operate a system of public recreational facilities.

### **Armistice, Independence, Memorial Days, Diamond Jubilee or Centennial Celebrations**

CITY, TOWNSHIP OR VILLAGE (MCL 123.861) may expend money for observances, under the control of the governmental unit, to celebrate armistice, independence, memorial days, diamond jubilee or centennials. These claims shall be paid in the same manner as other expenses of the unit.

### **Armistice Day**

COUNTIES (MCL 46.11a) County board of commissioners are authorized to appropriate such sum as they deem fit for public celebration on Armistice Day, in a matter the board may determine.

**NOTE:** It is improper for a unit of government to expend public money for an annual picnic, golden jubilee or other celebration that is not specifically authorized by law.

### **Community College Maintained by a School District**

COUNTY, TOWNSHIP, OR OTHER GOVERNMENTAL UNIT (MCL 380.1607) by action of its governing body may contribute annually towards the support of a community college maintained by a school district.

### **Libraries**

- CITY, TOWNSHIP OR VILLAGE (MCL 397.201 et seq.) may establish and maintain a public library.
- CITY may, without vote of the electorate, levy one mill for the library.
- CITY, TOWNSHIP OR VILLAGE, after voter approval, may levy up to two mills to establish, operate and maintain a library.
- COUNTY LIBRARY (MCL 397.301)
- SCHOOL LIBRARIES-- Under boards of education (MCL 397.261 et seq.)

NOTE--Several other statutes may authorize contributions to established libraries for library services to its inhabitants or the consolidation of library services.

REGIONAL LIBRARIES (MCL 387.151 et seq.)

DISTRICT LIBRARIES (MCL 397.171 et seq.)

LIBRARY NETWORK ACT (MCL 397.131 et seq.)

### **Hospitals**

COUNTY (MCL 331.151) May establish and operate a county hospital after vote of the electorate.

PROHIBITED from contributing to a private, nonprofit corporation operating a hospital. (AGO 4851 dated Nov. 4, 1974)

May contract for services (AGO 5083) with a private, nonprofit corp. to provide health or welfare services to persons who are the proper concern of the county pursuant to guidelines and where final authority to take discretionary action remains with the public body.

COUNTY, CITY, VILLAGE (MCL 331.1101) Municipal Health Facilities Corporations Act--County board, city or village council may incorporate 1 or more corporations under this act. **NOTE** A health care corporation established under this act is a discretely presented component unit of the incorporating unit.

Joint Municipal (Community) Hospitals--(MCL 331.1 et seq.) Two or more CITIES, TOWNSHIPS AND VILLAGES, or any combinations may incorporate a hospital authority to establish, expand and or operate a hospital or health care facilities.

TOWNSHIP (MCL 41.712) board may, by majority vote, pay from unexpended balances in its contingent fund to any hospital, a sum that fairly represents the reasonable share of the township in the maintenance and support of the hospital whose facilities are made available to the residents of the township at standard rates. However, the hospital and township board shall agree upon the number of residents of the township to which the hospital shall make facilities available during each year.

#### **Historical Activities, Commissions, Districts**

TOWNSHIPS (MCL 399.161) may appropriate money that the town board believes advances and fosters historical interests of the township.

CITIES, COUNTIES, TOWNSHIPS and VILLAGES (MCL 399.171) (Historical Commissions) may individually or jointly appropriate money to or by ordinance, create a commission to advance the historical interests of the unit or units.

CITY, COUNTY, TOWNSHIP or VILLAGE (MCL 399.201) may, by ordinance establish historical districts and a commission to preserve and refurbish historical structures.

#### **Juvenile Delinquency--Curbing**

CITY, COUNTY, TOWNSHIP, or VILLAGE (MCL 123.461) may levy taxes and appropriate funds for operating centers open exclusively to youths under 21 years of age and aimed at curbing juvenile delinquency within the community. May require a vote of electors.

#### **Economic Development**

COUNTY (MCL 125.1231) commissioners may create a county commission to promote economic development and provide in the county budget for the expenses of the commissions.

CITY, COUNTY, TOWNSHIP or VILLAGE (MCL 125.1601) may approve an application to incorporate an economic development corporation, file articles of incorporation and fund projects of said EDC, which are for a public benefit and as approved by the legislative bodies.

#### **Installment Purchases**

CITY, TOWNSHIP, or VILLAGE (MCL 123.721) may enter into a agreement with the contractor or vendor to purchase land, buildings or equipment for a period not to exceed 15 years or the life of the item purchased and pay installments. The liability for such purchases, exclusive of interest shall not exceed 1 and 1/4 percent of the units State Equalized Assessed Value. The purchases must be for a public purpose, within the unit's budgetary appropriations and without the prior approval of the Michigan Municipal Finance Commission. Otherwise a unit of government cannot borrow without the prior approval of the Municipal Finance Commission.

COUNTIES (MCL 46.11b) may purchase and pay in installments for a period not to exceed 10 years or the life of the item purchased. The liability shall not exceed 1/2 of 1 percent of the SEV. The county can

not levy a tax to pay the principal or interest. Special provisions apply for a few purchases that can be extended for a period of not to exceed 15 years. (see statute)

ROAD COMMISSIONS (COUNTY) (MCL 224.10) may enter into a contract or agreement for the purchase of machines, tools, appliances and materials (excludes buildings and land) to be used for public purposes that are paid for in installments over a period not to exceed 5 years or the useful life of the property acquired, whichever is less.

#### **Urban Cooperation Act**

CITY, COUNTY, TOWNSHIP, CHARTER TOWNSHIP or VILLAGE (MCL 124.501) may exercise jointly with any other public agency of the state, any other state, or public agency of the Dominion of Canada or the US Government, any power, privilege or authority which such agencies share in common and which each might exercise separately.

#### **Intergovernmental Transfer of Functions and Responsibilities**

CITY, VILLAGE, OTHER INCORPORATED POLITICAL SUBDIVISION, COUNTY, SCHOOL DISTRICT, COMMUNITY COLLEGE, INTERMEDIATE SCHOOL, TOWNSHIP, CHARTER TOWNSHIP, SPECIAL DISTRICT or AUTHORITY (MCL 124.531) Any two or more political subdivisions are authorized to enter into a contract with each other providing for the transfer of functions or responsibilities to one another or any combination thereof upon the consent of each political subdivision involved.

**NOTE** Several other specific statutes authorize the joint operations of sewer, water and other public functions by governmental units.

#### **Tax Tribunal (SEV) Appeals**

COUNTY and all SCHOOL BOARDS [211.44(3)] may contribute to the defense of tax tribunal issues defended by a local tax assessing unit to the extent that the cost of the appeal exceeds 1 percent of the administration fee available to the tax assessing unit.

#### **Senior Citizens/Older Persons**

CITY, COUNTY, TOWNSHIP or VILLAGE (MCL 400.571) authorizes a legislative body to appropriate funds to a public or private non-profit organization for the purpose of providing services to older persons 60 years or older. Appropriations to a private organization must be specified in a contract. The terms of the contract must be published within 10 days of its approval in a local newspaper specifying the terms of and services to be performed.

#### **COFFEE/MEALS**

The purchase of coffee, donuts and sandwiches first must be for a public, not an individual or private group or purpose. These expenditures for use at a regular or special meetings, for fire fighters, volunteer or full time employees, when working an extended period of time or when dedicating public buildings are normally considered expenditures for a public purpose.

Coffee and donuts for employees use during normal working hours is considered personal, not for a public purpose, and improper unless specifically provided for in a collective bargaining agreement or duly adopted employment policy of the governmental unit (fringe benefit).

#### **RETIREMENT/RECOGNITION FUNCTIONS**

Retirement functions, gifts or plaques for employees or officials, recognition dinners for volunteer fire fighters or ambulance staff are usually not for a public purpose, therefore not an allowable expense. Travel and meals as part of the cost of training volunteers to perform emergency services within the township are deemed a public purpose, payable as a expense when properly budgeted, authorized and approved.

A TOWNSHIP board may, by resolution, establish retirement, health, life and/or accident insurance benefits for township officials and employees. (MCL 41.110b) The board may provide that officials or employees pay a portion of the premium and deduct that cost by payroll deduction.

COUNTY RETIREMENT (MCL 46.12a) County commissioners may by resolution establish retirement systems.

ALL LOCAL UNITS (MCL 38.1501 et seq.)

### **LEGAL EXPENSES**

A governmental unit is not authorized to expend public money to assist residents with legal cost in defending the home owners from possible civil action by a neighboring city to condemn their property for public use by the city. We are unable to see a "public purpose" for the township in this expenditure. Also this expenditure may be prohibited under the provisions of Article 9, Section 18 of the 1963 Michigan Constitution that prevents a governmental unit from lending its credit to the aid of any person, association or corporation, public or private, except as authorized in the Constitution.

### **OTHER LAWFUL EXPENDITURES**

Contracts with public or private, profit or nonprofit organizations for a specific public service or benefit that the unit can legally perform and money is available within the budgeted appropriations. These may include contracts for fire protection, ambulance service, assessing and tax collections, trash/rubbish collections, employee benefits, etc. Contracts should address financial reporting, auditing, review of records and related matters.

Membership dues to governmental associations as MTA, MML, MAC, and similar organizations that advise, inform and educate officials and employees. (See court decision Hayes v City of Kalamazoo, 316 Mich. 443).

Meals and refreshments during extended working hours for emergency services by firefighters, police officers and for authorized seminars of an educational nature to officials and employees.

Registration fee, lodging and travel for attendance at useful public informational or educational workshops and seminars.

### **UNLAWFUL EXPENDITURES BY A GOVERNMENTAL UNIT**

Contributions or appropriations which are not specifically authorized by the Constitution or State Statute cannot be authorized regardless of the worthiness of the cause. Examples of such prohibited expenditures where there is no contract for specific services to lawful wards or functions of the local unit have been negotiated are as follows:

- Contributions to churches, veterans, 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.
- Donations to community organizations.
- Expenses for private road construction or maintenance.
- Office refreshments, picnics.
- Presents to officials and employees or retirement recognition events.
- Flowers to the sick or departed.
- Mileage of officials and employees to and from their residence to the city, township or village hall, county building or meeting rooms.
- Per diem compensation to township supervisor, clerk and treasurer on a salary basis for attending township board meetings. (Check City and Village Charters for their compensation procedures or restrictions) Extra compensation for summer tax collections unless part of the initial salary resolution or authorized within statutory procedures for an increase in salary.
- Extra compensation for special elections unless part of initial salary resolution or authorized under statutory procedures for an increase in salary.

The foregoing is not intended to be an exhaustive list of legal or illegal expenditures, but is an attempt to explain the most common questions and concerns raised on these issues.

We again advise that this information consists of a narrative addressing a few legal citations concerning governmental expenditures. It is intended for training purposes only and should not be considered a legal interpretation of the items presented. Please consult your legal advisor if a legal opinion is needed.

Personnel from our office are available to assist you.

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