

MEMORANDUM

TO: Edgar County Watchdogs
FROM: Tyson Manker, Attorney at Law
RE: Shelbyville Township Donations
DATE: March 6, 2017

Question Presented

Does Illinois law permit the Township of Shelbyville to donate public funds to private individuals and organizations to provide certain public services?

Short Answer

Yes, so long as the expenditures are made (1) ***in cooperation with another governmental entity, not-for-profit corporation, or nonprofit community service association***, 60 ILCS 1/235-5(6); and (2) ***to provide services to the residents of the township***, a list of which are enumerated by statute. 60 ILCS 1/85-13

Statement of Facts

According to published financial records, public officials in the Illinois township of Shelbyville have authorized a number of direct donations to private individuals and organizations. According to the Township's financials, donations have been given totaling the following amounts: (FY 2012-13) **\$13,234.33**; (FY 2013-14) **\$19,000.00**; (FY 2014-15) **\$26,500.00**; (FY 2015-16) **\$34,300.00**, for a four-year total of **\$93,034.33**.

Legal Discussion

Illinois Constitution

Art. VIII, Sec. 1 of the Constitution of the State of Illinois clearly states, "Public funds, property or credit ***shall be used only for public purposes***." Ill. Const. 1970, art. VIII, § 1

What constitutes a legitimate public purpose, however, is often unclear. "It may be impossible to clearly delineate the boundary between what constitutes a legitimate public purpose and a private benefit with no sufficient, legitimate public purpose to support it." *Southwestern Ill. Dev. Auth. v. National City Environmental*, 768 N.E.2d 1, 8, 199 Ill.2d 225 (Ill. 2002) "Each case turns on its own facts." *Berman v. Parker*, 348 U.S. 26, 32 (1954).

Illinois Township Code

The Township of Shelbyville derives its authority to tax and spend from the Illinois Township Code. 60 ILCS 1/ et seq.

Section 235-5 of the Code enumerates specific public purposes for which township boards can "raise money, by taxation." 60 ILCS 1/235-5

Relevant to your inquiry, subsection (6) allows the expenditure of taxpayer funds by township boards for "**Providing services in cooperation with another governmental entity, not-for-profit corporation, or nonprofit community service association under Section 85-13.**" 60 ILCS 1/235-5(6)

As a threshold requirement, subsection 6 first mandates that the township's public services be provided "in cooperation with" one or more external organizations.

Three distinct types of organizations are legally authorized to receive public funds to provide services: (1) another governmental entity; (2) a not-for-profit corporation; or (3) nonprofit community service association. Individual citizens are not authorized under this subsection to receive public funds to provide public services.

It is important to note that before "a private not-for-profit corporation or community service association" can become eligible to receive public funds from Shelbyville township, it "shall have been in existence at least one year before receiving the funds." 60 ILCS 1/85-13(b)

Next, Section 85-13 enumerates specific services that Shelbyville township is authorized to provide in cooperation with another governmental entity, not-for-profit corporation, or nonprofit community service association. 60 ILCS 1/85-13

In furtherance of its goal of providing public services in cooperation with an authorized outside organization, the township board can either "expend funds directly" or "enter into any cooperative agreement or contract with [the] governmental entity, not-for-profit

corporation, non-profit community service association, or [not previously listed, a] for-profit business entity.”

Whether expended directly or through a cooperative agreement or contract, Section 85-13 gives the township board broad discretion to expend public funds on anything considered “ordinary and necessary maintenance and operating expenses,” but only for a limited number of public services: (A) Public Safety; (B) Environmental Protection; (C) Public Transportation; (D) Health; (E) Recreation; (F) Libraries; (G) Social Services for the Poor and Aged.

Whatever the justification given, taxpayer revenues must only be spent for public purposes. As explained by the Illinois Supreme Court in *People Ex Rel. City of Urbana v. Paley*, 68 Ill. 2d 62, 368 N.E.2d 915 (1977) “It has long been held that the imposition of a tax for other than a public purpose constitutes a violation of the due process clause of the fourteenth amendment to the Federal Constitution (*Green v. Frazier*, 253 U.S. 233, 64 L. Ed. 878, 40 S. Ct. 499), and of the Illinois Constitution ... (*Cremer v. Peoria Housing Authority*, 399 Ill. 579).”

Analysis

As our highest courts have recognized, ascertaining the difference between what is a legitimate public purpose and what is an impermissible private benefit can prove difficult.

Over a four-year period, Shelbyville officials authorized a total of \$93,034.33 of what appear to be direct donations to finance public services: (FY 2012-13) \$13,234.33; (FY 2013-14) \$19,000.00; (FY 2014-15) \$26,500.00; (FY 2015-16) \$34,300.00. Some of these donations may be legally permissible, while others are not as clear.

The law allows Shelbyville Township to expend taxpayer revenues, either directly or through agreement or contract, to provide certain public services in cooperation with another governmental entity, not-for-profit corporation, or nonprofit community service association.

If the township has met these threshold requirements, then the three \$5,000.00 donations to “Senior Citizens” are most likely a permissible local use of public tax funds under the authority of providing “social services for the poor and aged.” 60 ILCS 1/85-13(1)(G) Similarly, three \$1,500.00 donations to “Cystic Fibrosis” are most likely permissible “Health” services if such services are administered locally for the benefit to taxpayers. 60 ILCS 1/85-13(1)(D).

Conversely, unless she is operating a “for profit business entity” capable of providing public services, there does not appear to be any legitimate legal authority for the \$1,000.00 donation given to Penny Standerfer, a private individual, in Fiscal Year 2013-14.

In addition, while a number of donations seem like permissible ***"Recreation" services***, (i.e. FY 2015-16 contributions to MJH Wrestling Fund, Shelbyville JFL, Boys Baseball, Football, Girls Softball, Post Prom, etc.), it is unclear how these activities rise to the level of public services, as well as what statutorily-required organizations are assisting in cooperation.

Plus, picking certain activities and clubs inevitably excludes others, which could create the appearance of a private benefit and invites the possibility of claims of Due Process and Equal Protection violations. Taxpayers may also unknowingly be financing activities and clubs for non-residents who commute to Shelbyville Township.

Conclusion

Shelbyville Township is legally permitted to use taxpayer funds to finance public services in cooperation with another governmental entity, not-for-profit corporation, or nonprofit community service association. Stand-alone donations are not authorized.

With the provided information, it remains unclear as to what level of cooperation, if any, exists between Shelbyville Township and "another governmental entity, not-for-profit corporation, or nonprofit community service association" to deliver public services. As such, township officials who authorized donations of public revenues should clarify how they are cooperating with other organizations, and what "public services" were provided by their donations.

Ultimately, the question of whether *legally permissible* donations made by Shelbyville Township officials provide a legitimate public service worthy of support with taxpayer revenues is a political question that can only be answered by voting residents of Shelbyville.

In other words, if the people of Shelbyville don't approve of the way their elected officials are spending their hard-earned tax dollars, they should vote in new officials.

I hope this clarifies your inquiry. Please contact me if you have any additional questions.

Best Regards,

/S/

Tyson Manker

Attorney at Law

P.O. Box 203

Jacksonville, IL 62651

tyson@mankerlaw.com