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September 6, 2017

Laura J. Morask
Supervisor
Maine Township
1700 Ballard Road
Park Ridge, Illinois 60068-1006

Re: Interactions between Maine Township's General Assistance Office and
Maine Township's Emergency Food Pantry

Dear Supervisor Morask:

I am writing in response to your request for my opinions with respect to questions which have been raised regarding certain interactions between Maine Township's General Assistance Office and Maine Township's Emergency Food Pantry.

(A) Factual Background

As I understand them, the pertinent facts are as follows.¹ Since 1981 Maine Township ("Maine") has operated an Emergency Food Pantry ("Pantry") which provides foodstuffs on an emergency basis to persons residing in the greater Maine area.² At present, Maine's General Assistance Office ("GAO") annually finances the Pantry with General Assistance ("GA") funds in return for the Pantry providing foodstuffs to persons approved for GA (GA recipients)

¹ Needless to say, should the facts be other than as I understand them my opinions might be altered.

² As I understand it, to receive Pantry assistance on a continuing basis a person must reside in Maine. A township board has the authority to expend general township funds to establish, operate and maintain a food pantry. (See 60 ILCS 1/85-13(a)(1)(D) (West Supp. 2017) (a township board may expend township funds to provide township residents with health related services)).

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by the GAO.³ Recently, the Maine Township Supervisor ("Supervisor") hired a former Maine elected official for a part-time position in the Pantry without conducting a job search.

As I understand it, the following questions have been raised relating to the interactions between the GAO and the Pantry. First, is the use of GA funds to finance the Pantry legally permissible? Second, may the Supervisor lawfully hire GAO employees without a job posting, search or advertising? Finally, may the Supervisor direct employees of the GAO to staff or work in the Pantry?

In my opinion, under the factual circumstances as I understand them, the answer to all such questions is, "Yes."

- (B) Under the factual circumstances as related, GAO financing of the Pantry constitutes the providing of "financial aid" within the meaning of the Public Aid Code and is legally permissible

As I understand it, the principal contention asserting that GAO funding of the Pantry through the use of GA funds is impermissible is that under the Illinois Public Aid Code ("PAC") GA funds may only be used to provide "financial aid" to GA recipients and that the use of GA funds to finance the providing of foodstuffs by the Pantry to GA recipients does not constitute "financial aid" within the meaning of such term as used in the PAC. In my view, such contention is incorrect.

Section 6-1 of the PAC provides, in pertinent part, that "(f)inancial aid (GA) in meeting basic maintenance requirements shall be given (by units of local government subject to this) . . . Article to or in behalf of persons who

³ I am unaware how long such arrangement has been in place. As I understand it, at present the Pantry is funded solely through monetary and in-kind donations and the GAO, with the 2017-18 Maine budget and appropriations ordinance appropriating \$ 50,000 out of the GA Fund for "Food Pantry Cash Donations". (See <http://www.maintownship.com/government/budget.pdf> (last accessed Sept. 4, 2017)).

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meet the eligibility conditions (set forth hereinafter)."⁴

Section 2-6 of the PAC provides that "financial aid" is "(a) money or vendor payment to or in behalf of a recipient for basic maintenance support or medical assistance provided under Articles III, IV, V, and VI (GA)."⁵ In short, "financial aid" for basic maintenance support may be provided either *via* money or vendor payment. And Section 2-5 specifies that a "vendor payment" is "(a) payment made directly to the person, firm, corporation, association, agency, institution or other legal entity supplying goods or services to a recipient."⁶

⁴ (305 ILCS 5/6-1 (West 2008) (emphasis added)). Article VI is the PAC Article which addresses GA. A township is a local governmental unit for purposes of the PAC. (See 305 ILCS 5/2-14 (West 2008) ("[l]ocal governmental unit" includes "[e]very . . . township charged with the duty of providing public aid under Article VI")). The "shall be given" language indicates that a township is statutorily mandated to provide GA. (See also 305 ILCS 5/12-3 (West 2008) (local governmental units "shall provide funds for and administer" General Assistance programs); 305 ILCS 5/12-21.8 (West 2008) ("[T]he Supervisor of General Assistance shall receive and pay out moneys raised by taxes or allocated by the State for public aid purposes and shall provide public aid to all persons eligible therefor under Article VI of this Code.") (emphasis added); *Johnson vs. Town of City of Evanston*, 39 Ill.App.3d 419, 423, 350 N.E.2d 70, 74 (1st Dist. 1976)).

The PAC does not define or specify what "basic maintenance requirements" embraces (see *Johnson*, 39 Ill.App.3d at 423, 350 N.E.2d at 74), but presumably food would, at a minimum, be encompassed.

⁵ (305 ILCS 5/2-6 (West 2008)). By contrast, a "money payment or grant" is a "payment made direct [*sic*] to the recipient, his legal representative, or other substitute payee by warrant, check, direct deposit transmittal or other instrument for basic maintenance support or other purpose." (305 ILCS 5/2-3 (West 2008)).

⁶ (305 ILCS 5/2-5 (West 2008) (emphasis added)). Of note, a "vendor payment" includes payments to entities "supplying goods" to GA recipients. (Indeed, this is how the vast majority of Illinois townships disburse GA.) In short, there is no requirement that any such supplier be a "vendor" or seller of goods in the conventional sense of the term.

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With the foregoing statutory definitions in mind, let us parse the foregoing PAC sections to delineate, with relevance to the present issue, the characteristics of "financial aid":

- (1) a vendor payment (PAC 2-5, 2-6),
- (2) for basic maintenance support (PAC 2-6, 6-1),
- (3) on behalf of a GA recipient (PAC 2-6, 6-1),
- (4) by a local governmental unit (GAO) obligated to provide GA by the PAC (PAC 6-1),
- (5) to a provider supplying arguably basic maintenance goods or supplies to a GA recipient (PAC 2-5, 2-6).

In my opinion, under the facts as I understand them, funding of the Pantry by the GAO as consideration for the supplying of foodstuffs (a basic maintenance need or item) to GA recipients satisfies all of the foregoing characteristics or elements and, therefore, constitutes the providing of "financial aid" as that term is used in the PAC.⁷ Accordingly, the use of GA

⁷ The fact that such payments are to another entity related to Maine does not alter my conclusion, as such entity (the Pantry) is not under the control of the GAO and is not legally obligated to provide foodstuffs to GA recipients.

Indeed, it is not unknown for a township to implement rules which virtually preclude GA recipients from receiving foodstuffs from a township food pantry. For example, Monee Township specifies that "[f]oodstuffs will not be provided to supplement food stamps or on a long-term basis" and that "[a]pplicants are asked to apply for food stamps before receiving foodstuffs a second time." (<http://www.moneetownship.com/general-assistance-fund> (last accessed Sept. 3, 2017)). Virtually all GA recipients are financially eligible for food stamps (SNAP benefits).

And there are cogent and justifiable reasons for such prohibition. First, without such prohibition persons receiving basic maintenance welfare benefits of virtually any type (such as, for example, Temporary Assistance for Needy Families ("TANF")) would, in all likelihood, be financially eligible for food pantry assistance. In addition, to the extent food pantry assistance augments assistance provided by basic maintenance welfare (such as TANF), such in-kind assistance might reduce the
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funds to finance the Pantry is, in my opinion, lawful.⁸

- (C) Under the factual circumstances as related, the Supervisor may lawfully hire (without a job posting, search or advertising) and direct employees of the GAO to staff the Pantry

First of all, may the Supervisor hire GAO personnel without a job posting, search or advertising?

⁷ (...continued)

stimulus for and the likelihood of increases in such welfare payment levels (resulting, in short, in township food pantries effectively subsidizing lower federal and state benefit payment levels for basic maintenance assistance).

Nor does the fact that such donations are not, unlike traditional vendor payments (typically denominated as voucher payments or disbursing orders), keyed to the value of goods supplied alter my conclusion. Any such objection goes merely to the advisability, not the legality, of such an arrangement.

Finally, in view of my opinion (which addresses, as I understand it, the articulated objection to such funding) I am not addressing whether GAO funding of the Pantry can be sustained on other grounds.

⁸ And the GA Fund portion of a township's budget and appropriations ordinance is under the virtual unfettered control of a supervisor of General Assistance, the official authorized by the PAC to administer a GA program. (See *Painter vs. Trustees of Town of Lyons*, 161 Ill.App.3d 26, 32, 112 Ill.Dec. 319, 322, 513 N.E.2d 928, 931 (1st Dist. 1987)). In *Painter*, the Supervisor of Lyons Township, Ann Painter, submitted to the Lyons Township Board a proposed GA budget containing a line item of \$ 13,800.00 for an intake social worker. The Board reduced the line item to \$ 5,280.00 (thereby in effect eliminating such position) and transferred the excess to a home relief line item. Thereafter, the Board informed the present intake social worker that the position had been eliminated. Painter filed for *mandamus* to compel the Board to budget the original proposed amount for the continued employment of the intake social worker. The trial court denied the writ and dismissed Painter's complaint. The Appellate Court reversed, holding, in essence, that the power to alter a township supervisor's proposed GA budget (the "power of the purse") was tantamount to GA policymaking authority, authority conferred by the PAC exclusively upon a supervisor of GA.

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I am unaware of any legal requirement imposing such condition upon hiring of GAO personnel. Accordingly, in my opinion, the answer is "Yes."⁹

Second, may the Supervisor lawfully direct employees of the GAO to staff the Pantry? In my view, there can, under the circumstances, be little or no doubt of such authority.

Section 12-21.2 of the PAC provides as follows.

Supervisors of general assistance in counties under township organization - Other staffing. In counties under township organization, the supervisors of the respective towns therein shall be *ex officio* Supervisors of General Assistance of their towns.¹⁰ The Supervisor of General Assistance shall appoint such other employees as may be necessary to provide public aid under Article VI and prescribe their compensation and duties.¹¹

⁹ I am unaware if Maine has established any such hiring requirement. But, as we shall shortly see, the only local governmental entity with lawful authority to impose such a requirement upon a GAO is a township supervisor. And, of course, the present Supervisor has the authority to amend, alter or repeal any such requirement.

Again, the advisability of any such hiring requirements or practices is a consideration separate and distinct from whether such requirements are lawfully mandated.

¹⁰ (See also 60 ILCS 1/70-50 (West 2006) ("The township supervisor shall be ex officio supervisor of general assistance in the township and shall administer the general assistance program in the township as provided in Articles VI, XI, and XII of the Illinois Public Aid Code.") (emphasis added)).

¹¹ (305 ILCS 5/12-21.2 (West 2008) (emphasis added)). Indeed, the Township Code goes out of its way to deny a township board any authority in this respect. (60 ILCS 1/100-5(a) (West 2006) ("The township board may employ and fix the compensation of township employees that the board deems necessary, excluding the employees of the offices of supervisor of general assistance . . .") (emphasis added). See also *Painter*, 161 Ill.App.3d at 32, 112 Ill.Dec. at 322, 513 N.E.2d at 931 (continued...)

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As is apparent, Section 12-21.2 confers authority upon the Supervisor to hire (appoint) "such other employees as may be necessary to provide public aid under Article VI and prescribe their compensation and duties." Are the functions performed by the Pantry in any way related to the providing of "public aid" to GA recipients under the PAC? Inasmuch as the Pantry provides GA recipients with foodstuffs (a basic maintenance need), in my opinion the answer is "Yes." Accordingly, I am of the opinion that the Supervisor may lawfully hire and direct employees of the GAO to staff the Pantry.¹²

(D) Reiteration

To reiterate, I am of the following opinions.

- (1) Funding of the Pantry by the GAO as consideration for the supplying of foodstuffs (a basic maintenance need or item) to GA recipients constitutes the providing of "financial aid" as that

¹¹ (...continued)

("The General Assembly has the constitutional authority to specifically grant the power and duty to the town supervisor to operate the public assistance program of the Town of Lyons, to appoint such employees as the supervisor may deem necessary to carry out the program and to determine their duties and compensation. Section 12-21.2 of the Public Aid Code expressly confers this power upon the township supervisor. Thus, under the authorities cited above, we find that the legislature exclusively granted this power to the supervisor, even though the board of trustees has the general responsibility for adopting a combined budget and appropriation ordinance for the entire governmental entity"); *Johnson*, 39 Ill.App.3d at 424, 425, 350 N.E.2d at 74, 75 ("The General Assembly expressly placed the administration of the general assistance program upon the supervisor."; township board is given accounting, auditing and taxing but not administrative powers under the PAC and the Township Code) (citations omitted)).

¹² Of course, one might take issue with the "necessity" or advisability of hiring [appointing] GAO personnel or staffing the Pantry with such personnel [prescribing duties] in order to provide GA, but in my opinion such judgments are (as indicated by both Section 12-21.2 and *Painter*) entrusted by the PAC to the sole and exclusive discretion of the Supervisor.

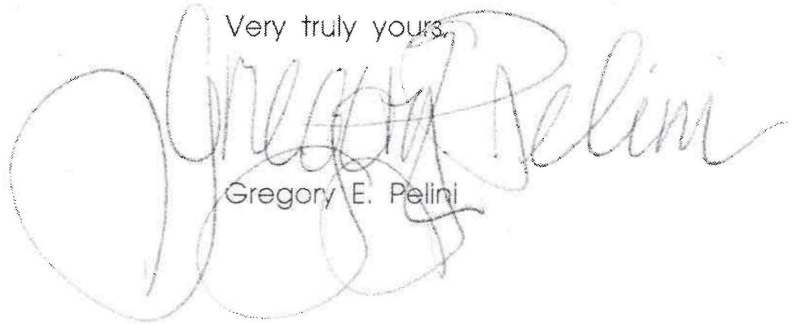
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term is used in the PAC and is, therefore, a permissible use of GA funds.

- (2) The Supervisor may lawfully hire GAO personnel without a job posting, search or advertising
- (3) The Supervisor may lawfully hire and direct employees of the GAO to staff the Pantry.

I hope the foregoing adequately addresses your questions. If not, or if you have any further or other questions in this regard, please don't hesitate to contact me.

Very truly yours,

A large, stylized handwritten signature in cursive script, reading "Gregory E. Pelini". The signature is written in dark ink and is positioned above the printed name.

Gregory E. Pelini

GEP:no