

Giving Public Funds

By Lance M. Werner

On occasion I receive questions pertaining to a library “giving” money to another entity or individual as a type of prize, gift or in support of some non-library program which may be peripherally related to the library. Most of these questions share some common traits. The first trait is that the money in question is public money and the second is that the questioner wants to discern the legality of giving money without a contract. In all instances the motives for these questions have been noble and well intentioned.

When contemplating questions of this nature it is important to recall one fundamental legal premise controlling how governmental entities conduct themselves. Library Boards have no inherent powers. They possess only those limited powers given them by state constitution, or by state statute, or by local ordinance or charter, or power that is necessarily implied from there. *Hanselman v Kileen*, 419 Mich.168, 351 NW2d 544 (1984). Further, it should be noted that government actions are not based on the same premise as private actions. Citizens of the United States can do anything that is not prohibited by statute, whereas governments and governmental entities cannot engage in any activity unless it has been authorized by law.

All of Michigan’s legally established public libraries are a type of governmental entity. All legally established public libraries in Michigan are either subdivisions of local governments or regional governmental entities and are considered municipal corporations.

As such, they are subject to the mandates provided in *Hanselman*. Library boards must not act in a manner not legally authorized. Finding authority to act must be considered before a library board actually acts. Two examples of authority to act can be found in state law. One is §12 of the District Library Establishment Act, 1989 PA 24, MCL 397.182 and another is § 5 of the City, Village and Township Libraries Establishment Act, 1877 PA 164, MCL 397.205. These sections provide the authority for library board actions. They are also similar in that they expressly state that library boards have the exclusive legal authority to spend money out of the library fund and to do any other thing necessary for conducting library service. There can be no doubt that these sections authorize library boards to enter into contracts and related agreements for the provision of library service. However, a gift or giving public funds is not akin to entering into a contract.

I am unaware of any legal authority authorizing a library board to “give” public funds in the absence of a contract or other legal obligation. It may be possible to provide employees a bonus, so long as the bonus is treated like compensation. It may be possible to have some type of “prize” if there is a supporting contract and some type of service is being given to the library in exchange for consideration.

The Michigan Attorney General has had an opportunity to discuss a similar matter. Attorney General Jennifer Granholm discussed the permissibility of a township's donation of funds in Opinion No. 7111 (June 17, 2002). She stated:

A township is not authorized to donate township funds to a combined school district/public library, but may enter into a contract to provide township funds to the library in return for library services to township residents.

Applying this premise to the questions that I receive on this topic, it is clear that a library board does not have the authority to "give" public money, no matter how noble the cause. If instead the library board was entering into some type of contract for the provision of library service the answer would be different.

The other issue with entering into contracts is that it is absolutely necessary that the funds be used appropriately. For instance, millage funds can only be used for the purposes stated in the ballot language. Funds can only be used consistent with the terms of the grant under which they were given.

A related question concerns gifts given by friends groups to people or entities other than the library. This endeavor raises some issues that must be addressed. The first issue is that the friends of the library are required to act in accordance with their articles of incorporation (assuming that they are incorporated under the Michigan Nonprofit Corporations Act, 1982 PA 162, MCL 450.2101 *et seq.*, and possess 501(c)(3) status under the Internal Revenue Code of 1986). If the articles of incorporation are specific to supporting the library they are limited to that action. The other issue is that it is not uncommon for friends groups to obtain charitable donations given for a specific purpose. If the friends use these encumbered funds in a manner which is contradictory to the reason that they were given, they could possibly face suit and / or lose the funds altogether.

In summary, the outcome of this issue is dependent on the nature of the proposed transaction. If the transaction is some type of gift it is doubtful that the library board would have the legal authority to comply. If the transaction is a contract for the provision or receipt of some type of library service, it is possible that it would be legally feasible. It will be necessary for a library board to make this determination. In addition, this determination and the following action should be discussed with the library's own legal counsel.

Finally, the Library of Michigan, Michigan Department of History, Arts and Libraries lacks authority to give legal advice to any person or agency. The Library of Michigan simply furnishes informational and comment services. The discussion above is intended as an informational service only. Please contact Lance M. Werner, Library Law Specialist at (517) 373 – 1299 if you have any questions.