

November 13, 2002

The Honorable Alan R. Mayberry
Wood County Prosecuting Attorney
One Courthouse Square
Bowling Green, Ohio 43402-2431

SYLLABUS:

2002-031

1. A county or township may donate public money to a charity, community group, nonprofit corporation, community social event, or community cultural event only if the county or township has statutory authority, either express or necessarily implied, to make such a donation. Any such donation must be made in compliance with applicable law.
2. A county or township may contract with a charity, community group, or nonprofit corporation for the provision of services by the charity, community group, or nonprofit corporation only if the county or township has statutory authority, either express or necessarily implied, to enter into such a contract. Any such contract must be made in compliance with applicable law.

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OPINION NO. 2002-031

The Honorable Alan R. Mayberry
Wood County Prosecuting Attorney
One Courthouse Square
Bowling Green, Ohio 43402-2431

Dear Prosecutor Mayberry:

We have received your request for an opinion concerning the donation of public money by counties or townships to various community groups, charities, nonprofit corporations, and community social or cultural events. You have asked whether counties, townships, and other local government agencies or instrumentalities may make donations to (write checks for) charities, community groups, nonprofit corporations, and community social or cultural events, or whether such tax dollars must purchase services which the government body is otherwise authorized by law to provide to its residents.¹

To address your question, let's begin with a review of the nature and powers of counties and townships. Counties and townships are political subdivisions of the state, established for purposes of political organization and local administration. *See, e.g.*, Ohio Const. art. X, §§ 1 and 2; *Cook-Johnson Realty Co. v. Bertolini*, 15 Ohio St. 2d 195, 239 N.E.2d 80 (1968); *Hunter v. Comm'rs of Mercer County*, 10 Ohio St. 515 (1860). Counties and townships have the powers and duties expressly conferred upon them by statute, and they also have the powers that are by implication necessary to carry out their express powers. *See, e.g.*, *State ex rel. Shriver v. Bd. of Comm'rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947); *Hopple v. Trs. of Brown Township*, 13 Ohio St. 311, 324 (1862).

¹ Because you are concerned primarily with counties and townships, we focus our attention on these governmental bodies. For purposes of this opinion, we do not consider charter counties operating pursuant to Ohio Const. art. X, §§ 1, 3, and 4, *see* R.C. 301.22 to 301.24; R.C. 307.94-.97, or limited home rule townships operating pursuant to R.C. Chapter 504. The analysis set forth herein is generally applicable to statutorily created bodies of local government. *See, e.g.*, 2001 Op. Att'y Gen. No. 2001-033 (veterans service commission); 1997 Op. Att'y Gen. No. 97-051 (county board of mental retardation and developmental disabilities); 1988 Op. Att'y Gen. No. 88-045 (community mental health board).

With regard to the expenditure of public funds, it is generally established that public money is held in trust for the benefit of the public. Public money may be expended only by clear authority of law and in compliance with applicable statutory provisions. *See, e.g., State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph 1) (“[a]ll public property and public moneys ... constitute a public trust fund Said trust fund can be disbursed only by clear authority of law”).

In the case of doubt as to any expenditure of public funds, the doubt is resolved in favor of the public and against the grant of power to expend the funds. *See, e.g., State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571, 571-72 (1916) (“county commissioners, in their financial transactions, are invested only with limited powers The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county”); 1997 Op. Att’y Gen. No. 97-051. Thus, a county or township may spend public money only for purposes authorized by statute and in the manner provided by statute.²

It is evident under the foregoing analysis that a county or township may donate public money to a charity, community group, nonprofit corporation, community social event, or community cultural event only if the county or township has statutory authority, either express or necessarily implied, to make such a donation. *See, e.g.,* 1983 Op. Att’y Gen. No. 83-069, at 2-286 (“a specific grant of authority would be necessary for a township to simply donate tax funds ... to a private individual or corporation”). Clearly, any such donation must be made in compliance with applicable law.³

² Apart from the general issue of authority to spend public funds, it should be noted that some public moneys are restricted to particular purposes and may be expended only for purposes that come within these restrictions. *See, e.g.,* Ohio Const. art. XII, §§ 5 and 5a; R.C. 343.08; R.C. 5705.19; 1989 Op. Att’y Gen. No. 89-068; 1988 Op. Att’y Gen. No. 88-101; 1988 Op. Att’y Gen. No. 88-018; 1983 Op. Att’y Gen. No. 83-069.

³ The following general rule was set forth in 1952 Op. Att’y Gen. No. 1713, p. 559, at 565:

[P]ublic officers, in the expenditure of public funds, are the trustees of such funds and are not philanthropists. Thus, in 67 Corpus Juris Secundum, 409, §118b(I), it is said:

“A public officer may pay out public funds only where the law requires or permits him to do so, and only in the manner provided by the statute, where the statute directs the manner and method of payment. A public officer has no right to give away

There are statutes that grant the authority for a county or township to make contributions to private nonprofit entities. For example, recent legislation grants a township the following broad authority to donate money to certain charitable organizations:

A board of township trustees may appropriate from the township general revenue fund moneys not appropriated for any other purpose to an organization that the board determines serves a community purpose and that is exempt from federal taxation under subsection 501(a) and described in subsection 501(c)(3) of the “Internal Revenue Code of 1986,” 100 Stat. 2085, 26 U.S.C. 1, as amended.

R.C. 505.707; *see* Sub. H.B. 315, 123rd Gen. A. (2000) (eff. Apr. 5, 2001).

Various other statutes also grant counties or townships authority to make contributions to private nonprofit entities. In many instances, the statutes require that amounts contributed be used for particular purposes or be subject to certain restrictions. *See, e.g.*, R.C. 307.23 (board of county commissioners may appropriate money to nonprofit historical society for certain purposes); R.C. 307.45 (board of county commissioners may, pursuant to agreement, use certain tax money to provide financial support for private nonprofit agencies engaged in diversion, adjudication, detention, or rehabilitation of criminals or juvenile offenders; agreement must provide for accurate accounting, financial audit, and repayment of money improperly used); R.C. 307.691 (board of county commissioners may give financial assistance to nonprofit corporations engaged in promoting safety, providing emergency medical services or patient transport, promoting the Great Lakes-St. Lawrence Seaway, or assisting citizens in dealing with government); R.C. 307.692 (county may appropriate general fund money to be spent by private nonprofit organizations “for the public purpose of encouraging economic development of the county or area through promotion of tourism”); R.C. 307.78 (board of county commissioners may contribute money, personal property, or services to community improvement corporation for any of corporation’s functions); R.C. 307.85(A) (board of county commissioners may give financial assistance to private agencies in establishing and operating federal program); R.C. 307.85(B) (board of county commissioners may give financial assistance to nonprofit agencies for social services for older persons or emergency food for the needy; if funds are used improperly “the board shall withhold further payments”); R.C. 505.70(A) (township trustees may give financial assistance to private agencies in establishing and operating federal program); R.C. 505.70(B) (township trustees may give financial assistance to nonprofit agencies for social

public funds, and must deliver such funds or property to the public official or function for whom or which they were intended. Any public officer who wrongfully withholds or misappropriates public funds, or who pays or authorizes the illegal payment of public funds, is personally liable for such misappropriation or illegal payment.”

services for older persons; if funds are used improperly “the trustees shall withhold further payments”); R.C. 505.80 (board of township trustees may appropriate general fund money to be spent by private nonprofit organizations “for the public purpose of encouraging economic development of the township or area through promotion of tourism”); 1997 Op. Att’y Gen. No. 97-051, at 2-319 to 2-320; 1994 Op. Att’y Gen. No. 94-003, at 2-11; 1984 Op. Att’y Gen. No. 84-096, at 2-324 (board of county commissioners may donate money to nonprofit corporation for park purposes, while imposing limitations on the use of the money).

Thus, there are statutory provisions that authorize counties and townships to make contributions to private nonprofit entities in certain circumstances. Counties and townships are permitted to donate public funds to charities, community groups, nonprofit corporations, community social events, or community cultural events only pursuant to such statutory authority.

As your letter indicates, counties and townships may be authorized to purchase certain types of services, such as drug education efforts or recreational facilities, from charities, community groups, or nonprofit corporations. *See, e.g.*, R.C. 307.851 (board of county commissioners may use certain tax proceeds to contract with a for profit or nonprofit corporation or association for the provision of any or all health and human services or social services provided to the residents of the county; contract must provide for accurate accounting, fiscal audits, and repayment of money unused or improperly used); 1983 Op. Att’y Gen. No. 83-069 (a board of township trustees may not use tax proceeds to simply donate a fire station, equipment, or services to a private volunteer fire company but may enter into a contract with the company). Such purchases must be made in accordance with law and comply with applicable statutes. In general, agreements for the purchase of services must provide compensation in reasonable amounts for the services received. *See, e.g.*, 2001 Op. Att’y Gen. No. 2001-033, at 2-199 n.2; 1988 Op. Att’y Gen. No. 88-045, at 2-214; 1983 Op. Att’y Gen. No. 83-069, at 2-287.

Thus, a county or township may contract with a charity, community group, or nonprofit corporation for the provision of services by the charity, community group, or nonprofit corporation only if the county or township has statutory authority, either express or necessarily implied, to enter into such a contract. Any such contract must be made in compliance with applicable law.

When a county or township donates money to, or enters into an agreement with, a private entity, care must be taken to ensure that there is no violation of Ohio Const. art. VIII, § 6, which prohibits a county or township from lending its credit to or in aid of any joint stock company, corporation, or association. Ohio Const. art. VIII, § 6.⁴ Public aid to a private nonprofit entity does not violate Ohio Const. art. VIII, § 6 if it serves a public purpose. *See, e.g.*, 1999 Op. Att’y Gen. No. 99-016, at 2-125 n.6; 1984 Op. Att’y Gen. No. 84-096, at 2-324 to 2-325. No lending credit violation occurs in a purchase of services for fair compensation. *See, e.g.*, 1997 Op. Att’y

⁴ Exceptions are permitted for certain types of industrial development or housing pursuant to Ohio Const. art. VIII, §§ 13 and 16.

Gen No. 97-051, at 2-319 n.6; 1984 Op. Att’y Gen No. 84-080, at 2-272; 1983 Op. Att’y Gen. No. 83-069, at 2-287, n.4.

In conclusion, it is my opinion, and you are hereby advised, as follows:

1. A county or township may donate public money to a charity, community group, nonprofit corporation, community social event, or community cultural event only if the county or township has statutory authority, either express or necessarily implied, to make such a donation. Any such donation must be made in compliance with applicable law.
2. A county or township may contract with a charity, community group, or nonprofit corporation for the provision of services by the charity, community group, or nonprofit corporation only if the county or township has statutory authority, either express or necessarily implied, to enter into such a contract. Any such contract must be made in compliance with applicable law.

Respectfully,

BETTY D. MONTGOMERY
Attorney General