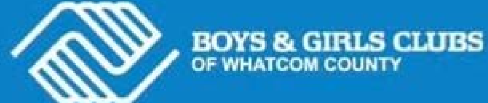


GREAT FUTURES START HERE.

November 6, 2023

Dear Parent/ Guardian,

Thank you for allowing us to provide care for your children. Throughout 2023 we have continued to work on facility improvements and our community has been very generous in supporting our capital campaigns to purchase the four Kids World Early Learning Centers as well as contribute to the redesign of our playgrounds. We expect to see the playground in Ferndale completed yet this year, with the others to follow as funding is secured. We have purchased the locations at Ferndale and Yew Street and are nearly half complete with the fundraising to purchase Northwest.

I share this important information with you so you are aware that we are not using tuition dollars for the purchase and updating of our early learning centers. Tuition and fees cover the cost of operations only, not facility purchases and upgrades.

Boys & Girls Clubs of Whatcom County is committed to providing high quality care at the most affordable price we can. We continue to advocate for ways to reduce the cost burden to families and continuously look for efficiencies that allow us to keep our operational expenses low, without sacrificing quality. We were happy to be able hold off on a rate increase throughout 2023. Rates for all ages will be increasing in 2024.

Rates as of January 1, 2024:

*rates change to the next age group the 1st of the month following the child's birthdate

Age Group	Rate
Infant (to 12 mos)	$95/ day
Toddler (12 to 36 mos)	$86/ day
Pre-K (3 to 5 yrs)	$78/ day
School Age (enrolled in 5 year old Kindergarten)	$70/ day

We understand that inflation continues to have an impact on most families and an increase at this time may be difficult. As a business we are also not immune to inflation and the cost of food, staffing and other operational expenses have increased for us and we must recover those in order to continue to provide quality programming.

Serving your child(ren) is a privilege we feel honored to do every day. We will continue to look for every efficiency to control the cost of childcare.

Sincerely,

H. G. Powell

Heather Powell- CEO

1715 Kentucky Street, Bellingham, WA 98229 (360) 738-3808 www.whatcomclubs.org

December 1, 2023

Dear Families,

As you likely know, the minimum wage in Washington will increase from $15.74-$16.28 on January 1, 2024. This coupled with the increased cost of goods and services, we will be instituting a tuition increase at The Seedlings beginning January 1, 2024 to maintain our high-quality standards.

The Seedlings touts a high-quality early learning program by meeting many quality indicators. Here are some that we are most proud of:

- **Low child to teacher Ratio.** Seedlings ratios are better than state licensing requirements. You can see this on the pricing chart on the back of this letter.
- **Consistent Relationships**-Having consistent staff creates quality relationships between children and teachers, and teachers and parents. Research tells us that consistent caregiving leads to better child outcomes. Did you know that 12 Seedlings employees have been with us for all 5 years The Seedlings has been in business and 15 have been here for over 3 years. We have only had to hire one new employee in the last year. We are very blessed to have such retention in a childcare center.
- **Caregivers have Early Childhood Training**-Did you know that we have 3 Staff with Post Graduate Certificates or Masters Degrees in Education and/or Early Learning, 4 Staff with BAs with Early Learning Emphasis or Health and Nutrition emphasis, 6 Staff with AAs in Early Childhood Education (ECE) or equivalent and 11 staff with State Initial or Short ECE Certificates or are in college to complete their State ECE or an AA In ECE.
- **Participating in State Quality Rating Program, Early Achievers**-Seedlings is participating in Early Achievers and currently are in the rating process and should receive a rating by the summer 2024.
- **High Health, Safety and Nutrition Standards** -The Seedlings will continue to provide meals that exceed the USDA and childcare requirements by providing nutritious meals with high quality ingredients and fresh fruits and vegetables prepared by Kayla, our amazing chef who graduated from Bastyr University in culinary arts and nutrition. Our New HVAC systems, New Floors and kitchen contribute to our healthy environment. Thank you, parents, as you have been so patient during the renovations!

As you can imagine, compensating staff that are meeting longevity and educational milestones is a must for maintaining this amazing skilled staff.

I am hopeful that the county will soon begin implementation of the Healthy Children's Fund that voters affirmed a year ago and we will see some relief for childcare providers and families of young children. I am anticipating grants that can be used to create sliding fee scales or tuition assistance for families that don't qualify for State subsidies, grants for supporting the retention of employee's and grants to complete minor renovations or to support innovation in the childcare field. I will be applying for any that The Seedlings is eligible for.

Please feel free to reach out to me with questions or concerns.

Sincerely,

Kim Walbeck

The Seedlings Tuition Rates Effective January 1, 2024

Room/Age Group	State Required Ratio	Seedlings Average Ratio
Willow Room/Infants 1-12 months	4:1	3:1
	# of Days Per Week	Monthly Tuition
	5 Days	$1800
	4 Days	$1596
	3 Days	$1243

Room/Age Group	State Required Ratio	Seedlings Average Ratio
Huckleberry Room/Toddlers 12-18 Months	7:1	5:1
	# of Days Per Week	Monthly Tuition
	5 Days	$1,735
	4 Days	$1,544
	3 Days	$1,204

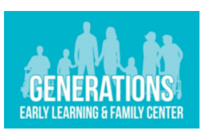
Room/Age Group	State Required Ratio	Seedlings Average Ratio
Juniper Room/Toddlers 18-30 Months	7:1	6:1
Gooseberry Room/Preschool 2-3 years	10:1	7:1
	# of Days Per Week	Monthly Tuition
	5 Days	$1660
	4 Days	$1484
	3 Days	$1159

Room/Age Group	State Required Ratio	Seedlings Average Ratio
Rhodie Room/Preschool 3-4 years	10:1	7:1
Cedar Room/Preschool 4-5 years	10:1	7:1
	# of Days Per Week	Monthly Tuition
	5 Days	$1570
	4 Days	$1412
	3 Days	$1105

Note:

- Families attending 5 days a week with multiple children in the program will receive a 10% overall discount on their childcare bill. Families attending 4 days a week with multiple children will receive a 5% overall discount on their childcare bill.
- Annual Registration fee is $100 per child assessed at enrollment and every September thereafter.
- A $2.00 per minute late pick-up fee will be assessed for every minute past 6:00.
- **The price increase does not affect your co-pay if you are receiving a childcare subsidy from DSHS.**

The Seedlings is an equal opportunity program.



St. Francis Foundation d.b.a. Generations Early Learning & Family Center
2901 Connelly Ave. B101
Bellingham, WA 98225
360-752-6336

Dear Families,

As you likely know, Bellingham voters recently approved an initiative to increase the minimum wage above the state minimum from $15.74 to $17.28, effective January 1, 2024. This initiative has impacted our childcare community as we all determine how it will affect our businesses.

We understand that inflation continues to have an impact on families, and our community as a whole. Unfortunately, as a business, we are not immune to the rising cost of food, staffing, and other operational expenses. To cover these costs, we have made the decision to institute a tuition increase at Generations Early Learning & Family Center beginning February 1, 2024. The breakdown will be as follows:

MONTHLY RATES as of February 1, 2024					
Child's age	**Daily Rate_**	2 day week (Part time)	3 day week (Part time)	**4 day week (Full time)**	**5 day week (Full time)**
12-36 months	**Full time: $87** Part time: $94	$815	$1,222	**$1,508**	**$1,885**
37 months +	**Full time: $79** Part time: $84	$728	$1,092	**$1,369**	**$1,712**

The St. Francis Foundation Board of Directors is committed to providing high quality care at the most affordable price possible. Though this is difficult news to share, it is the only path forward to maintain our high standards, and ensure our program can continue to thrive.

We are hopeful that the county will soon begin implementation of the Healthy Children's Fund ("Prop 5 For Kids") that voters affirmed a year ago, and that we will see some relief for childcare providers and families of young children. We are anticipating grants that can be used to provide additional funding that supports families through tuition assistance, employee retention, and grants to complete minor renovations, or to bolster innovation in the childcare field.

We will be meeting as a board in January and will continue to discuss ways we can support families financially at this time. We currently offer an in-house tuition assistance program for families that don't qualify for state subsidies, as well as the Trisha Lewis Angel Fund, available to families experiencing emergency financial burden. If you have any questions, or would like to apply for either of these programs, please contact the Generations administrative staff.

The new 2024 Financial Agreement will be distributed in mid-January, and we ask that all families sign and return it to the office before January 31, 2024.

We would like to thank all of our amazing families for their continued understanding and support. You are the reason that we are all here supporting this program and why we will continue to do so for many generations to come.

Sincerely,

Catherine Reis El-Bara
President, St. Francis Foundation

Drew Smith
Treasurer, St. Francis Foundation

Place equal emphasis on both qualitative and quantitative methods of evaluation.

While it is essential to measure the impact of programing funded through the Healthy Children's Fund (HCF), it is also essential that we—advocates, funders, and service providers—continually tune our attention to the lived-experience of children and families in our community. We need to know how many families among us struggle to find childcare, and we also need to know what that experience is like. This will require the use of both qualitative and quantitative methodologies, the collection of both stats and stories. Both forms of knowing should be weighted equally and integrated to tell the whole story of child and family experience across our community.

Establish a pre-HCF baseline using found data for population-wide community health objectives and RAPID Survey for targeted measurements of well-being.

While we anticipate the HCF evaluation plan will include a number of program-level evaluations enabled by data sharing requirements in most or all of its funding contracts, the ordinance calls for a bi-annual, whole-fund evaluation of outcomes and we would urge the fund administrator not to compromise the power of this exercise by attempting to meet this broad requirement through piece-meal evaluations. In fact, the holistic nature of the external evaluation was an intentional choice specifically to prevent our shared understanding of fund impact to be diluted in this way.

To that end, it is important to capture a clear picture of our community prior to the disbursement of HCF funds, so that future evaluations have a firm baseline against which to measure. Consistent with points made earlier, we would like to see this baseline established through both qualitative and quantitative methodologies.

Establishing a statistical baseline is relatively straightforward, and most of the data of interest is already collected through the community health improvement planning work done as part of Healthy Whatcom and other sources. Other data would simply need to be gathered into a single source and posted publicly so that future assessment can be done without making requests for this baseline data.

Measurements of interest include:

- Kindergarten readiness
- Number and nature of licensed childcare slots
- Number of homeless (housing unstable) children
- Number of homeless (unsheltered) children
- Rate of child maltreatment (reports, investigations, removals)
- Rates of child poverty (homelessness, cost-burdened families, food insecure families, etc.)

These topline measurements of community health are certainly available, though some work may need to be done to disaggregate the data by race or other relevant demographics, and to map the data in order to reveal any geographic disparities present in the pre-HCF baseline.

The experience of parenting is a little harder to untangle. The RAPID Survey could be used to establish a qualitative understanding of family well-being across Whatcom County.

A national survey designed and administered at the Stanford Center on Early Childhood. It has been conducted twice—April 2020 and March 2021—in six communities across the United States and statewide in California, the purpose of The Rapid Survey is to gain a better understanding of the experiences of families and childcare providers. Stanford is expanding the scope of its data collection and seeking local survey administrators.

By deploying the RAPID Survey now, prior to the disbursement of any HCF funding, we will establish a qualitative well-being baseline and have the opportunity to track changes in parent sentiment as funded programs scale across our community illuminating if these efforts are having the intended impact on families and reveal why/why not. And by selecting this specific instrument, we would benefit from the existing work to design and validate the survey, an effort which we would not need to reproduce.

Identify comparable communities which can be used in longitudinal evaluation as an ad hoc control.

In addition to the pre-HCF baselines above, we suggest identifying comparable communities that can be used as comparison to differentiate the effect of HCF programming and broader trends, policies, and/or funding. Having established these comparisons and collected baseline data on these communities, longitudinal comparisons can be made while controlling for forces that are outside our control such as federal and state level policy and/or funding decisions.

Co-design process evaluation with community stakeholders.

We also understand that the Health and Community Services Department (HCSD) is interested in using Healthy Children's Fund evaluation dollars to conduct a separate process evaluation. We support this line of inquiry as the rigidity of county contracting has emerged as a theme in our exploration of the childcare landscape. We encourage the department to develop the parameters of this evaluation collaboratively with community stakeholders, particularly the agencies who have attempted and failed to secure county funding as these are the stakeholders most affected by the process concerns that such an evaluation is intended to illuminate. Said another way, the taskforce is more interested in making HCF dollars available to a broader set of service providing agencies than it is in streamlining the fund disbursement to the small number of agencies that tend to be recipients of most county funds. Doing so would lead to a more durable, mixed delivery system that meets the needs of more parents. We anticipate that diversifying the service providing landscape will better meet the needs of children of color, provide more equitable access to public funds, and increase competition and therefore quality of service. We hope the process evaluation is designed and carried out with these goals in mind.

Make participation in data collection accessible and beneficial to resource-constrained service providers.

We anticipate that reporting and data collection requirements will emerge as an obstacle in the process evaluation, so we encourage HCSD to begin now planning for ways to reduce this burden on fund recipients. As part of an RFP process, ask applicants to name what metrics they would be able to collect on their own and which they believe would be most meaningful for program management. Spell out in contract terms, the support which HCSD is able to provide to fund recipients in data collection and reporting, the intended uses for the collected data, and commit to share all findings with fund recipients.

Embrace the opportunity for an objective, reliable, and depoliticized evaluation which would free the Health Department from dual relationships.

The specific prescription for a bi-annual external evaluation was an intentional choice in the drafting of Proposition 5 with the goal of maximizing data reliability and minimizing relationship disruption. The dual roles of funder and evaluator (and in some cases competing service

provider) are complex ones for a fund administrator. Fund recipients would be incentivized to selectively report data–both stats and stories–that the funder expects to hear. This could limit the validity of any evaluation activity conducted internally to the HCSD. For this reason, the HCF calls for an external evaluation partner, to create a degree of separation between the funder and the funded service providers and maximize candor.

Rather than the fund administrator place itself in this uncomfortable and mutually-detrimental dual-role situation, we recommend the evaluation plan be consistent with the spirit and the letter of the HCF and outsource the majority of HCF outcome evaluation, and assume a role of partner in iteratively improving the fund as a whole and specific programs of interest.

It is worth pausing to consider: who will be responsible for telling the official story of HCF and its impact? The advocates who pushed for its passage? The department responsible to administer it? The council providing fiscal oversight? The taskforce, responsible for representing the community's interests with both the council and the fund administrator? In our view, none of these entities are well positioned to play that role, so we are happy to have an ordinance which calls for a fully independent external evaluator, free of dual roles to tell us all the unvarnished truth so that we can learn and work together to improve the performance of the Health Children's Fund over time.

Drafted by: Ray Deck III, 518-290-0729
Adopted as the position of the Whatcom Child & Family Well-Being Taskforce on 12.11.23

WHATCOM COUNTY PROSECUTING ATTORNEY

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Whatcom County Courthouse
311 Grand Avenue Suite 201
Bellingham, WA 98225-4079
(360) 778-5710 /Main Office FAX (360) 778-5711

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Erik Sigmar

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CRIMINAL DEPUTIES
David Graham
Kellen Kooistra
Benjamin Pratt
Gordon Jenkins
Kacie Emerick
Jesse Corkern
Evan Sterk
Maggie Peach
Andrew Bogle
Andrew Heydrich
Ashley Bohnett
Natasha Campbell
Levi Uhrig
Samantha Macintosh

CHIEF CIVIL DEPUTY
Karen Frakes

CIVIL DEPUTIES
Royce Buckingham
Christopher Quinn
George Roche
Brandon Waldron

CIVIL SUPPORT ENFORCEMENT DEPUTIES
Janelle Wilson/Lead

APPELLATE DEPUTIES
Kimberly Thulin
Hilary Thomas

ADMINISTRATOR
Louise Trapp

January 12, 2023

To: Whatcom County Health Department
From: Royce Buckingham, Senior Deputy

Re: Gift of Public Funds Analysis (3-page memo with worksheet and appendix)

Gift of Public Funds Analysis

Introduction

The Whatcom County Health Department is entrusted with the expenditure of the Healthy Children's Fund to benefit the well-being of young children. To that end, every expenditure must be primarily used for that purpose, and Whatcom County typically must receive identifiable consideration (benefit or service) for those expenditures. Funds may not be donated to a private cause, even if the cause is worthy and/or nonprofit. If an expenditure is not for an identifiable public purpose, or if it is a donation, or if it is not primarily used to benefit the public, it may be an illegal "gift of public funds."[1]

The Health Department Contract Coordinator, Finance, Civil Division attorneys, and possibly even State Auditors will review and question whether each expenditure is justified by its fundamental public purpose or by consideration. This is meant to ensure the legality of the expenditure, not

[1] This is unlike prior Federal stimulus moneys, some of which were essentially giveaways. These are local taxpayer dollars collected for a particular purpose and subject to State Constitutional limits.

to be a roadblock. These County staff should help you work to revise any imperfect proposal to achieve a legitimate purpose or identify the consideration.

Expenditures can be tricky to administer. But if we get in the habit of asking a few simple questions every time we spend County money, we can minimize delays or denials in approval.

Purpose of Healthy Children's Fund

The purpose of Healthy Children's Fund expenditures per Prop. 5 is:

> "…funding to address the well-being of children. …to fund childcare, early learning programs, and increased support for vulnerable children."

Overarching purpose:

- Children's well-being.

Sub-purposes:

  - Support childcare.
  - Support early learning.
  - Support vulnerable children (children at significant risk of harm to their well-being).

Test for Expenditures

Below is the basic test for expenditure of government funds:

Is the expenditure primarily for a "fundamental" governmental purpose?

- If so, then outright allowed.
  - What are "fundamental" government purposes?
    - Think of them as services the government traditionally always provides (trash, sewers, roads, workers comp, communicable disease services, K-12 schools).
    - This is a narrow but evolving category.[2]

[2] Other examples of traditional government services that are "fundamental" include:
protecting public health
collecting taxes
acquiring real property
controlling floods
enforcing child support obligations
disposing of solid waste
providing and administering workers' compensation
obtaining and defending guardians ad litem

- Support of poor and infirm and public health are specifically allowed.
  - Support of vulnerable children who are poor or infirm is very likely a “fundamental” purpose.
- Child care and early learning generally might <u>not</u> be “fundamental” traditional government services.[3]

- If the purpose is not “fundamental,” then the expenditure may still be allowed, but only if it meets the further tests below…

Does the expenditure primarily serve <u>any</u> governmental purpose.

- If no, then not allowed.
- If yes, then apply tests below…

Is the intent of the expenditure a “donation”?

- If yes, then not allowed.

Is there “consideration” for the expenditure?

- If yes, then allowed.
  - Consideration must be identifiable.

Incidental benefit to private entities is allowed <u>if the governmental purpose is primary</u>.

Note: This test flow chart results from various case law and is admittedly complex and difficult to apply. Thus, I’ve formulated a worksheet to guide the application of these tests.

---

[3] Though remember that child care and early learning expenditures <u>used for</u> public health or the poor/infirm will qualify.

WORKSHEET

Simple questions to ask every time before we spend Healthy Children's Fund taxpayer dollars.

What is the specific governmental purpose (within the Healthy Children's Fund) served by this expenditure?

How does the expenditure serve that purpose?

Does the expenditure "primarily" or only incidentally serve that purpose?

Who is getting the money?

What consideration (benefit/service) are they providing to Whatcom County in return?

Document the answers to these questions.

You should be able to answer the above questions for yourself before every contract/grant/etc. is negotiated.

The answers should later be documented in the "cover memo" of every contract, grant, or agreement that is submitted for approval. These answers will be reviewed by Finance, Civil Division attorneys, or even a State auditor, and more detail may be requested. The contract may be rejected if the purpose is unclear, the benefit to the public is not primary, or the consideration (benefit/service) is not clear.

Expenditure of public money can be a subtle, complex, and sometimes untested area. Review is not meant to be a roadblock, but instead a helpful filter/check to ensure that money is spent legally and appropriately.

Examples:

Probably Valid

"The purpose of this contract is to pay for low-income housing, a fundamental government purpose. This expenditure primarily benefits County low income families."

Probably Invalid

The purpose of these grants is to help boost the local fishing industry. The expenditure primarily benefits fishers, but incidentally benefits the entire

community. These are direct grants to aid with boat repair with no obligation to provide services to the County.

Potential fix

Each fisher receiving a repair grant shall provide their fish products at a reduced cost (-10%) to the Whatcom County low-income food program as consideration for the grant.

Final note: there are gray areas, and so feel free to speak with your Contract Coordinator, Finance, or Civil Division attorneys before you negotiate a contract/grant/etc. if you have questions about whether the expenditure is allowed. Be prepared to provide details.

APPENDIX

Additional reading.
Below are helpful articles from MRSC and Western Washington University, followed by Attorney General opinions which analyze Gift of Public Funds. Frankly, the AG Opinions can be as confusing as they are helpful, but they provide additional background.

MRSC on Gift of Public Funds
Gift of Public Funds
This page provides information about the Gift of Public Funds Doctrine in Washington State and how it applies to the local and state governments.
Contents:
Overview
Origins of the Doctrine
What is Prohibited?
Why the Prohibitions?
Permitted Actions
Avoiding a Violation
What Happens if a Violation Occurs?

Overview
The "Gift of Public Funds Doctrine" refers to a fairly broad set of prohibitions contained in two sections of the Washington State Constitution. While the two sections vary to some degree, they focus on a common theme of barring the state government and its political subdivisions from conferring benefits on private parties in ways that might disadvantage public interests.
It is a good idea for many government officers and even some government employees to have at least a basic understanding of the doctrine, as its broad scope causes it to crop up in a variety of contexts. Consider, for instance, the following three scenarios:
Scenario 1: A county has surplus land that it wants to dispose of and a nonprofit group would like the land to build a community center for an adjacent residential area. The county decides that this is a laudable purpose for the otherwise undeveloped land and wants to donate it to the nonprofit.
Scenario 2: A local business has fallen behind on its utilities and is struggling financially. The business has been part of the community for as long as anybody can remember so the city decides to forgive the utility charges to help the business stay afloat.
Scenario 3: A well-known restaurateur wants to lease a space on public property and open a new location; however, he is having trouble getting a loan to build the restaurant. The bank will give the loan if the city were to agree in the lease to purchase the improvements to the property in the event of a default. The city is fairly confident that the restaurant will be a success and that it will never have to follow through on any such agreement.
So, which of these is allowed under the Gift of Public Funds Doctrine? Probably none of them. However, before discussing why this is, it would be best to start with where the doctrine comes from.

Origins of the Doctrine
The two sections of the state constitution from which the doctrine stems are as follows:

- ARTICLE 8, SECTION 5 CREDIT NOT TO BE LOANED. The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.

- ARTICLE 8, SECTION 7 CREDIT NOT TO BE LOANED. No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm…

This topic page focuses on section 7, as section 5 only applies to the state government. However, it is worth noting that the conduct that is prohibited by the two sections has been construed similarly by the courts despite the different wording.

What is Prohibited?

In short, article 8, section 7 prohibits any local government entity from bestowing a gift or lending money, property, or the entity's credit to a private party. At first glance, these prohibitions may seem fairly clear; however, there has still been some confusion over what exactly is barred. After all, what exactly is a gift and what does it mean for a municipality to lend its credit? The Washington courts have helped to clear up some of this ambiguity and to better define the prohibited conduct.

In assessing whether a gift has been bestowed to a private entity, the courts have used a two-step process. First, they determine whether the funds are being expended to carry out a fundamental purpose of the government. If so, then no gift of public funds has been made. Otherwise, the court looks to see whether the government entity had a "donative intent," and whether it received an adequate return for the transfer.

- *CLEAN v State* – holding that, although constructing a baseball stadium is a "public purpose," it is not a "fundamental purpose" of the government. However, since there was no donative intent, and adequate consideration would be received, the Stadium Act did not violate the constitution. (This case arises under article 8, section 5, but the analysis should be the same under section 7.)

The courts have construed a gift to include more than just the act of giving a benefit. A gift can also consist of a government entity forgiving a debt or duty that is owed to it.

- *City of Yakima v. Huza* – holding that article 8, section 7 would be violated if the City enacted an ordinance that would repeal a tax on private utilities and allow credits on future taxes to equal those previously collected under the repealed tax.

The bar on loaning a government entity's "credit" has been interpreted somewhat broadly, and the courts have identified specific conduct that government entities cannot engage in. This includes, but is not necessarily limited to:

- Acting as a surety or guarantor for a private entity;
  - *City of Ferndale v. Friberg* – finding no unconstitutional lending of credit where the government did not act as a surety.
- Lending the government entity's name or status to a private enterprise, or;
  - *Port of Longview v. Taxpayers* – invalidating bonds the Port issued to finance a private enterprise.
- Acting as a financing conduit for the purchase of private property for resale to a private entity.
  - *Lassila v. City of Wenatchee* – voiding a sale of property which the City had acquired specifically for the purpose of resale.

Why the Prohibitions?

In *Japan Line v. McCaffree* the court stated that, "The manifest purpose of these provisions in the constitution is to prevent state funds from being used to benefit private interests where the public interest is not **primarily** served."

But why were the drafters of Washington's constitution so concerned about this? The answer is tied primarily to the history of railroads. In the 19th century, government entities, particularly those in the West, were extending their credit to railroad companies and subsidizing construction in order to attract and spur growth. However, such endeavors were not always successful and there were a number of

instances where the abandonment of railroad projects placed serious financial burdens on the governments that had provided financing.

The Washington constitution was drafted during a time when many were becoming concerned about these railroad defaults and the burdens they were placing on governments. To prevent Washington from being caught up in the sort of trouble that others were finding themselves in, the drafters included article 8, sections 5 and 7. The constitutional prohibitions would mitigate the risk of loss of public funds by ensuring that such loss was only risked in pursuit of the public interest, and would ensure that the public would not be left holding the bill for failed private enterprises.

Today, there is probably less concern about private railroad defaults, but there are still plenty of opportunities for public funds to be put at risk for the benefit of private parties. Article 8, section 7 continues to help mitigate that risk.

Permitted Actions

While the prohibitions created by article 8, section 7 are broad, there are a number of actions that government entities can engage in. Some of these are exceptions that stem from section 7 itself or from subsequent amendments to the Washington State Constitution, while others are actions which the courts or attorney general have construed as being outside the scope of the prohibitions.

Section 7 contains an express provision for providing "necessary support for the poor and infirm." It is particularly worth noting that the courts and the attorney general's office have interpreted this exception as being disjunctive, allowing for the support of individuals who are poor or who are infirm. This was made particularly clear in AGO 1991 No. 7.

A number of exceptions to section 7 have been created by subsequent amendments to the state constitution. These exceptions are as follows:

- Public funds may be used by port districts "for industrial development or trade promotion and promotional hosting." (Article 8, Sec. 8)
- Political subdivisions can use proceeds from the sale or distribution of water, energy, or stormwater or sewer services to finance the acquisition and installation of materials and equipment for more efficient use of water or energy. However, such financing can only be used in regards to existing structures and cannot be used for conversion from one energy source to another. (Article 8, Sec. 10)
- Agricultural commodity commissions can use agricultural commodity assessments "for agricultural development or trade promotion and promotional hosting." (Article 8, Sec. 11)
- Government entities may, where authorized by the State legislature, issue revenue bonds to fund industrial development projects. (Article 32, Sec. 1)

Government entities may use public funds to carry out a "fundamental purpose of the government." State and local governments regularly confer benefits on their citizens who are, of course, private parties. However, when the grant of those benefits is part of a "fundamental purpose" of the state, such as protecting the public health, safety, and welfare, no violation occurs.

- *Hudson v City of Wenatchee* – helping citizens into locked cars is a "community caretaking" function, which is a fundamental purpose of the government, such that no gift of public funds occurs.

No violation occurs when a government entity assists in the acquisition and transfer of property to another entity that is serving wholly public functions. The courts have recognized that this at least extends to transfers to the federal or state government, counties (including those in another state), state agencies, special purpose districts, and American Indian tribes. It is of note that, in such situations, government entities still must ensure compliance with any applicable statutes such as RCW 43.09.210.

- *Lancey v King County* – An act allowing King County to condemn land for a right-of-way for a federal canal project did not violate article 8, section 7 since the federal government is not a private entity.

State and local governments are not prohibited from serving as a conduit to transfer federal funds to private entities. This exemption stems from AGO 1970 No. 24 where the Attorney General found no violation of article 8, section 7 when a city transferred funds from HUD to federally approved recipients, as those funds never actually became city funds. However, in AGO 1973 No. 18, the Attorney General clarified that such an exemption only applies if the federal government reserves control over either the designation of recipients or the size of grants. Otherwise, the funds would become city or state funds subject to article 8, sections 5 or 7.
A deposit of public funds into insured, interest-bearing accounts does not violate the prohibitions on lending public funds. However, in *State ex rel. Graham v. Olympia* the court indicated that this exemption may depend on the motivation of the public entity. No violation occurs where the government entity's primary purpose for the deposits is to avail itself of the return incidental to the deposit of its funds rather than intending to aid the banking institutions.

Avoiding a Violation
Before government entities consider transferring property or funds to a private party, either on a permanent or temporary basis, **they should assess the purpose of the transfer, as well as what they are receiving in return**, in order to ensure that the transfer is not gifting a benefit to the private party.
Gift issues often arise in the context of disposal of property a government entity no longer needs. Development of, and compliance with, surplus procedures can help ensure that adequate consideration is received to avoid a gift. For more information on this, refer to our topic pages:

- Surplus City or Town Property
- Surplus County Property
- Surplus Property for Special Purpose Districts

What Happens if a Violation Occurs?
If a violation of article 8, section 7 occurs, or is suspected of having occurred, there are a few different types of consequences.

- If a violation is found by the state auditor, then the auditor's office will issue an audit finding. The exact consequences of such a finding can vary depending on the seriousness of the violation, but in any event, audit findings are best avoided.
- If a lawsuit is filed and the court holds that a violation has occurred, then it is likely the court will void the contested transaction or issue an injunction prohibiting it. Litigating such cases can be very costly and can have political ramifications.
- In cases where a municipality suspects it may have committed a violation, it should raise the issue with its legal counsel and discuss options for addressing the potential violation.

Western Washington University guidance.

https://rcps.wwu.edu/gifting-of-public-funds/
Gifting of Public Funds
What does gift of public funds (GOPF) mean?
I've been told I can't purchase an item with state funds because "it violates the State Constitution by gifting of public funds." What does this mean?
The "Gift of Public Funds Doctrine" refers to a fairly broad set of prohibitions in two separate sections of the Washington State Constitution but are similar in that they both bar state agencies, including public higher education, from conferring benefits on private parties in ways that might disadvantage public interests. The issue of gifting public funds can be found in various contexts and all levels of government.
Article 8; Section 5 Washington State Constitutionopen_in_new(opens in new window): *Credit is not to be loaned. The credit of the state shall not, in any manner be given or loaned, or in aid of, an individual, association, company, or corporation.*

What is permitted?
Government entities may use public funds to carry out a "fundamental purpose of the government." State and local governments regularly confer benefits on their citizens who are, of course, private parties. However, when the grant of those benefits is part of a "fundamental purpose" of the state, such as protecting the public health, safety, and welfare, no violation occurs.
How is GOPF determined?
Courts use a two-part analysis to determine if government has made a GOPF.
Question 1: Does the expenditure further a fundamental purpose of government?
Question 2: Is there adequate consideration or exchange of benefit?
What are tips for reviewing GOPF?
Recent GOPF case law involves large and complex projects but GOPF issues arise in day-to-day circumstances as well. Here are some tips for addressing possible GOPF situations:

- Use contracts to define the scope and purpose of local government expenditures. *Johns v. Wadsworth* makes clear that local governments cannot make donations, even if it is for a good cause. On the other hand, a local government can contract with nonprofit entities to provide services that the local government would be authorized to provide.
- Make sure to document that restricted funds have been spent appropriately. There are many government revenue sources that are limited to specific purposes. Expenditures of such funds must be consistent with statutory restrictions as well as the government agency's plans and policies. Expenditures that do not meet the applicable fund criteria may be deemed a GOPF.
- Context matters. An expenditure that may be a GOPF in "normal times" might be permitted in an emergency such as in a pandemic. Such assistance, during a protracted emergency, may be a "fundamental purpose of government" since it is intended to ameliorate the hardships caused by the COVID-19 pandemic. Of course, documenting the nexus between the assistance provided and the benefits to public health and welfare is of critical importance.

What happens if a violation occurs?

- If a violation is found by the State Auditor, then the Auditor's office will issue an audit finding. The exact consequences of such a finding can vary depending on the seriousness of the violation, but in any event, audit findings are best avoided.
- If a lawsuit is filed and the court holds that a violation has occurred, then it is likely the court will void the contested transaction or issue an injunction prohibiting it. Litigating such cases can be very costly and can have political and reputational ramifications.

Examples in University context:
Q1: A student can't afford gas to travel to their practicum site. Can we use our department funds to provide gas money to the student?
ANSWER: No. Paying any part of a student's academic costs or fees with department Chart 1 funds would be considered gifting of public funds. There are many resources to assist students with expenses, so departments are to refer them to the Office of Student Life where a team will assess each students' needs and refer back out to various resources as needed.
Q1: Can we reimburse a remote working employee for an hourly parking permit to attend a meeting on campus?
ANSWER: No. The occasional commute to campus for remote workers, including parking, is not a permitted expense if campus would be the primary location for their job if not working remotely.

AG Opinion examples
AG Opinion 2003 #7
https://www.atg.wa.gov/ago-opinions/constitutionality-using-school-district-funds-pay-cost-providing-meals-school-breakfast

Constitutionality of using school district funds to pay for the cost of providing meals in a school breakfast program where not all participating students meet federal income eligibility requirements

AGO 2003 No. 7 - Sep 23 2003
Attorney General Christine Gregoire
SCHOOL DISTRICTS– SCHOOLS – PUBLIC FUNDS – Constitutionality of using school district funds to pay for the cost of providing meals in a school breakfast program where not all participating students meet federal income eligibility requirements.
It would not be unconstitutional for a school district to operate a school breakfast program in such a manner that public funds are used to pay the difference between the amount reimbursed by the federal government for providing meals to eligible students and the total cost of the program where (1) federal eligibility is based on income status; (2) districts would save substantial administrative costs in federal reporting requirements by using such a system; and (3) the school education program benefits where students are properly fed.
****
September 23, 2003

The Honorable Terry Bergeson
Superintendent of Public Instruction
P.O. Box 47200
Olympia, WA 98504-7200

Cite As:
AGO 2003 No. 7

Dear Dr. Bergeson:

By letter previously acknowledged, you asked for an opinion on whether school districts may lawfully expend public funds to pay the difference between the federal reimbursement for eligible children under federal school meal programs and the cost of providing meals to all participating children so that all students may participate in school breakfast programs. Specifically, you ask:

Would the use of state or local funds to pay the difference between the federal reimbursement for eligible children under federal meal programs and the actual cost of providing meals at no cost to all participating children constitute a gift of public funds in violation of article VIII, sections 5 and 7 of the Washington Constitution?

You explain that school districts wish to provide free, nutritious breakfasts to all children on test days. In addition, you further state that school districts would like to take advantage of a federal regulation that would permit districts to provide meals to students who do not qualify for federal school meal benefits if the district reimburses the federal agency for the cost of providing meals to students who otherwise are not eligible for them.

BRIEF ANSWER

It likely would not violate article VIII, sections 5 or 7 of the Washington Constitution for school districts to use state or local funds to pay the difference between federal reimbursement and the actual cost of providing meals to all children who participate in the meal program. While providing nutritious meals to students does not appear to be a "fundamental purpose of government" as that concept has been developed by the courts, such programs likely would not violate the constitution, because the school districts receive consideration for providing the meals, and the school districts do not intend to make a gift to the participating students. The provision of food is incidental to the provision of educational services, a constitutional responsibility of the state, and a fundamental purpose for school districts. Therefore, we do not believe that a court would hold that expending public funds for this purpose would be unconstitutional.

BACKGROUND

A. Constitutional Provisions Prohibiting Gifts Of Public Funds

The Washington Constitution prohibits state and local governments from giving or loaning public funds to individuals, companies, or associations. Article VIII, sections 5 and 7 set forth these prohibitions:

SECTION 5 CREDIT NOT TO BE LOANED. The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.

SECTION 7 CREDIT NOT TO BE LOANED. No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

Although these provisions are worded differently, the Washington Supreme Court has held that they have the same meaning, and the courts have applied the same analysis in deciding their application. *City ofTacomav. Taxpayers*, 108 Wn.2d 679, 702 n.13, 743 P.2d 793 (1987). These provisions apply to school districts, which are municipal corporations. *SeeStateex rel.Sch.Dist.24 v. Grimes*, 7 Wash. 270, 34 P. 836 (1893).

B. School Meal Programs

School districts are authorized to prepare and provide meals to students (RCW 28A.235.120) and are required to "develop and implement plans for a school breakfast program in severe-need schools". RCW 28A.235.140(2). Students whose family income is below a certain threshold are eligible for free or reduced price school meals under federal school meal programs. *See*42 U.S.C. §§ 1751 *et seq.*; 42 U.S.C. §§ 1771 *et seq.*; RCW 28A.235.140(1)(a), (b). Simply put, the federal government reimburses participating states for the cost of providing meals to those students who meet the eligibility requirements for free or reduced cost meals. *See* 42 U.S.C. §§ 1756-57. The federal government reimburses the Superintendent of Public Instruction, which in turn reimburses the school districts for these costs. *See* 42 U.S.C. §§ 1756-57; WAC 392-157. The Superintendent of Public Instruction also administers the state funds expended in school meal programs. WAC 392-157-130.

Under federal school meal programs, states are permitted to offer free meals to all students, regardless of eligibility requirements, so long as the state pays, with funds from non-federal sources, the difference between the cost of providing the meals and the amount of the federal reimbursement for the program. 7 C.F.R. § 245.9(b), (c). From your letter, we understand that school districts are interested in providing breakfast to all students, even those who do not qualify for free or reduced price meals, pursuant to 7 C.F.R. § 245.9(b) and (c) ("Provisions 2 and 3").[1] Both of these provisions permit schools to provide meals to all students, but they require the state to pay the difference between the cost of the meals and the federal reimbursement, which is paid to the state according to the number of eligible children participating in the meal programs. *Id.*

You advise that school districts are interested in providing students with breakfast under Provisions 2 and 3 for two reasons. First, following Provisions 2 and 3 will result in less paperwork and reduced administrative costs than the remaining option, Provision 1, which requires more extensive record-keeping. *Compare* 7 C.F.R. § 245.9(a) (Provision 1) *with* 7 C.F.R. § 245.9(b) and (c) (Provisions 2 and 3). Second, research has shown that students who participate in free school meal programs have improved academic and behavioral performance in school.[2]

ANALYSIS

In determining whether a gift of public funds has taken place, the courts apply a two-part analysis. The first inquiry is whether the funds are being expended to carry out a fundamental purpose of government. If the answer to this question is yes, then there has been no gift of public funds. If the answer to the first question is no, then the courts will look to the consideration received by the governmental entity for the expenditure of public funds and the donative intent of the governmental entity

in order to determine whether there has been a gift. *CLEAN v. State*, 130 Wn.2d 782, 797-98, 928 P.2d 1054 (1996).

A. Providing Free Or Reduced Cost Meals To All School Children, Regardless Of Eligibility, Is Not A "Fundamental Purpose Of Government" Under Washington's Constitution And Basic Education Statutes

1. Basic Education Is a Fundamental Purpose of Government.

The Washington Constitution provides that the state has a "paramount duty" to provide for the education of children within the state. Const. art. IX, § 1. The Washington Supreme Court has interpreted this provision to create an affirmative obligation on the part of the state to broadly provide for education:

[T]he State's constitutional duty goes beyond mere reading, writing and arithmetic. It also embraces broad educational opportunities needed in the contemporary setting to equip our children for their role as citizens and as potential competitors in today's market as well as in the marketplace of ideas. Education plays a critical role in a free society. It must prepare our children to participate intelligently and effectively in our open political system to ensure that system's survival. It must prepare them to exercise their First Amendment freedoms both as sources and receivers of information; and, it must prepare them to be able to inquire, to study, to evaluate and to gain maturity and understanding. The constitutional right to have the State "make ample provision for the education of all (resident) children" would be hollow indeed if the possessor of the right could not compete adequately in our open political system, in the labor market, or in the market place of ideas.

SeattleSch. Dist. v. State, 90 Wn.2d 476, 517-18, 585 P.2d 71 (1978) (citations and quotations omitted). Although the court defined the state's obligation broadly, the court made plain that the obligation is not without bounds, but it is limited to "basic education." *Id.* at 519. The court did not define "basic education," except to say that basic education does not mean *all* possible instruction, programs, subjects, or services. *Id*. The Legislature has defined "basic education" through a list of goals (RCW 28A.150.210) and specific educational program requirements designed to meet those goals. *See, e.g.*, RCW 28A.150.220, .250, .260.

2. UnderWashingtonLaw, Providing Free Meals to Students Is Not a Component of Basic Education and Therefore Not a Fundamental Purpose of Government.

The Legislature has authorized school districts to permit students who do not meet the eligibility requirements for free meals to participate in the districts' school breakfast programs, and it has further authorized the districts to charge those students for the meals. RCW 28A.235.140(5). However, the Legislature expressly has said that school breakfast programs are not included within the state's obligation to provide for basic education. *Id.* While providing basic education is a fundamental purpose of government, by statute, providing free meals is not.

B. A Program That Provides A Free Breakfast To School Children Does Not Violate The Constitution Because The School Districts Receive Consideration In Return For Providing The Meals, And The Districts Do Not Intend To Make A Gift

Upon concluding that providing free meals to students who are not eligible for them is not a fundamental purpose of government as contemplated by our state's constitution, the next step in the

analysis is to assess whether the school districts receive consideration for providing the meals and whether the school districts intend to make a gift to the students receiving the meals. *SeeTacoma v. Tacoma Taxpayers*, 108 Wn.2d at 703 (citing *Adamsv. Univ. of Wash.*, 106 Wn.2d 312, 327, 722 P.2d 74 (1986)). If the school districts receive consideration and do not intend to confer a gift, there is no gift of public funds. *KingCy. v. Taxpayers ofKingCy.*, 133 Wn.2d 584, 597, 949 P.2d 1260 (1997).

From your letter, it appears that the school districts do not intend to make a gift to the students who participate in the free breakfast program. The purpose of the program is not to confer a gratuitous benefit on students or their families but to enhance and facilitate the school districts' mission of providing public education. Further, as discussed below, the school districts intend to take advantage of a federal rule that eases the amount of paperwork the districts must submit to the federal agency. The program is intended to improve the academic performance of students. Therefore, there is no intent to make a gift to the students.

If there is no intent to make a gift, then the courts will not closely scrutinize the consideration but will assess the consideration for legal sufficiency. *TacomaTaxpayers*, 108 Wn.2d at 703. Legal sufficiency is not a matter of comparative value but is a matter of what will support the promise. *KingCy.,* 133 Wn.2d at 597. Under this analysis, the courts will not scrutinize whether the school districts receive dollar-for-dollar consideration but will look to whether the benefits the districts receive support their expenditures for the meals. *See id.* (courts are reluctant to delve into adequacy of consideration because such analysis would interfere with the government's decision-making).

Under the facts you have provided, the school districts receive consideration for providing free meals to students who are not eligible for them. You note that by providing meals to all students, school districts are required to submit less paperwork to the federal agency, which reduces the school districts' costs to participate in the federal programs. The reduced costs 1) free school district staff time for other uses and 2) financially benefit the districts. Based on the benefits you have stated, then, we conclude that the school districts would receive actual cost savings by providing free meals to students. Therefore, the school districts would receive sufficient consideration for the meals.

The Washington Supreme Court will narrowly apply the prohibition on gifts of public funds "to remedy more precisely 'the evils the framers sought to prevent.'" *Id.*, 133 Wn.2d at 596 (quoting *Tacoma Taxpayers*, 108 Wn.2d at 701-02). The purpose of the constitutional prohibitions against gifts of public funds is to prevent state funds from being used to benefit private interests where the public interest is not primarily served. *CLEAN*, 130 Wn.2d at 797. A program that provides free meals to all students does not violate the constitution simply because individual students receive a benefit. "Where the public receives sufficient consideration, and benefit to an individual is only incidental to and in aid of the public benefit, no unconstitutional gift has occurred." *City ofTacoma*, 108 Wn.2d at 705.

In addition to the public benefit of cost savings to school districts, you also state that there is extensive research linking improved academic and behavioral performance with free nutritious meals, such as by reducing hyperactivity, absenteeism, and tardiness. While a meal program does not produce traditional "consideration" in the form of money or property, such programs make it easier for students to learn and thus make it easier for school districts to meet their educational goals with good success rates. In this manner, the free meal becomes an adjunct support component of the educational program, much like recess breaks, field trips, rest periods (for young children), and physical exercise. None of these is "education", strictly speaking, but a successful educational program includes attention to the students' physical and psychological needs as well. This benefit to the district's educational program amounts to

substantial "consideration" for the district's expenditure, although indirect and not capable of easy measurement.

Thus, there is a clear public benefit, and neither the primary purpose nor the primary effect of the program is to make a gift or to confer an unearned benefit on the students who participate in the free breakfast program. Assuming that school districts are in compliance with substantive and procedural statutes governing their operations, we see no constitutional bar to a program of the type described in your request.

We trust that this opinion will be of assistance to you.

Sincerely,
SHANNON E. SMITH
Assistant Attorney General

AG Opinion 2023 #2

5. Is it an unconstitutional gift of public funds for school districts to make space available to other entities to operate health clinics on district property?

No, it is not a gift of public funds for school districts to make space available to other entities to operate health clinics on district property.

Article VIII, section 7 of the Washington Constitution reads:

No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

Our Supreme Court has recognized that when the constitutional convention adopted article VIII, section 5, the related provision that limits the state's lending of credit, it did not intend to hinder state government from carrying out its "essential function to secure the health and welfare of the state's citizens." See Wash. State Hous. Fin. Comm'n v. O'Brien, 100 Wn.2d 491, 495, 671 P.2d 247 (1983). The purpose of article VIII, sections 5 and 7 is "'to prevent state funds from being used to benefit private interests where the public interest is not **primarily** served.'" *Wash. Pub. Ports Ass'n v. Dep't of Revenue*, 148 Wn.2d 637, 653, 62 P.3d 462 (2003) (quoting Japan *Line, Ltd. v. McCaffree*, 88 Wn.2d 93, 98, 558 P.2d 211 (1977)).

A government's use of public funds is presumed constitutional, and the burden of overcoming that presumption lies with the individual making the challenge. *City of Tacoma v. Taxpayers of Tacoma*, 108 Wn.2d 679, 702, 743 P.2d 793 (1987).

Washington courts "use a two-pronged analysis to determine whether a gift of public funds has occurred." *In re Recall of Burnham*, 194 Wn.2d 68, 77, 448 P.3d 747 (2019). First, the court asks whether the funds were expended "to carry out a fundamental purpose of the government[.]" Id. If the answer to that question is yes, the analysis ends, and there is no gift of public funds. Id.; *CLEAN v. State*, 130 Wn.2d 782, 797-98, 928 P.2d 1054 (1996). If the answer to that question is no, the court asks whether the funds were given with donative intent, and what the public received in exchange (also called "consideration"). *CLEAN*, 130 Wn.2d at 797-98. The consideration that the public receives is "the key factor." *City of Tacoma*, 108 Wn.2d at 703 (quoting *Adams v. Univ. of Wash*., 106 Wn.2d 312, 327, 722 P.2d 74 (1986)). Unless there is a proof of donative intent or a grossly inadequate return, courts do not inquire into the adequacy of consideration. *City of Tacoma*, 108 Wn.2d at 703.

State courts have not offered a complete list or definition of what constitutes a "fundamental purpose" of government. Case law applying article VIII, sections 5 and 7 of the Washington Constitution, however, provides several examples. Fundamental purposes of government include:

- protecting public health,

- collecting taxes,
- furthering higher education,
- acquiring real property,
- controlling floods,
- enforcing child support obligations,
- disposing of solid waste,
- providing and administering workers' compensation, and
- obtaining and defending guardians ad litem.[2]

Article VIII, section 7 also allows local governments to give or loan money for the "necessary support of the poor and infirm[.]" The phrase "poor and infirm" in article VIII, section 7 is read in the disjunctive, meaning the benefitted individual must be "poor" or "infirm," but does not need to be both. *Wash. Health Care Facilities v. Ray*, 93 Wn.2d 108, 116, 605 P.2d 1260 (1980). State courts generally do not assess who "belongs in the benefitted class" of the "poor and infirm." *O'Brien*, 100 Wn.2d at 497. Instead, they defer to the legislative determination of what constitutes need, and they assess the reasonableness of that determination. Id.

Finally, courts will likely consider a school district's motive when it gives or loans money or property to another entity. When analyzing the legislature's actions under article VIII, section 5, our Supreme Court has stated that it gives great weight to the government's stated declaration of purpose. *O'Brien*, 100 Wn.2d at 495-96. The Court does not accept the government's declaration as conclusive, but it will accept it unless it is arbitrary or unreasonable. Id. at 496.

Applying all of these principles here, it seems clear on multiple grounds that school districts may constitutionally provide or lease space to other entities to operate health care clinics. First, doing so serves a fundamental public purpose, in that such clinics are intended to promote and protect the health of the public. Second, health care clinics exist to support those needing medical care, who reasonably fall within the definition of the "infirm" referenced in the state constitution. Third, presumably, a school district's motive in providing or leasing space to another entity to operate a health care clinic would be related to supporting students by strengthening family, school, and community partnerships, as encouraged by RCW 28A.605.040. For these reasons, it is not a gift of public funds for a school district to make space available to another entity to operate a health clinic on district property.

AG Opinion 2009 # 5
https://www.atg.wa.gov/ago-opinions/use-public-funds-repair-or-replace-side-sewers

Use of public funds to repair or replace side sewers

AGO 2009 No. 5 - Aug 27 2009
Attorney General Rob McKenna
SEWER DISTRICTS — PUBLIC FUNDS — GIFT OF PUBLIC FUNDS — GIFTS — LOANS — Use of public funds to repair or replace side sewers.

Municipal sewer districts have statutory authority to use public funds to repair or replace side sewers located on private property if doing so will increase sewer capacity by reducing infiltration and inflow. Use of public funds to do so does not constitute an unconstitutional gift or loan of public funds if the district acts without donative intent and can demonstrate that the action will result in significant benefit to the public.
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August 27, 2009
Representative Ruth Kagi
State Representative, 32nd District

P. O. Box 40600 **Cite As:**
Olympia, WA 98504-0600 **AGO 2009 No. 5**

Dear Representative Kagi:

By letter previously acknowledged, you have requested our opinion with respect to the following question:

May a municipal sewer district repair or replace private side sewers as part of a district-wide infiltration and inflow reduction program where (a) aging and inadequate side sewers are the most significant contributor to infiltration and inflow in the district's entire system; (b) the purpose of the program is to benefit the district and the public through lower long-term capital and maintenance costs, not private property owners; (c) repair or replacement would be subject to a right of entry from the private property owner; and (d) the program costs will be paid back through the district's bi-monthly sewer rates?

BRIEF ANSWER

Municipal sewer districts have statutory authority to maintain or operate the sewer system by repairing or replacing side sewers if doing so results in increased sewer capacity by reducing infiltration and inflow into the sewer system. The exercise of this statutory authority does not constitute a gift of public funds if the municipal sewer district does not have a donative intent and it is able to demonstrate that the expense will result in sufficient benefit to the public.

BACKGROUND

Your question concerns a municipal sewer district that owns and operates sewer mains and lift stations that transport wastewater and sewage to treatment plants. [1] Side sewer lines ***[original page 2]*** collect waste and stormwater from individual homes and buildings and connect to the sewer district's system of pipes and pumps. The side sewer lines are owned by individual property owners, not the sewer district.

The sewer district is experiencing infiltration and inflow from the side sewer lines. Infiltration takes place when groundwater enters the side sewers through deteriorated or damaged side sewer pipes. U.S. Envtl. Prot. Agency, *Sewer System Infrastructure Analysis and Rehabilitation* 91 (1991). Inflow occurs when stormwater is discharged into side sewers or the sewer system through direct connections, such as downspouts, foundation drains, and driveway drains. *Id.* Infiltration and inflow "is the major deterrent to the successful performance of a wastewater conveyance or treatment system." *Sewer System Infrastructure* at 19 (citing *Technology and Design Deficiencies at Publicly Owned Treatment Works*, Water Env't & Tech., (Dec. 1989)). It can cause excessive wear on pumping station equipment, high power costs, and the need for construction of new or additional sewer facilities earlier than the date projected. *Id.* Infiltration and inflow can also cause overloaded sewer systems and treatment plants to flood streets and basements and release untreated wastewater into waterways. *Id.*

ANALYSIS

A municipal sewer district may repair or replace private sewers if it has statutory authority to do so, and if paying for such repairs or replacements would not violate the state constitutional prohibition against the gifting or lending of public funds. We conclude that municipal sewer districts have the necessary authority and that its exercise would not transgress the state constitution.

We begin by briefly considering the statutory authority of municipal sewer districts. RCW 57.08.005(5) provides authority to municipal wastewater districts "to construct, condemn and purchase, add to, maintain, and operate" sewer systems for a variety of purposes, including provision of "an adequate system of sewers" and "control of pollution from wastewater." In addition to possessing the authority granted by RCW 57.08, municipal sewer districts are authorized to exercise any of the powers granted to cities and counties with respect to the maintenance and operation of waterworks and systems of

sewage and drainage. RCW 57.08.005(21). Cities and towns have authority to "construct, condemn and purchase, acquire, add to, maintain, conduct, and operate" sewer systems "together with additions, extensions, and betterments thereto, within and without its limits." RCW 35.67.020(1). Counties have similar authority to "establish . . . operate, and maintain" a sewer system. RCW 36.94.020.

The statutory authority of a municipal corporation is limited to the power conferred by statute and the constitution, necessarily implied or incident to the powers expressly granted, or essential to the declared objects and purposes of the corporation. Okeson v. City of Seattle, 159 Wn.2d 436, 445, 150 P.3d 556 (2007). The Washington Supreme Court has explained that "if municipal utility actions come within the purpose and object of the enabling statute and no express limitations apply, [the] court leaves the choice of means used in operating the utility to the discretion of municipal authorities." *City of Tacoma v. Taxpayers of Tacoma*, 108 Wn.2d 679, 695, 743 P.2d 793 (1987).

[original page 3] The Washington Supreme Court considered the scope of similar municipal utility authority in *Taxpayers of Tacoma*. That case involved RCW 35.92.050, which provides cities authority to "maintain and operate" electrical facilities, and purchase and sell power to its residents. Tacoma's electric utility invested in energy conservation audits and paid for the installation of conservation measures on the private property of its ratepayers. *Taxpayers of Tacoma*, 108 Wn.2d at 683. The evidence in the record demonstrated that that "investment in conservation is considered the equivalent of purchasing electricity or of purchasing an electric generating facility." *Id.* at 693. In determining whether the expenditures were permitted, the Court considered whether the conservation program bore a "sufficiently close nexus to the purpose and object" of the city's statutory authority to operate the electrical utility. *Id.* at 696. The Court found that "the policy underlying legislative authorization of municipal utilities was the belief that municipalities could provide lower cost and more efficient electrical service." *Id.* Noting the "heavy environmental and financial costs" of generating additional power, the Court stated conservation "offers the cheapest and cleanest alternative for meeting future electrical supply needs." *Id.* at 696-97. The Court concluded that Tacoma had not exceeded its authority "to own and manage an electric utility and to purchase and sell power". *Id.* at 700.

As with the conservation measures considered in the Tacoma case, expending funds to repair side sewers that are causing infiltration or inflow is within the statutory authority to construct, maintain, and operate a sewer system. RCW 57.08.005(5); RCW 35.67.020(1); RCW 36.94.020. In addition, repair and replacement falls within the sewer district's statutory authority to control "pollution from wastewater" if it prevents an overloaded system from polluting streets, waterways, and private property with untreated wastewater. RCW 57.08.005(5).

In exercising its statutory authority, a municipality may not act contrary to constitutional limitations. Okeson, 159 Wn.2d at 447. The Washington Constitution prohibits state and local governments from giving or loaning public funds to private individuals, companies, or associations. Article VIII, section 5 states: "The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation." Article VIII, section 7 states:

No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

Although sections 5 and 7 are worded differently, the Washington Supreme Court has held that they have the same meaning and are to be analyzed in the same manner. *CLEAN v. State*, 130 Wn.2d 782, 797, 928 P.2d 1054 (1996). The purpose of the provisions is " 'to prevent state funds from being used to benefit private interests where the public interest is not primarily served.' " *Id.* (*quoting Japan Line, Ltd.*

v. McCaffree, 88 Wn.2d 93, 98, 558 P.2d 211 (1977)). The question of whether a gift of public funds has occurred is resolved by (1) determining whether the governmental body had a donative intent and (2) examining the consideration received by the public. *CLEAN*, 130 Wn.2d at 798.

[original page 4] The Washington Supreme Court's analysis of these factors in the *Taxpayers of Tacoma* case is closely analogous to the question you have presented. In *Taxpayers of Tacoma*, the Court found that despite the fact that the conservation measures benefitted individuals by decreasing their utility bills, the city did not act with donative intent. "Aid to individuals is not absolutely prohibited under our law but is only improper where public money is used solely for private purposes." *Taxpayers of Tacoma*, 108 Wn.2d at 705 (*quoting State v. Ralph Williams' N. W. Chrysler Plymouth, Inc*., 82 Wn.2d 265, 277, 510 P.2d 233 (1973)). The Court found that any benefit received by individuals was incidental to the public benefit of meeting future power needs by using the energy saved through the conservation measures. As in the *Taxpayers of Tacoma* case, private property owners may benefit from the repair or replacement of side sewers. However, if the private benefit is merely incidental to the public benefit of increasing sewer capacity, there would not be a donative intent.

In determining whether the consideration received by the public as a result of the energy savings was acceptable, the Court applied a legal sufficiency test. *Taxpayers of Tacoma*, 108 Wn.2d at 703; *see also King Cy.,* 133 Wn.2d at 597. The Court stated that if the consideration received is not "grossly inadequate," the courts will not analyze whether the public received consideration that was equal to the expenditure. *Taxpayers of Tacoma*, 108 Wn.2d at 703. In *Taxpayers of Tacoma*, the Court found that the consideration was not grossly inadequate, because the city demonstrated the number of kilowatts of electricity that were likely to be saved in the first year after installation of the conservation measures. *Id.* at 703-4. As in the *Taxpayers of Tacoma* case, a municipal sewer district could demonstrate the adequacy of consideration by analyzing the amount of increased sewer capacity it predicts will be obtained through the repair or replacement of side sewers. If the sewer district does not have a donative intent, and it is able to provide an analysis of the predicted increased sewer capacity, we do not believe the repairs or replacement would constitute a gift of public funds.

Our analysis of whether the repairs would constitute a gift of public funds is not affected by article VIII, section 10 of the state constitution. Section 10 contains an exception to the state constitution's prohibition on gifts of public funds. It states:

> Notwithstanding the provisions of section 7 of this Article, any county, city, town, quasi municipal corporation, municipal corporation, or political subdivision of the state which is engaged in the sale or distribution of water, energy, or stormwater or sewer services may, as authorized by the legislature, use public moneys or credit derived from operating revenues from the sale of water, energy, or stormwater or sewer services to assist the owners of structures or equipment in financing the acquisition and installation of materials and equipment for the conservation or more efficient use of water, energy, or stormwater or sewer services in such structures or equipment. Except as provided in section 7 of this Article, an appropriate charge back shall be made for such extension of public moneys or credit and the same shall be a lien against the structure benefited or a security interest in the equipment benefited. Any financing for energy conservation authorized by this article shall only be used for conservation purposes in existing structures and shall not be used for any purpose which results in a conversion from one energy source to another.

[original page 5] In *Taxpayers of Tacoma*, the Washington Supreme Court examined a prior version of section 10. Const. art. VIII, § 10 (as originally adopted as Amendment 70 (1979)). Like the current version of section 10, it permitted loans of public money to help property owners acquire equipment for energy conservation, but it did not include sewer systems or sewer equipment. The Court found that section 10 was proposed by the Legislature, and ratified by the people, for "the limited purpose of carving

out an exception to the lending of credit prohibition" in the state constitution. *Taxpayers of Tacoma*, 108 Wn.2d at 688. The Court held that the question of whether Tacoma could *purchase* conservation measures from private parties was a question "totally separate from, and uninfluenced by" the exception in article VIII, section 10 for the provision of *loans* to private parties for conservation measures.

In 1997, section 10 was amended to add municipal sewer services and sewer equipment. Const. amend. 91 (H.J.R. 4209 (1997)). The legislative history of amendment 91 indicates that the Legislature's intent was to permit lending of public credit to finance sewer improvements, not to address the use of public funds for the purchase of improvements. H.B. Rep. on H.J.R. 4209, 55th Leg. (1997). The voters pamphlet reflects the same intent. The ballot title submitted to the voters asked: "Shall the Constitution be amended to permit local governments to make loans for the conservation or the more efficient use of stormwater or sewer services?" Voters Pamphlet for State General Election 18 (1997). As with the original enactment of section 10, there is no indication that amendment 91 was intended to create a negative implication that the purchase of conservation equipment would be prohibited. Accordingly, the amendment does not affect a municipal sewer district's authority to use public funds to repair or replace side sewers.

We trust that the foregoing will be useful to you.

ROB MCKENNA
Attorney General

AG Opinion 1997 #4
https://www.atg.wa.gov/ago-opinions/department-information-systems-education-schools-religion-public-funds-colleges-and

1. **K-20 Educational Network**

DEPARTMENT OF INFORMATION SYSTEMS - EDUCATION - SCHOOLS - RELIGION - PUBLIC FUNDS - COLLEGES AND UNIVERSITIES - Including privately-operated schools and colleges in K-20 Educational Network

AGO 1997 No. 4 - Oct 7 1997
Attorney General Christine Gregoire
DEPARTMENT OF INFORMATION SYSTEMS - EDUCATION - SCHOOLS - RELIGION - PUBLIC FUNDS - COLLEGES AND UNIVERSITIES - Including privately-operated schools and colleges in K-20 Educational Network

1. It would not violate article VIII, section 7, of the state constitution to include privately-owned and operated schools and colleges in the K-20 Educational Network, provided that the private schools and colleges provide consideration in the form of monetary payment and valuable services.
2. It would not violate article I, section 11, or article IX, section 4, of the state constitution to include religiously-affiliated schools and colleges in the K-20 Educational Network, provided that there is consideration in the form of monetary payment and services, and provided that the Network is not operated in such a way as to violate the constitution.

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October 7, 1997

The Honorable Steve E. Kolodney
Director, Department of Information Services
P.O. Box 42445
Olympia, Washington 98504-2445
Cite as: AGO 1997 No. 4
Dear Director Kolodney:

By letter earlier acknowledged you have asked for an opinion on two questions related to the implementation of the Education Technology Act, codified as chapter 28D.02 RCW. Your questions are posed on behalf of the K-20 Telecommunications Oversight and Policy Committee established in RCW 28D.02.010.

Chapter 28D.02 RCW was enacted by the Legislature in 1996. Laws of 1996, ch. 137. In it, the Legislature ". . . supports the creation of a K-20 education network for the coordinated expansion of current technology and the development of new technologies that support an integrated and interoperable educational technology network serving kindergarten through higher education and promoting access for Washington citizens." RCW 28D.02.005. Your committee was established to plan and coordinate the development of the education network. RCW 28D.02.010. One of the committee's main tasks is to identify existing hardware which can be utilized in developing the network, as well as to identify and plan for the acquisition of additional facilities. RCW 28D.02.020.

One of the statutory purposes of the network is to ". . . foster partnerships among public, private, and non-profit entities, including independent non-profit baccalaureate institutions of higher education, libraries, and public hospitals. . . ." RCW 28D.02.020(5). RCW 28D.02.070 establishes a two-phase plan. Phase one would provide a telecommunications backbone for educational service districts, the main campuses of public baccalaureate institutions, the branch campuses of public research institutions, and the main campuses of community colleges and technical colleges. Phase two contemplates connection to the system by several additional types of institutions, including local school districts and ". . . independent non-profit baccalaureate institutions. . . ." RCW 28D.02.070(2).[1]

Given this background, and especially noting the language encouraging the participation of "independent non-profit baccalaureate institutions," you have asked several questions which we have rephrased for clarity as follows:

1. Would the connection of private non-profit baccalaureate institutions to the K-20 network constitute an unconstitutional gift of public funds or lending of public credit to the private institutions, assuming that the private institutions would be charged for the costs of establishing and maintaining their connection to the system?

2. Would it violate the state constitution to connect to the K-20 network an institution that has a religious affiliation, if the purpose of the connection is to expand the network's shared resources and not to promote religion or religious instruction?

BRIEF ANSWER

We answer both of your questions in the negative. Where the creation of a statewide telecommunications agency is for a public purpose, and the connection of private institutions, including those with religious affiliations, is merely incidental to the public purposes of the network, and where the private institutions share in both the costs and benefits of the network, the participation of the private institutions violates neither the lending of credit nor the religious establishment provisions in the state constitution.

ANALYSIS

Chapter 28D.02 RCW contemplates the establishment of a statewide telecommunications network connecting, eventually, all of the publicly-owned educational institutions in the state, including local school districts, community and technical colleges, and state-owned institutions of higher education. According to material you provided us in connection with your opinion request, the policy committee contemplates a wide range of telecommunications services to be provided through the "K-20 network."

These would include, just as examples, internet and intranet facilities, video conferencing, long-distance teaching, and shared access to educational databases.

Although the legislation specifically contemplates the participation of private non-profit baccalaureate institutions in the K-20 network, and mentions them in several places in chapter 28D.02 RCW, it is clear from the context that providing benefit to the private institutions is not the major thrust of the legislation.[2] While the purpose of including the private non-profit institutions in the network is not explicit in the legislation, you have explained in your opinion request that at least two major benefits would result. First, connecting the private institutions to the network would open their resources (which in some cases are not duplicated elsewhere) to the rest of the network, increasing both the volume and the variety of programs and services available through the network. Second, the inclusion of the privately-owned institutions increases the total size of the network and allows economies of scale in the purchasing and utilization of information infrastructure and services.[3]

As your committee debates policy options on the development of the K-20 network, you have asked us to analyze two constitutional questions which might affect the committee's options.[4]

Question 1. Would the connection of private non-profit baccalaureate institutions to the K-20 network constitute an unconstitutional gift of public funds or lending of public credit to the private institutions, assuming that the private institutions would be charged for the costs of establishing and maintaining their connection to the system?

From the facts as you have supplied them and as chapter 28D.02 RCW sets legislative policy, the primary purpose of the K-20 network is to benefit students in the state's educational system, including elementary and secondary students as well as those in higher education institutions. The great majority of those students attend institutions owned and operated by the state and funded through tax revenue. As noted earlier, the purpose of inviting private non-profit institutions to join the network is primarily to gain for the state the benefit of the shared resources and services which the private institutions might provide.[5]

Article VIII, section 5 of the state constitution provides that "[t]he credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation." This provision has a parallel for local government in article VIII, section 7, and the two sections are read by the courts as equivalent. Tacoma v. Taxpayers of Tacoma, 108 Wn.2d 679, 743 P.2d 793 (1987) (footnote 13 in 108 Wn.2d at 701).

Although these provisions were at times interpreted quite literally by the courts, they have not been used for at least two decades to invalidate legislation which has an obvious public purpose and which only incidentally benefits private interests. This is especially true where the government in question receives payment or other bargained-for consideration from the private party involved.

Perhaps the most influential case in this regard is the Tacoma case, in which the court upheld the city of Tacoma's scheme of conservation credits as authorized by state statute. The trial court had invalidated the program on a finding that any bargained-for consideration received by the city was insufficient because it was neither measurable nor lasting. The Supreme Court reversed, finding that, in the absence of donative intent, the court will invalidate a program only for a "grossly inadequate return." Tacoma v. Taxpayers of Tacoma, 108 Wn.2d at 703, citing Adams v. UW, 106 Wn.2d 312, 327, 722 P.2d 74 (1986).

In the very recent series of cases involving construction of a baseball stadium in King County using both state and county funds, the Court has adhered to this view of article VIII, sections 5 and 7. In both CLEAN v. State, 130 Wn.2d 782, 928 P.2d 1054 (1996) and in King County v. Taxpayers of King County, 132 Wn.2d 360, 938 P.2d 309 (1997), the Court rejected challenges based on the "lending of credit" sections of the constitution, finding that there was a substantial public purpose in building the stadium and only an incidental, somewhat speculative, private benefit to the professional athletic team expected to lease and use the stadium. By almost any measure, the team had a more substantial interest in

the construction and operation of the stadium than the private higher education institutions have in the development of the K-20 network.

Two more cases should be sufficient to illustrate the Court's willingness to permit considerable leeway in establishing public/private relationships which confer mutual benefit. In Wn. Natural Gas Co. v. Public Util. Dist. No. 1 of Snohomish Cy., 77 Wn.2d 94, 459 P.2d 633 (1969), the Court upheld a public utility district's practice of installing an electrical distribution system on the property of a private land developer, even though the developer was granted up to three years to reimburse the district for its costs. Examining the various elements of the contractual relationship between the district and developer, the Court found adequate consideration in the form of substantial benefits to the district.

Similarly, and perhaps even closer to the case you have posed, the Court found no lending of credit in Public Utility District No. 1 of Snohomish Cy. v. Taxpayers ofSnohomishCy., 78 Wn.2d 724, 479 P.2d 61 (1971). In that case, the Court upheld the authority of a group of municipal corporations to join with four privately-held companies in constructing and operating a coal-fired electric generation plant. Where the participation of the government entities served a public purpose, and provided a substantial public benefit, the court found no constitutional infirmity in a "joint venture" with private parties.

Given these precedents, we conclude that participation by one or more private non-profit institutions in the K-20 network would not violate article VIII, section 5, since there is no evidence of donative intent and the network will receive consideration from the private institutions.[6] Any benefit to the private institutions will be purely incidental to the benefit derived by the public agencies in the network. We answer "no" to your first question.

Excerpts from a good article.
History of Gift of Public Funds
https://wsama.org/vertical/sites/%7B8ED61B30-6B44-4E1C-8894-9FFBA9264BFB%7D/uploads/06_Thats_the_Ticket.pdf
Non-profit corporations are still private corporations. As a quick reminder, non-profit corporations, though their purpose may be laudable, are still privately held and therefore would likely be an “individual, association, company, or corporation” under sections 5 or 7.36.
No specific set of factors will determine exactly when a government grant or loan is for a “recognized public function,” but these cases indicate that, if there is a history of government involvement in the subject area involved, or other laws and regulations directed toward achieving similar ends within that subject area, or even a clear sense that the questioned action is truly governmental, a strong argument can be made that the gift or loan is for a recognized government function and entirely exempt from Article VII, sections 5 and 7 scrutiny.
Legally sufficient consideration and donative intent.
If the gift of public funds or extension of credit is not for a recognized public function, all is not lost. A second inquiry remains. The government action still may fall outside the prohibition if the government receives legally sufficient consideration for the gift or loan and makes the gift or loan without donative intent.
The phrase, “donative intent” is used repeatedly in Washington case law, but true definitions are hard to come by. Suffice it to say, “donative intent” is essentially the inverse of “consideration.” If you do not have consideration, then you have donative intent (i.e., intent to make a gift); if you do have consideration, then donative intent theoretically goes away.66 The question then turns to how the courts have defined adequate consideration for the purpose of gifts or loans to private parties.
The court there stated that any examination into the adequacy of the consideration would “intrude upon the freedom to contract,” thereby implying that it would not step on the toes and second-guess a separate branch of government.

Put another way, "[a]bsent a showing of donative intent or gross inadequacy, trial courts should only apply a legal sufficiency test, under which a bargained-for act or forbearance is considered sufficient consideration."

Conclusion.

The above analysis is designed to provide the practitioner guidance and context, but in this area it cannot provide certainty. "What constitutes a 'public municipal purpose is not susceptible of precise definition, since it changes to meet new developments and conditions of times.'" Under the two-prong analysis now used by the courts, the "recognized government function" approach has become more and more available to completely avoid Article VIII, section 5 and 7 issues. When they do arise, however, the courts' increasingly relaxed view toward the adequacy of consideration, particularly when they find themselves second-guessing legislative policy and budget decisions, will often provide the necessary legal basis to avoid the prohibition on gifts or lending of credit. With that said, it does not hurt to consider the historical origins of these clauses when evaluating compliance. The clauses were enacted to combat corruption and prevent undue influence by private corporate actors on local governments. While railroads are no longer at the forefront of these concerns, the question of subsidies for the private sector continues to arise regularly in municipal practice. If the courts detect indicia of these concerns, it is not difficult to envision a decision that embodies a retrenchment on the current state of the law.

The 2 Most Common Scenarios

https://wsama.org/vertical/sites/%7B8ED61B30-6B44-4E1C-8894-9FFBA9264BFB%7D/uploads/06_Thats_the_Ticket.pdf

Today, municipal attorneys face the gifting issue in at least two distinct scenarios: providing public money or services for larger public-private partnership projects and providing smaller amounts of public money or services to citizens, neighborhoods, and local organizations. In analyzing these issues, it is useful to consider both the history of the clauses and the development of current doctrine.