




VILLAGE OF OAK PARK  
LAW DEPARTMENT

MEMORANDUM

To: Honorable President Anan Abu-Taleb and Board of Trustees  
cc: Cara Pavlicek, Village Manager  
From: Paul L. Stephanides, Village Attorney   
Date: January 29, 2014  
Re: Donation of Public Funds

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INTRODUCTION:

Intermittently, the Village of Oak Park ("Village") receives requests from private organizations, including not-for-profits, seeking the donation of Village funds pursuant to the purpose of a particular organization, including a recent request from a local scholarship organization. This memorandum addresses the purposes for which public funds may be donated by the Village.

DISCUSSION:

I. Case Law Analysis

Article VIII, section 1(a) of the Illinois Constitution of 1970 provides that "[p]ublic funds, property or credit shall be used only for public purposes." Ill. Const. 1970, art. VIII, § 1. The Illinois Supreme Court has long held that what is for the public good and what are public purposes are questions which the governing body must decide in the first instance. *Clayton v. Village of Oak Park*, 117 Ill.App.3d 560, 73 Ill.Dec. 112, 453 N.E.2d 937 (1<sup>st</sup> Dist. 1983). The governing body is vested with broad discretion, and the judgment of the governing body is to be accepted in the absence of a clear showing that the purported public purpose is but an evasion and the purpose is, in fact, private. *In re Marriage of Lappe*, 176 Ill.2d 414, 429, 223 Ill.Dec. 647, 655, 680 N.E.2d 380, 388 (1997); *Clayton v. Village of Oak Park*, 117 Ill.App.3d at 567, 73 Ill.Dec. at 118, 453 N.E.2d at 943.

In the *Clayton v. Village of Oak Park* case, the court held that the village's enactment of an ordinance creating an equity assurance program for single-family residences by which the Village would reimburse participants 80% of the difference between the appraised value of their residences at the time of certification and its value at the time of sale was a valid public purpose under the above cited section of the Illinois Constitution. The court held that the public purpose advanced by the village, the enhancement of racial integration through the prevention of panic peddling and blockbusting, was "of singular importance." The plaintiffs in the case also challenged the ordinance on the grounds that it exceeded the Village's home rule powers, and

the court held that because home rule power is “broad” and is to “be construed liberally,” the Village was within its home rule authority.

The Illinois Supreme Court has held that a public purpose was served by a state law which required school boards to provide free transportation to school to nonpublic students due to the public purpose of providing transportation to students. *Board of Education, School District No. 142 v. Bakalis*, 54 Ill.2d 448, 299 N.E.2d 737 (1973). The Illinois Supreme Court has also held that the reconstruction of Soldier Field funded by the use of public funds served a public purpose despite a challenge that the reconstruction only stood to benefit a private entity, the Chicago Bears. *Friends of the Parks v. Chicago Park District*, 203 Ill.2d 312, 271 Ill.Dec. 903, 786 N.E.2d 161 (2003). The Supreme Court held that a financial benefit to a private party standing alone does not diminish the fact that the stadium would serve a public purpose and would be used by the public for a wide variety of public purposes.

Conversely to the above cited cases, an Illinois appellate court has held that the use of a public water tower for a commercial emblem and words painted on the tower to advertise a private shopping center amounted to a private purpose. *O’Fallon Development Company, Inc., v. City of O’Fallon*, 43 Ill.App.3d 347, 2 Ill.Dec. 6, 356 N.E.2d 1293 (5<sup>th</sup> Dist. 1976). The Court limited its holding to the use of public property for private advertising because no public benefit results from such use.

## II. Village Manager Authority

The Village Manager does not possess the authority to donate funds to a private organization without prior Board approval. State statutes do not address the Village Manager’s authority to make donations. Section 2-6-10 of the Oak Park Village Code (“Village Code”) provides in pertinent part:

**2-6-10: ALL CONTRACTS FOR SUPPLIES, EQUIPMENT, REPAIR WORK OR THE MAKING OF ANY PUBLIC IMPROVEMENT; REQUIREMENTS FOR APPROVAL AND BIDDING:**

No contract shall be made for any supplies, equipment, repair work or personal services when the total cost exceeds twenty five thousand dollars (\$25,000.00), or the making of any public improvement when the total cost exceeds ten thousand dollars (\$10,000.00), unless such contract shall have been authorized by the Board of Trustees. Whenever the total cost of a contract for supplies, equipment, repair work or personal services shall not exceed, in any one case, one thousand dollars (\$1,000.00), the Purchasing Agent, without such previous authorization, shall cause the same to be purchased upon his written order; and further provided that when the total cost thereof shall exceed one thousand dollars (\$1,000.00) but shall not exceed twenty five thousand dollars (\$25,000.00), the Village Manager may

cause the same to be purchased without previous authorization in like manner, but the Purchasing Agent or the appropriate department head shall first obtain in writing, whenever possible, at least three (3) informal bids to furnish same, which bids shall be filed in every case in the Finance Department. All such contracts shall be let to the lowest responsible bidder provided that any and all informal bids for equipment, supplies, repair work or personal services may be rejected by the Purchasing Agent or appropriate department head if the character or quality of the supplies, equipment or labor does not conform to requirements or if the public interest may otherwise be served thereby.

Thus, pursuant to Section 2-6-10 quoted above, the Manager has the authority to enter into contracts for "supplies, equipment, repair work or personal services" that do not exceed \$25,000.00, but does not have the authority to donate Village Funds absent a budget appropriation or other prior Board action.

**CONCLUSION:**

Significantly, the Village adopted the equity assurance program at issue in the *Clayton* case pursuant to Board action. If the Board directs budgeting authority in the future for donations, then the necessary Code amendments of policy direction could be brought to the Board for approval. This would also ensure that a proper legal analysis can be conducted to determine if there is a public benefit under the relevant case law for a donation. Please let me know if there are any questions.