

A GUIDELINE TO THE
USE OF PUBLIC FUNDS BY CITIES AND VILLAGES - REVISED

On September 11, 1992 the Nebraska Accountability and Disclosure Commission adopted a document entitled Use of Public Funds by Cities and Villages. The original use of the public funds document was the result of a suggestion by the League of Nebraska Municipalities. Over the years, the Commission and its staff had received a number of inquiries as to whether the use of public funds would be permissible by a municipality under certain circumstances. The League of Nebraska Municipalities also regularly received inquiries on this subject. The League in turn often contacted the Commission staff for its opinion regarding a specific inquiry. The League suggested that there would be a benefit to Nebraska's municipal officials and municipal employees if the Commission would take a public position in areas in which questions constantly reoccur. On June 9, 1993 the Governor signed into law LB734 which included the Local Government Miscellaneous Expenditure Act. It is found at §13-2201 through §13-2204 of the State Statutes. This new act provides a legal basis for certain types of expenditures for which there previously had been no statutory authority or for which there had been questionable legal authority. Thus, a number of the responses found in the original use of public funds document are now inaccurate.

The following are general responses to general questions. A variety of circumstances could change the responses. It is possible that there are exceptions to some of the positions set forth below. There is no substitute for careful analysis of a specific problem with all of the relevant circumstances and factors considered.

Prior to considering the questions submitted, there are some general rules which may be beneficial to municipal officials and municipal employees. They are:

- A) The manner in which government does business sometimes is, and must be, different from the way that private industry does business.
- B) The government body expending public funds should always be able to articulate the statutory or other legal basis for the expenditure. "We've always done it this way" is not a legal basis.
- C) A government body expending public funds should always be able to articulate the public purpose served by the expenditure.
- D) Government resources are for government purposes only.

Question #1 - Is a city official permitted to use public funds to purchase meals for officials or staff?

Response - Under certain circumstances, yes. The Local Government Miscellaneous Expenditure Act provides that public funds may be spent for meals under the following circumstances:

- a) If the meal is part of the actual and necessary expenses incurred by the official or employee at educational workshops, conferences, training programs, official functions, hearings or meetings (whether within or without the municipal limits). The governing body must give approval prior to the expense being incurred either by formal vote or by the adoption of a uniform policy.

- b) Meals and nonalcoholic beverages may be provided to individuals while performing or immediately after performing relief, assistance, or support activities in emergency situations including tornado, severe storm, fire, accident, etcetera.

The governing body may not expend public funds for meals of paid members of a governing body provided while the members are attending a public meeting of the governing body unless the meeting is a joint public meeting with one or more other governing bodies.

Question #2 - May municipal funds be used to provide cash bonuses in recognition of excellence, provide cash incentives for not using sick leave; or provide cash incentives for exemplary safety records?

Response - These uses of public funds are permissible. However, they are all likely to be considered compensation by the Internal Revenue Service. Cities and villages have the authority to establish compensation policies for city employees. A municipality may wish to consider establishing policies in this area if it intends to use any of the foregoing incentives.

Question #3 - May municipal funds be used to purchase plaques, certificates, and similar tokens of acknowledgement or appreciation for public officials, public employees, and citizens serving on municipal boards, etcetera?

Response - Yes. However, before making any such expenditure, the governing body shall, by official action after a public hearing, establish a uniform policy which sets a dollar limit on the value of any plaque, certificate of achievement, or item of value to be awarded. The policy may not be amended or altered more than once in any twelve month period.

Question #4 - May municipal funds be used to pay conference registration fees, travel expenses, and actual and necessary expenses of officials or staff in connection with their attendance at conferences for training purposes?

Response - Yes.

Question #5 - May a municipality expend funds to pay the expenses of a spouse of a public employee or public official in connection with attendance at a conference?

Response - No. There is no statutory authority for such an expenditure. The Local Government Miscellaneous Expenditure Act specifically prohibits using public funds to pay the expenses of a spouse of an elected or appointed official. The Accountability and Disclosure Act prohibits the use of public funds for the financial benefit of an immediate family member of a public official or public employee. See §49-14,101(4).

Question #6 - May municipal funds be expended for flowers and memorials for deceased elected officials, employees or their families?

Response - No.

Question #7 - May municipal funds be used to sponsor a municipal employee basketball or softball team?

Response - No.

Question #8 - May municipal funds be used to purchase uniforms and shoes for police, fire and public works employees?

Response - This is a tax question. Detailed provisions exist in the Internal Revenue Code regarding an employer providing uniforms and shoes to an employee. This is a matter upon which a municipality should consult a tax professional.

Question #9 - May municipal funds be used to pay for Christmas parties and other social functions for employees?

Response - No.

Question #10 - May municipal funds be used to pay for a recognition dinner for elected officials and employees?

Response - Yes. The Local Government Miscellaneous Expenditure Act provides that one recognition dinner each year may be held for elected and appointed officials, employees, or volunteers of the local government. It provides, however, that the maximum cost per person for the dinner must be established by formal action of the governing body and may not exceed \$25.

Question #11 - May a municipality use its share of the money received from vending machines on municipal property for Christmas parties and similar events for employees?

Response - No. The money would be public funds. Municipalities often have a variety of income sources other than taxes. Examples of these sources of income are sewer and water funds, funds generated by the sale of electricity, funds generated by admission fees to municipal swimming pools, and the like. All of these are public funds.

Question #12 - May funds generated by the recycling of aluminum pop cans generated by city employee pop purchases be used to pay for Christmas parties for municipal employees?

Response - Yes. Strictly speaking, these aluminum cans are the property of the purchasing employee. It is permissible to allow city employees to voluntarily deposit their aluminum cans in a bin or receptacle on city property. The proceeds of the sale of the cans belong to the city employees and they can use the proceeds for whatever they will.

Question #13 - May a municipality expend public funds to pay for Christmas decorations and other promotional decorations for downtown or other shopping areas?

Response - Yes. Section 13-315 permits cities and villages to engage in publicity campaigns for a variety of purposes including exploiting of the commercial resources of the city or village.

Question #14 - Is the municipality permitted to use public funds to contribute to chambers of commerce?

Response - Yes. Municipalities carry out their functions in a variety of ways. Sometimes these functions are carried out through private organizations such as the local chamber of commerce. However, money may not be given to a private organization (a chamber of commerce or otherwise) by a municipality if the money is directed to a project in which the municipality itself has no authority to engage. Simply stated, a municipality may not do through a private organization that which it is prohibited from doing itself.

Adopted by the Nebraska Accountability and
Disclosure Commission
September 17, 1993