

## APPENDIX H

### PLANNING THE COMPLIANCE PORTION OF AN AUDIT

#### Restrictions on Local Government Expenditures

Local units of government in Michigan are only allowed to incur expenditures for a valid public purpose. The local unit is the steward of public resources, and they may not be used for a private purpose. Determining whether an expenditure is for a valid public purpose is a legal consideration. Often the local unit's legal counsel can be helpful in making this determination. There are numerous state statutes, court cases and attorney general opinions that define allowable expenditures. As a guide, the following is a list of the more common types of questionable expenditures:

1. Charitable Donations to Non-Profit Organizations: Unless the payment is in exchange for the provision of a governmental service that the local unit could have provided itself, this is not a valid public purpose. In general, such expenditures should be documented through a written agreement. This prohibition includes churches, veterans' organizations, community organizations, Little League, Boy Scouts, Big brothers/ Big Sisters, etc.
2. Donations to a Private Ambulance or EMS Service: MCL 333.20948 authorizes local governmental units to contract for ambulance services. This would only be allowed if there is a written agreement providing that the payment is in consideration for services rendered (which service the local unit could have provided with its own employees).
3. Public Celebrations and Events: MCL 123.851 specifically allows cities, villages and townships to expend money for observances of Armistice (Veterans), Independence and Memorial Days and Diamond Jubilee or Centennial celebrations. MCL 46.11a specifically allows counties to appropriate money for the celebration of Armistice (Veterans) Day.

It is improper for a unit of government to expend public money for an annual picnic or other celebration that is not specifically authorized by law and does not serve a public purpose. The Michigan Supreme Court in *Wayne County v Hathcock*, 471 Mich 445, 462; 684 NW2d 765 (2004), defined "public purpose" as having "for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation, the sovereign powers of which are used to promote such public purpose."

4. Providing Coffee, Food, etc.: The purchase of coffee, food, etc., must be for a public, not an individual or private group or purpose. These expenditures for use at a regular or special meeting where the public is also participating in the coffee, food, etc., for fire fighters, volunteer or full-time employees, when working an extended period of time or when dedicating public buildings are normally considered expenditures for a public purpose.

Coffee, food, etc., for employees use during normal working hours is considered personal, not for a public purpose, and improper unless specifically provided for in a collective bargaining agreement or duly adopted employment policy of the governmental unit (fringe benefit). See the definition of "public purpose" in item 3 above.

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5. Retirement/Recognition Functions and Employee and Retiree Gifts: Retirement functions, gifts or plaques for employees or officials, recognition dinners for volunteer fire fighters or ambulance staff are usually not for a public purpose, therefore, not an allowable expense. Travel and meals as part of the cost of training volunteers to perform emergency services within the local unit are deemed a public purpose, payable as an expense when properly budgeted, authorized and approved. See the definition of “public purpose” in item 3 above.
6. Historical Activities: MCL 399.161 allows a township to appropriate money that the township board believes advances and fosters historical interests of the township. MCL 399.171 and 399.172 allow a city, county, township or village to individually appropriate money or jointly create a commission to advance the historical interests of the unit or units. MCL 399.201-399.215 allow a city, county, township or village to establish historical districts and a commission to preserve and refurbish historical structures.
7. Juvenile Delinquency--Youth Centers: MCL 123.461 allows a county, city, township or village to operate centers open exclusively to youths under 21 years of age and aimed at curbing juvenile delinquency within the community.
8. Economic Development: MCL 125.1601-125.1636 allows a county, city, village or township to incorporate an economic development corporation, file articles of incorporation and fund projects of said EDC, which are for a public benefit. MCL 125.1231 - 125.1237 allows county commissioners to create a county commission to promote economic development and provide in the county budget for the expenses of the commission.
9. Senior Citizens, Older Persons: MCL 400.571 - 400.577 allows a county, township, city or village to provide services to persons 60 years or older. Appropriations to a private organization must be specified in a contract. The terms of the contract must be published within 10 days of its approval in a local newspaper specifying the contract terms and services to be performed.
10. Legal Expenses: A governmental unit is not authorized to expend public money to assist residents with legal costs in defending the homeowners from possible civil action by a neighboring city to condemn their property for public use by the city. We are unable to see a "public purpose" for the township in this expenditure. Also this expenditure may be prohibited under the provisions of Article 9, Section 18 of the 1963 Michigan Constitution that prevents a governmental unit from lending its credit to the aid of any person, association or corporation, public or private, except as authorized in the Constitution.
11. Membership Dues: Membership dues to governmental associations such as MTA, MML, MAC and similar organizations that advise, inform and educate officials and employees are appropriate. (See court decision Hayes v City of Kalamazoo, 316 Mich. 443).
12. Training and Education: Registration fees, lodging, travel, and meals while in attendance at useful public informational or educational workshops and seminars are appropriate.

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13. Mileage Reimbursements: Local units should follow the IRS guidelines for determining which travel is considered a “business purpose.” Mileage of officials (except county finance committee and board of commissioners. See MCL 46.52 and 46.62) and employees to and from their residence to the city, township or village hall, county building or meeting rooms is not to be reimbursed. (Mileage paid to county commissioners must be included on their W-2 forms as taxable income.) This means that commuting from home to work and back is not to be reimbursed.
14. Private Roads: Expenses for private roads are the responsibility of the private owners of the road and it is inappropriate to use public funds for such purpose. However, this does not prohibit a local unit from assisting the private road owners by levying a special assessment for improving or maintaining a private road, as long as the special assessment is designed to cover 100% of the costs associated with the private road. (Public Act 188 of 1954, as amended, being MCL sections 41.721 - 41.738)
15. Per Diem Payments to Township Supervisor, Clerk or Treasurer: When the supervisor, clerk or treasurer is paid on a salary basis, it is inappropriate to pay extra or a per diem for attendance at meetings (MCL 41.95). (Check city and village charters for their compensation procedures or restrictions.) Extra compensation for summer tax collections is inappropriate, unless part of the initial salary resolution or is authorized within statutory procedures for an increase in salary.
16. Flowers to the Sick or Departed: Local governments do not have authority to expend money for floral gifts. (Attorney General Opinion Number 2346 dated July 18, 1956)

#### **Other Provisions (Supplementary Information)**

This section contains excerpts and descriptions of many of the provisions of the State Constitution, State Statues, Court Cases and Attorney General Opinions that specify what local governments can and cannot do. This section should be used as a more detailed supplement to the compliance requirements presented earlier in this manual.

#### **Authority for the Primary Governments**

##### Constitutional Provisions, Michigan Constitution of 1963

(Article 7, Section 1) Each organized county shall be a body corporate with powers and immunities provided by law.

(Article 7, Section 17) Each organized township shall be a body corporate with powers and immunities provided by law.

(Article 7, Section 21) The legislature shall provide by general laws for the incorporation of cities and villages.