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Honorable Alvin V. Miller

Office of the Attorney General
April 25, 1979

1979 Iowa Op. Atty. Gen. 102 (Iowa A.G.), 1979 WL 20932

Office of the Attorney General

State of Iowa

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Opinion No. 79-4-26

*1 April 25, 1979

***1 IOWA CONST. ART. III § 31; Iowa Code Sections 740.20 (1975); 721.2(1, 5), (1979). A retirement dinner sponsored by and paid for by a municipal utility may, depending upon the circumstances, be for a 'public purpose' and thus not violative of Iowa Constitution, Art. III, Section 31. (Salmons to Miller, State Senator, 4/ 25 /79)**

*1 Honorable Alvin V. Miller
*1 State Senator
*1 Sixth District
*1 The Senate
*1 State Capitol Building
*1 Des Moines, Iowa 50319

Dear Senator Miller:

*1 This office is in receipt of your opinion request of March 20, 1979, concerning proper use of public utility funds. You state: 'A municipally owned electric utility is planning a recognition dinner for a retiring electric superintendent. May electric utility funds be used to pay for the dinner of the superintendent and other retiring or retired trustees who are also being recognized for their community contributions?'

*1 In 1975, then Attorney General Turner wrote an opinion to State Auditor Smith in which Smith quoted:

*1 'There appears to be a growing tendency throughout the State for Hospital Trustees, School Boards, City Councils and/or similar agencies to authorize and pay for out of public funds such affairs as parties, banquets and entertainment for employees of the agencies involved. Your opinion is respectfully requested as to whether or not Hospital Trustees, School Boards, City Council and/or similar agencies of the State have authority to expend public moneys in payment for social functions, parties, or other forms of entertainment for employees of the agency making or proposing to make such expenditures.'

*1 76 O.A.G. 69.

*1 While failing to note that penal statutes are strictly construed in favor of the accused, State v. Lawr, 263 N.W.2d 747 (Iowa 1978), Mr. Turner concluded the questioned activities were in violation of Iowa Code Section 740.20 (1975), prohibiting the private use of public property, (see comparable Section 721.2(1, 5) Code, 1979), and, in addition, possibly constituted an embezzlement.

*1 The matters about which you inquire, however, seem different in kind from the activities of which Mr. Turner wrote. While an expenditure of public monies strictly for the gratification of public workers, their entertainment, parties, social affairs and other pleasures can be said to violate criminal laws, a retirement dinner for those who have served the public long and faithfully, sometimes no doubt beyond the call of duty with little public attention for such acts seems a small honorarium in recognition. The character and purpose of such a dinner highlights a wide contrast to the activities about which Mr. Turner wrote.

*1 But such questions are never free from the pale of doubt. Your request presents this office with little of the facts and circumstances surrounding the proposed recognition dinner. One would have no reason to believe that those in charge of a municipal utility would spend public funds frivolously or unwisely on the private gatherings and merriments of those employed by it; for to do so could run close to activity construed as criminal. And there should be no suspicion that the public officers running such utilities would allow corporation resources to be spent on such things; for the suspicion undermines the trust instilled with such positions and calls into question the presumption that these officers execute their duties honestly and faithfully.

*2 The key is 'public purpose'; public monies may be spent only for the public benefit. Iowa Constitution, Article III, Section 31; Love v. City of Des Moines, 210 Iowa 90, 230 N.W. 373 (1930), 64 C.J.S. Municipal Corporations § 1835(b) (1950); 56 Am. Jur. 2d Municipal Corporations § 591 (1971); O.A.G. March 9, 1972, at 395. And the general rule, seemingly applicable to this case is:

*2 It is generally conceded that a municipal corporation has no implied power to expend its funds for providing refreshments, entertainment, and dinners for delegates to a convention; or for entertaining guests at a supper or ball; or for the purpose of extending hospitality or furnishing social pleasures either to citizens or invited guests.

*2 56 Am. Jur. 2d Municipal Corporations, § 204, at 262.

*2 But this rule has several variants by which public funds may legitimately be spent. It has been recognized that a public purpose is served and public funds may be spent in commemorating those important historical, military and civil events in which all citizens should take an interest. Id., at 263. In Kingman v. Brockton, 153 Mass. 255, 26 N.E. 98 (1891), the court said:

*2 That statute authorizes the city to appropriate a sum of money for the erection of a memorial hall, to be used and maintained as a memorial to the soldiers and sailors of the War of the Rebellion. This may properly be deemed to be a public purpose, and a statute authorizing the raising of money by taxation for the erection of such memorial hall may be vindicated on the same grounds as statutes authorizing the raising of money for monuments, statues, gates or archways, celebrations, the publication of town histories, parks, roads leading to points of fine natural scenery, decorations upon public buildings, or other public ornaments or embellishments, designed merely to promote the general welfare, either by providing for fresh air or recreation or by educating the public taste, or by inspiring sentiments of patriotism or of respect for the memory of worthy individuals.

*2 Numerous cases have held a public purpose is served in the purchase, construction and erection of public parks, monuments and memorials and commission of other public events. United States v. Gettysburg Electric R. Co., 168 U.S. 668 (1896) (purchase and commemoration of battlefield); Vrooman v. City of St. Louis, 88 S.W.2d 189 (Mo. 1935) (construction of memorial park); Hutcheson v. Atherton, 99 P.2d 462 (N.M. 1940) (commemoration of centennial); Hoyt v. Broome County, 258 N.Y. 402, 34 N.E.2d 481 (1941) (payment of soldier's bonus); State ex. rel. Singelman v. Morrison, 57 So.2d 238 (La. App. 1952) (erection of statue); Sears v. Hopely, 103 Ohio St. 46, 132 N.E. 25 (1921) (highway monument); Powell v. Thomas, 52 S.E.2d 782 (S.C. 1949) (war memorial building); Thomas v. Daughters of Utah Pioneers, 197 P.2d 477 (Utah 1948) (pioneer museum); Conley v. Daughters of the Republic of Texas, 151 S.W. 877 (Tex. App. 1912) (Texas' independence memorial building); City of Greensboro v. Smith, 241 N.C. 363, 85 S.E.2d 292 (1955), (war memorial building and playground); Allied Architects' Ass'n of Los Angeles v. Payne, 192 Cal. 221 P.209 (1923) (memorial hall); Hubbard v. City of Townton, 140 Mass. 467, 5 N.E. 157 (1886) (band concerts); Stegmier v. Goeringer, 218 Pa. 499, 677 A. 782 (1907) (centennial celebration); Stephens v. Chambers, 34 Cal. App. 660, 168 P. 595 (1917); State ex. rel. American Legion etc. v. Smith, 235 Wis. 443, 293 N.W. 161 (1940) (American Legion convention). See, Annot., 30 A.L.R. 1035 (1923); 56 Am. Jur.2d Municipal Corporations § 204 (1971); 64 C.J.S. Municipal Corporations § 1835(b) (1950); 15 McQuillen, Municipal Corporations § 39.21 at 38-42 (Rev. Ed. 1970).

*3 In Dickinson v. Porter, 240 Iowa 393, 35 N.W.2d 66, (1948), the Supreme Court upheld the Agricultural Land Tax Credit Act against a challenge under Iowa Constitution Article III, Section 31, and established a standard, applicable here, that has been followed since. It quoted extensively 1 Cooley, Taxation, Fourth Ed., Section 189 to this effect:

*3 It is only in a clear case that a statute imposing a tax will be held invalid on the ground that the tax is not for a public purpose. The question is one not 'of exclusive legal logic, but is one more or less of policy and wisdom, properly determinable in light of public welfare, present and future, in a broad sense, and hence is not a pure judicial law question, except in those cases clearly outside of the twilight zone.'

*3 Money for a particular purpose may be raised by tax, it is said in one case, it there be the 'least possibility' that it will be promotive in any degree of the public welfare. . . . And still another presents the same idea in language but little different: 'To justify the court in . . . declaring the tax void, the absence of all possible public interest in the purpose for which the funds are raised must be clear and palatable; so clear and palatable as to be perceptible by every mind at first blush.' . . .

*3 Id., at 417.

*3 Recently in John R. Grubb v. Iowa Housing Finance Authority, 255 N.W.2d 89, 93 (Iowa 1977), the Supreme Court upheld the Iowa Housing Finance Authority Act against an Article III Section 31 challenge and quoting the above-quoted language of Dickinson v. Porter, supra, said:

*3 An examination of Dickinson, supra, and decisions from other jurisdictions discloses a plain judicial intent to permit the concept of 'public purpose' to have that flexibility and expansive scope required to meet the challenges of increasingly complex social, economic, and technological conditions.

*3 In Talbott v. Independent School District, 230 Iowa 949, 962, 299 N.W. 556, ___ (1941), the Supreme Court considered the character of public employees' pensions, in a discussion that bears repeating here:

*3 The conclusion to be deduced from all these decisions holding that allowances paid to public employees from retirement funds, in part maintained by them, is that such allowances are not pure pensions, gratuities, or bounties, but are given in consideration of services which were not fully recompensed when rendered. And also that any contribution by the state, or any subdivision of it, by way of taxation or other public money, to such retirement or disability funds, is not a donation for private purpose, but is a proper outlay for a public purpose, which purpose is to bring about a better and more efficient service in these various departments by improving their personnel and morale, through the retention of faithful and experienced employees.

*3 If a public purpose is met by the extension of pensions which foster the creation and maintenance of an efficient and dedicated body of public servants, how may it be said it is less served when public funds are used to pay tribute to a man's years of honorable public service? Seemingly a retirement dinner is at least possibly promotive of the public welfare when the public is called to give praise to a servant's life of work in the public sector by a dinner for that purpose. Arguably, it is not clear and palpable to every mind at first blush that the small honorarium paid in a public dinner is not conducive to the maintenance of a spirited, inspired and motivated body of public workers. If the greater cost of erection of halls, statues, memorials and the celebration of great events serves to inspire a citizenry's motives of patriotism, love of country and community concern, the expenditure of far smaller amounts to commend one's community contributions can be productive of the same ends.

*4 Under the best circumstances a recognition dinner can be seen to benefit the public, even though indirectly and intangibly. But the fear is that one retirement dinner will become many, and its high purposes lost to a moment's impulse to celebrate events and occasions of lesser

deserving. The weakness is not in our laws but in ourselves. As was remarked quite early by a court granting an injunction against the expenditure of public funds to commemorate the surrender of Cornwallis:

*4 If fireworks and illuminations can be permitted, so may dinners, balls, and fetes of every description. It is obvious that such a power would open a door for great abuses and expenditures of the most wasteful character.

*4 Hood v. Lynn, 1 Allen 103, ___ (1861), quoted in 30 A .L.R. 1035, 1042 (1923).

*4 The line to be drawn between those expenditures which may be said to violate criminal statutes and those truly yielding of public benefit cannot properly be drawn by this office. Courts have grappled with these problems for decades and no clear trend in the cases appears. Aside from saying that potential abuses in these cases can be checked by appropriate legislation, perhaps all that can be said presently is that a retirement dinner under proper circumstances and with proper motives would be upheld as 'for a public purpose'; and it is the motive for the expenditure that may insulate an officer from criminal liability. Iowa Code Section 721.2 (1979). But any retirement dinner will certainly be subject to a deserved close scrutiny and one is well advised to consider carefully the expenditure of public monies for such a purpose.

Sincerely,

*4 Carlton G. Salmons

*4 Assistant Attorney General

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